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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, ORIGINAL.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

Vol. I.

(PAGES 1 TO 1048, INCLUSIVE.)

BILL FILED OCTOBER 27, 1902.

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No. 3—United States Statutes at Large, chap. 22, vol. 2—Act for the disposal of certain tracts of land in the Mississippi territory, February 28, 1809	2036	1866
No. 4—United States Statutes at Large, chap. 100, secs. 1 and 2—Act for adjusting the claims to lands, &c., in the districts east of the island of New Orleans	2038	1868
No. 5—United States Statutes at Large, vol. 3, p. 472, Act concerning an act to enable the President to take possession of the country east of the Perdido, &c., March 3, 1811	2039	1869
No. 6—United States Statutes at Large, vol. 2, p. 471, Act to enable the President to take possession of the country lying east of the Perdido, &c., January 15, 1811	2040	1870
No. 7—Resolution of the Congress of the United States relative to the occupation of the Floridas, approved January 15, 1811	2041	1871
No. 8—United States Statutes at Large, vol 2, chap. 50, 1st par., sec. 1—Act for the admission of the State of Louisiana into the Union, April 8, 1812	2042	1871
No. 9—United States Statutes at Large, chap. 57, vol. 2—Act to enlarge the limits of the State of Louisiana, April 14, 1812	2043	1872

	Original.	Print
Document No. 10—United States Statutes at Large, chap. 84, vol. 2—Act to enlarge the boundaries of the Mississippi territory, May 14, 1812	2044	1873
No. 11—United States Statutes at Large, vol. 3, p. 472, Act authorizing the President to take possession of a tract of country south of the Mississippi territory and west of the Perdido, February 12, 1813	2045	1873
No. 12—United States Statutes at Large, chap. 23, vol. 3, secs. 1 and 2—Act to enable the people of the western part of the Mississippi territory to form a constitution, &c.	2046	1874
No. 13—United States Statutes at Large, vol. 2, p. 473—Resolution for the admission of the State of Mississippi into the Union, December 10, 1817	2047	1875
No. 14—Copy of one of the Spanish grants annulled by the treaty between United States and Spain of February, 1819	2048	1875
No. 15—Article II of treaty of 1819 between United States and Spain	2050	1877
No. 16—United States Statutes at Large, chap. 39, vol. 2, secs. 1 and 2—Act for carrying into execution treaty between United States and Spain of February 22, 1819, approved March 3, 1821	2051	1878
No. 17—Opinion of Supreme Court of United States in Foster & Elam *vs.* Neilson, 2 Pet., 300	2052	1879
No. 18—Boundaries of Hancock county, Mississippi, sec. 44, Code 1880, and sec. 368, Code of 1892	2059	1886
No. 19—Boundaries of Jackson county, Mississippi, sec. 50, Code of 1880, and sec. 374, Code of 1892	2060	1887
No. 20—Boundaries of Harrison county, Mississippi, sec. 45, Code 1880, and sec. 369, Code of 1892	2061	1888
No. 21—Chap. 52, Laws of Mississippi of 1842—Act to extend the jurisdiction of the county of Harrison, February 22, 1842	2062	1889
No. 22—Article 2 of sec. 2 of chap. 2 of the Revised Code of Mississippi of 1857	2063	1889
No. 23—Certified copies of entries in Justice of the Peace Champlin's docket, &c	2064	1890
No. 24—Certified copies of entries in Justice of the Peace Champlin's docket, &c	2070	1895
No. 25—Certified copy of proceedings in the matter of an official inquest upon the body of John Kennedy, November 29, 1886, in circuit court of Harrison county, Mississippi	2077	1896

	Original.	Print
Document No. 25a—Minutes of the board of supervisors of Harrison county, Mississippi, at the March term, A. D. 1882	2085	1904
No. 26—Minutes of the board of supervisors of Harrison county, Mississippi, at the August term, A. D. 1884	2087	1906
No. 27—Minutes of the board of supervisors of Harrison county, Mississippi, at the August term, A. D. 1885	2088	1907
No. 28—Minutes of the board of supervisors of Harrison county, Mississippi, at the March term, A. D. 1888	2089	1908
No. 29—Minutes of the board of supervisors of Harrison county, Mississippi, at the November term, A. D. 1892	2090	1909
No. 30—Minutes of the board of supervisors of Harrison county, Mississippi, at the December term, A. D. 1892	2093	1912
No. 31—Minutes of the board of supervisors of Harrison county, Mississippi, at the January term, A. D. 1893	2094	1913
No. 32—Minutes of the board of supervisors of Harrison county, Mississippi, at the January term, A. D. 1893	2098	1917
No. 33—Minutes of the board of supervisors of Harrison county, Mississippi, at the August term, A. D. 1893	2099	1918
No. 34—Minutes of the board of supervisors of Harrison county, Mississippi, at the October term, A. D. 1893	2100	1919
No. 35—Minutes of the board of supervisors of Harrison county, Mississippi, at the November term, A. D. 1893	2102	1921
No. 36—Minutes of the board of supervisors of Harrison county, Mississippi, at the December term, A. D. 1893	2103	1922
No. 37—Minutes of the board of supervisors of Harrison county, Mississippi, at the February term, A. D. 1894	2105	1923
No. 38—Minutes of the board of supervisors of Harrison county, Mississippi, at the September term, A. D. 1892	2106	1924
No. 39—Pilots' laws, rules and regulations of Ship Island harbor, Mississippi	2109	1928
No. 40—Act of Congress approved February 20, 1811, providing the conditions upon which Louisiana might be admitted into the Union—Gayarre's History of Louisiana under American Domination	2117	1937
No. 41—Record of oyster boat licenses, Harrison county, Mississippi	2120	1939

	Original	Print
Document No. 42—Minutes of the board of supervisors of Jackson county, Mississippi, at August term, 1893		
No. 43—Order of the board of supervisors of Jackson county, Mississippi, at November term, 1892	2131	1945
No. 44—Minutes of the board of supervisors of Jackson county, Mississippi, at June term, 1892	2132	1946
No. 45—Minutes of the board of supervisors of Jackson county, Mississippi, at September term, 1884	2134	1948
No. 46—Rules and regulations of the board of health of Harrison county, Mississippi, for year 1877	2135	1949
No. 47—Quarantine physician's report, July 22, 1878, to the board of health of Harrison county, Mississippi	2136	1951
No. 48—Biographical and Historical Memoirs of Mississippi, chap. I	2140	1954
No. 49—Article 9, chap. 13, Hutchinson's Mississippi Code, 1798 to 1848—Public health and safety	2141	1956
No. 50—Proclamation by the King of England, October 7, 1763	2142	1956
No. 51—Extract from letter from King of France to Mons. D'Abbadie, April 21, 1764	2161	1978
No. 52—Extract from letter from James Madison to Robert R. Livingston, September 28, 1801	2162	1980
No. 53—Extract from a letter of Albert Gallatin to James Madison, February 7, 1803	2164	1981
No. 54—Letter from James Madison to Mr. Monroe, July 29, 1803	2166	1983
No. 55—Extracts from a letter to Mr. Monroe, April 15, 1804	2167	1984
No. 56—Letter from James Madison to Messrs. Monroe and Pinckney, July 8, 1804	2171	1989
No. 57—Extract from message of Thomas Jefferson to Congress, November 8, 1804	2173	1991
No. 58—Extract from letter of Mr. Monroe to Mr. Talleyrand, November 8, 1804	2175	1993
No. 59—Letter of Mr. Talleyrand to General Armstrong, December 21, 1804	2176	1993
No. 60—Extract from a letter of Messrs. Monroe and Pinckney to Mr. Cevallos, Jan. 28, 1805	2178	1995
No. 61—Extract from a letter of Mr. Madison to Mr. Monroe, May 23, 1805	2180	1998
No. 62—Application to Congress to annex West Florida to the Mississippi territory, November 20, 1811	2184	2002
	2185	2003

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Document No. 63—Extract from a letter addressed to the Secretary of State by the minister of Spain, December 30, 1815	2188	2005
No. 64—Extract from a letter of the Secretary of State to the minister of Spain, Jan. 19, 1816	2189	2006
No. 65—Extract from a letter of the minister of Spain to the Secretary of State, Feb. 22, 1816	2190	2007
No. 66—Extract from a letter of the Secretary of State to the minister of Spain, June 10, 1816	2192	2008
No. 67—Extract from letter of Don Jose Pizarro to Mr. Erving, August 17, 1817	2195	2011
No. 68—Extract from letter of Don Luis to the Secretary of State, January 5, 1818	2198	2014
No. 69—Map (not reproduced)	2199	2014
No. 70—Map (not reproduced)	2200	2014
No. 71—Map (not reproduced)	2200	2014
No. 72—Proceedings of board of supervisors of Hancock county, Mississippi, January term, 1808	2201	2015
No. 73—Proceedings of board of supervisors of Hancock county, Mississippi, September term, 1808	2202	2016
No. 74—Proceedings of board of supervisors of Hancock county, Mississippi, June term, 1900	2204	2018
No. 75—Certificate of auditor of public accounts of State of Mississippi as to amounts paid into the State treasury on account of oyster fund	2205	2019
No. 76—Letter of secretary of Board of Oyster Commissioners of Mississippi to chairman of committee on testimony, May 25, 1904	2206	2019
No. 77—Letter of secretary of Board of Oyster Commissioners to chairman of committee on testimony, May 25, 1904	2207	2020
No. 78—Report of Mississippi Commissioners to Governor Longino, October 2, 1901	2208	2021
Exhibit A—Letter of Louisiana Commissioners to Mississippi Commissioners, April 6, 1901	2209	2022
Exhibit B—Letter of Mississippi Commissioners to Louisiana Commissioners, July 20, 1901	2214	2027
No. 79—Report of Mississippi Commissioners to Governor Longino, October 1, 1901	2215	2028
No. 80—Extract from governor's message to the legislature of Mississippi of 1902, relative to boundary commission	2217	2031
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No. 84—Laws of Mississippi, chap. 20, page 134, act giving consent of the State to the United States to purchase a site on St. Joseph's or Half Moon island for a light-house	2317	2105
No. 85—Letter of citizens' committee and mayor and aldermen's committee of Biloxi, Mississippi, to Governor Longino, Nov. 5, 1902	2318	2105
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Nos. 87, 88, 89, and 90—Maps which will be found in Mississippi Atlas of Maps	2328	2112
No. 91—Extract from Report on the Agriculture and Geology of Mississippi, by B. L. C. Wailes, 1854	2328	2112
No. 92—Extract from Report on the Geology and Agriculture of Mississippi, by L. Harper, 1857	2330	2113
No. 93—Laws of Mississippi, chap. XL, page 113—Act to provide for the printing of the Second Annual Report of the Agricultural and Geological Survey of the State, January 31, 1857	2332	2114
No. 94—Laws of Mississippi, chap. 38, page 109—Act to provide for the appointment of a harbor master for Ship Island harbor, November 19, 1857	2334	2116
No. 95—Acts of 1812 relating to the division of the original county of Mobile into the counties of Mobile, Hancock, and Jackson	2336	2118
No. 96—Section 4 of chap. 84, Laws of Mississippi, approved December 16, 1830, extending boundaries of Hancock and Jackson counties	2337	2118
No. 97—Laws of Mississippi, chap. 52, page 174—Act to extend the jurisdiction of the county of Harrison and for other purposes, February 22, 1842	2338	2119

	Original.	Print
Document No. 98—Laws of Mississippi, chap. CXXV, page 205—Memorial of the legislature of the State of Mississippi to the Congress of the United States, January 26, 1830	2339	2119
No. 99—Laws of Mississippi, chap. 36, page 56—Act to provide for a survey of the Mississippi coast, February 14, 1839	2340	2120
No. 100—Laws of Mississippi, chap. 150, page 262—Joint resolution to Congress for a lighthouse on the shoal or middle ground between Pass Christian and Pass Mary Ann, February 7, 1840	2341	2121
No. 101—Laws of Mississippi, chap 148, page 148—Memorial of the legislature of the State of Mississippi to the Congress of the United States, February 22, 1840	2342	2121
No. 102—Laws of Mississippi, chap. 118, page 252—Resolution to Congress concerning the erection of a lighthouse on St. Joseph's island, February 22, 1842	2344	2124
No. 103—Laws of Mississippi, chap. 196, page 371—Resolution requesting Congress to remove the custom-house from Pearlington to Shieldsborough, February 24, 1844	2345	2124
No. 104—Laws of Mississippi, chap. 307, page 553—Preamble and resolution asking Congress to erect a lighthouse and establish a mail route on the seacoast of Mississippi, &c., February 5, 1846	2346	2125
No. 105—Laws of Mississippi, 1854, chap. 46, page 48—Act to authorize the printing of the First Annual Report of the Agricultural and Geological Survey of the State, March 1, 1854	2347	2126
No. 106—Laws of Mississippi, 1857, chap. CV, page 162—Act to enable the United States to obtain title to St. Joseph's island, &c., November 19, 1857	2349	2128
No. 107—United States Statutes at Large, vol. 3, page 371—Act to establish a separate territorial government for the eastern part of the Mississippi territory, approved March 3, 1817	2350	2129
No. 108—United States Statutes at Large, vol. 9, page 175—Act authorizing the erection of certain lighthouses, &c., March 3, 1847	2351	2129
No. 109—United States Statutes at Large, vol. 11, page 95—Act making appropriations for lighthouses, &c., approved August 18, 1856	2352	2130
No. 110—Laws of Mississippi, 1821, chap. XX, page 21—Act for the relief of John Quavre, November 24, 1821	2353	2131

	Original.	Print
Document No. 111—Certificate of clerk of circuit court of Hancock county, Mississippi, as to lost papers in case of Mississippi *vs.* Baker & Hogan	2354	2132
No. 112—Doc. A—Extract from letter of W. C. C. Claiborne to George Poindexter, January 7, 1812	2355	2132
Doc. B—Extract from letter of W. C. C. Claiborne to James Monroe, Jan. 31, 1812	2355	2133
Doc. C—Extract from letter of W. C. C. Claiborne to John H. Johnson, April 20, 1812	2356	2133
Doc. D—Extract from letter of W. C. C. Claiborne to Wm. L. Brent, May 14, 1812	2356	2134
Doc. E—Extract from letter of W. C. C. Claiborne to James Monroe, June 27, 1812, and same to Albert Gallatin, June 27, 1812	2357	2134
Doc. F—Extract from letter of W. C. C. Claiborne to Thos. B. Robertson, July 4, 1812	2357	2135
Doc. G—Extracts from letter of David Holmes to Governor Claiborne, June 22, 1812, and same to General Wilkinson, September 7, 1812	2358	2135
Doc. H—Proclamation by Governor Holmes, August 1, 1812	2358	2136
Doc. I—Proclamation by Governor Holmes, September 17, 1812	2359	2137
Certificate of director of department of archives and history of State of Mississippi to foregoing documents	2360	2137
Exhibits A and B—Maps which will be found in Mississippi Atlas of Maps	2361	2138
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Certificate of Commissioner Bullard as to testimony taken at New Orleans	2363	2139
Certificate of Commissioner Bullard as to all the testimony and evidence	2364	2139
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Minute entry submitting motion to assign cause for argument	2368	2141
Order assigning cause for argument on Tuesday, October 10, 1965	2370	2141

1 At the Capitol of the United States in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the thirteenth day of the same month) in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-seventh, the Supreme Court of the United States met agreeably to law.

And afterwards, towit, on the 20th day of October A. D. 1902, the following entry appears of record, viz:

2 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, *vs.* THE STATE OF MISSISSIPPI. } No. —, Original, October Term, 1902.

Mr. Walter Guion, of counsel for the complainant, submitted to the consideration of the court a motion for leave to file a bill of complaint herein.

October 20th, 1902.

Which said motion is in the words and figures following, viz.

3 Supreme Court of the United States, —— Term, 1902.

STATE OF LOUISIANA *versus* STATE OF MISSISSIPPI. } No. —.

Motion and Brief in Support of Motion to File Bill of Complaint.

Walter Guion, attorney general of Louisiana.
John Dymond, Jr., Albert Estopinal, Jr., of counsel.

4 Supreme Court of the United States.

STATE OF LOUISIANA *versus* STATE OF MISSISSIPPI. } No. —.

And now comes the State of Louisiana, through Walter Guion, its attorney general, and Messrs. John Dymond, Jr., and Albert Estopinal, Jr., of counsel, and moves this honorable court for permission to file in this court its bill of complaint against the State of Mississippi, and for process to answer.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

5 Supreme Court of the United States.

STATE OF LOUISIANA
versus
STATE OF MISSISSIPPI. } No. —.

Brief on the Part of the State of Louisiana in Support of Its Motion to File Its Bill of Complaint.

May it please your honors:

This proceeding is an action of boundary on the part of the State of Louisiana brought against its adjoining sister State, Mississippi, and relief is sought through the original jurisdiction of this honorable court, as provided in section 2 of article three of the Constitution of the United States of America.

We have set forth in our bill of complaint the detail of the dispute between the two States. It is as to their respective boundaries as created, described and established by the acts of Congress
6 of the United States forming the two States, and your honors are asked to interpret the meaning of these acts of Congress and to apply your resulting conclusions in establishing a boundary line in the waters between certain parts of the two States where the disagreement as to their respective rights exists.

The proceeding is not a novel one, as in the course of the history of our Union many similar cases have been heard and decided by your honors.

In the case of The State of New Jersey *vs.* The State of New York, 5 Peters, 284, the question was first fully considered and it was there held, that the Supreme Court of the United States had original jurisdiction to settle boundaries between States. This decision on this point was affirmed in the cases of The State of Rhode Island *vs.* The State of Massachusetts, 12 Peters, 657; and has been uniformly followed in the cases of The State of Missouri *vs.* The State of Iowa, 7 Howard, 660; The State of Florida *vs.* The State of Georgia, 17 Howard, 478; The Commonwealth of Virginia *vs.* The State of West Virginia, 11 Wallace, p. 39; The State of Missouri *vs.* The State of Kentucky, 11 Wallace, p. 395; The State of Indiana *vs.* The State of Kentucky, 136 U. S., p. 479; The State of Virginia *vs.* The State of Tennessee, 148 U. S., p. 503.

Your orator therefore respectfully prays that its motion for leave to file its bill of complaint be granted, and that process to answer be issued and all other necessary orders be granted.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

7 (Endorsed:) Supreme Court U. S., October term, 1902. No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Motion for leave to file bill of complaint. Filed October 27, 1902.

8 And afterwards, to wit, on the 27th day of October, A. D. 1902, the following entry appears of record, viz:

9 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, *vs.* THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

On consideration of the motion for leave to file a bill of complaint herein,

It is now here ordered by the court that said motion be, and the same is hereby granted, and that a subpœna returnable on Monday, January 12, 1903, be issued and served herein.

October 27th, 1902.

10 [Endorsed:] Supreme Court of the United States. October term, 1902. Term No. 12, original. Order. Filed Oct. 27, 1902.

11 And on the same day to wit, the 27th day of October, A. D. 1902, the bill of complaint was filed in the words and figures following, to wit:

12 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA *versus* STATE OF MISSISSIPPI. } No. 12, Orig'l.

Bill of Complaint.

Walter Guion, attorney general of Louisiana.
John Dymond, Jr., Albert Estopinal, Jr., of counsel.

13 Supreme Court of the United States, —— Term, 1902.

STATE OF LOUISIANA *versus* STATE OF MISSISSIPPI. } No. —.

Bill of Complaint.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

The State of Louisiana, one of the United States of America, by William W. Heard, governor, and upon the information of Walter

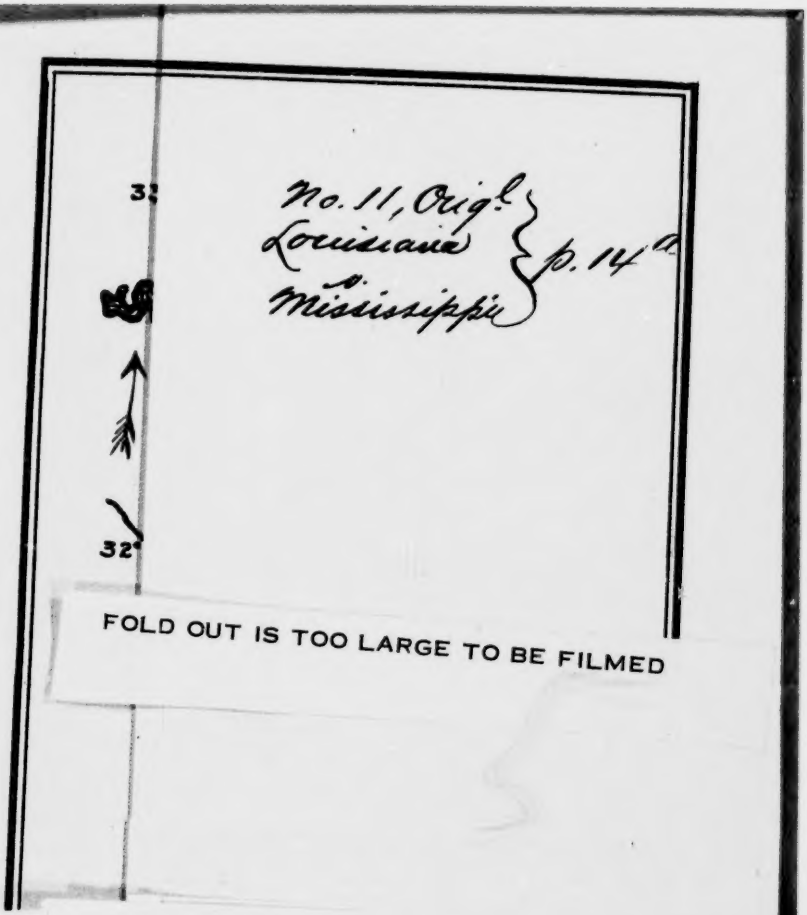
Guion, attorney general, brings this, her bill of complaint, against The State of Mississippi, one of the United States of America, and against Andrew H. Longino, a citizen of the State of Mississippi, in his capacity as governor of the State of Mississippi, and Monroe McClurg, attorney general of the State of Mississippi, and thereupon your orator complains and says:—

1st. That the State of Louisiana was admitted into the Union of the United States of America by the act of Congress, found in
14 chapter 50 of the United States Statutes at Large, volume 2, page 701, approved April 6th, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said act, were described as follows:—

"Whereas, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said river, including all islands to the 32d degree of latitude; thence due north to the northernmost part of the 33d degree of north latitude; thence along the said parallel of latitude to the Mississippi river; thence down the said river to the River Iberville, and from *thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast,*" etc. (Italics ours.)

2nd. That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi river, beginning at the northeast corner of said State and extending south to the junction of the said river, with the River Iberville (now known as Bayou Manchac) and thence extending eastwardly through the lower end of the Amite river, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the gulf of Mexico its only course was through the Rigolets, into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, following said channel, north of Half Moon island, through Mississippi sound to the north of Isle à Pitre, through the Cat Island channel, southwest of Cat island, into the gulf of Mexico, which said eastern boundary of the State of Louisiana is more fully shown on diagram No. 1, made part of this bill;

(Here follows diagram marked p. 14*a*.)



FOLD OUT IS TOO LARGE TO BE FILMED

3rd. That by the act of Congress, found in the United States Statutes at Large, vol. 2, p. 708, chapter 57, approved April 14th, 1812, additional territory was added to the then existing State of Louisiana, which additional territory was described in the following language:—

"Beginning at the junction of the River Iberville with the Mississippi river; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the eastern branch of the Pearl river to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana;"

4th. That the effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the Mississippi river as the original eastern boundary, as far south as the 31st degree of north latitude. The change then moved the eastern boundary eastward along the 31st degree of north latitude to the Pearl river, whence it then ran south down the said river, through its eastern branch, till it entered the northern corner of Lake Borgne, where the State's eastern boundary then joined and followed the boundary line originally fixed in the act of April 6th, 1812, and followed, as heretofore stated, the deep water channel through the upper corner of Lake Borgne, north of Half Moon island, eastward through the deep water channel along the Mississippi sound till it reached the Cat Island channel north of Isle à Pitre, and south[illegible]st of Cat island, whence passing through Chandeleur sound, nor[illegible]east of Chandeleur islands, it entered the gulf of Mexico, and ran south around the delta of the Mississippi river and then north and westward to the point where the Sabine river enters the gulf of Mexico, as will be more fully seen from the diagram No. 2, made part of this bill;

(Here follows diagram marked p. 15a.)

5th. That the territory lying adjacent to, and to the eastward of the State of Louisiana is the State of Mississippi, which latter State was admitted into the Union of the United States of America
16 by the act of Congress, found in the United States Statutes at Large, volume 3, chapter 23, page 348, approved March 1st, 1817, whereby the inhabitants of the western part of the then Mississippi territory were authorized to form for themselves a State constitution and to be admitted into the Union, the boundaries of the then to be created State being described as follows:—

"Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the gulf of Mexico; *thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne;* thence up said river to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi river; thence up the same to the beginning;"

6th. That by the said act, Congress intended that the southern boundary line of the State of Mississippi, beginning at the point dividing it from the State of Alabama, should run westwardly till it joined the Louisiana eastern boundary line, and that in doing so, the said southern boundary would in effect start westward from a point eighteen miles south of the coast line, and include in its westwardly direction the western end of Petit Bois island, all of Horn island, Ship island and Cat island, and the smaller islands north of these, those islands being the ones contemplated in the act of Congress, as being within eighteen miles of the southern coast line of Mississippi, and that the said southern boundary of Mississippi, extending in its *westwardly* direction through the gulf of Mexico, would gradually approach the coast line, and meet the eastern boundary line of Louisiana, just as the said eastern boundary line of Louisiana immerges from the Cat Island channel into the gulf of Mexico,
17 and thence follow and become the same as the Louisiana boundary line extending westwardly to the south of Cat island, through Mississippi sound to the north of Half Moon or Grand island to the *most southern junction of the east branch of Pearl river with Lake Borgne*, being identical with the Louisiana eastern boundary, and thence extending up the channel of Pearl river;

7th. That the islands included between the shore line and the southern boundary of the State of Mississippi are the islands heretofore described, viz: the western end of Petit Bois island, with all of Horn island, Ship island and Cat island, and the small islands north of them, those islands being large, and well known to Congress at the time of the passage of the act, all of which islands and the southern boundary of the State of Mississippi will more fully appear from the diagram No. 3, made a part of this bill;

(Here follows diagram marked p. 17*a*.)

No. 11, Orig.
Louisiana
v.
Mississippi
p. 17a



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8th. That the islands contemplated in the act of Congess of 1812, creating the State of Louisiana, and intended to be embraced within the State of Louisiana, as provided by the clause, "*Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast,*" were all of the other islands, except those heretofore named as going to the State of Mississippi, as all other islands, and all other mainland, are south and west of the boundary line thus passing from Pearl river through the deep water channels in Lake Borgne, and Mississippi sound, through the deep water channel, southwest of Cat island to the eastward of the Chandeleur islands, and thence south, taking in the delta of the Mississippi river, and extending westward along the Gulf coast, including all islands along the coast, to the Sabine river, where the State of Louisiana is thence bounded on the westward by the State of Texas, all of which will more fully appear from diagram No. 2, heretofore referred to;

9th. Now your orator avers that there has developed in recent years in the waters south of the State of Mississippi and east
18 of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom;

10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and *permits* the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made;

11th. That the State of Louisiana has by legislative enactments regulated the oyster industry in the said State of Louisiana, and *prohibits* the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made;

12th. That the provisions of the laws of the said two States differ considerably in many other respects.

13th. That the existence and location of the natural oyster reefs in the waters of the parish of St. Bernard in the State of Louisiana which adjoins the State of Mississippi is shown by the map made from a reconnaissance by the United States Fish Commission steamer, "Fish Hawk," in February, 1898, as will more fully appear from diagram No. 4, now made part of this bill;

(Here follows diagram marked p. 18a.)

14th. Now your orator avers that the boundary line dividing the two States in the waters thereof has been clearly defined by the acts of Congress creating the States of Louisiana and Mississippi, as will be seen from the diagram No. 5, made up from the boundary descriptions taken from the acts of Congress creating the said States of Louisiana and Mississippi, which diagram is also made part of this bill;

(Here follows diagram marked p. 18*b*.)


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15th. That the said boundary line in the waters between said States has never been designated by buoys or marks of any kind by either State, nor designated in any manner, except by the United States Government in so far as it has buoyed the *deep water channel*, extending from the mouth of the Pearl river through the upper corner of Lake Borgne north of Half Moon island, eastward to the Cat Island pass, north of Isle à Pitre, and southwest of Cat island, which buoys were placed by the Coast Survey of the United States Government;

16th. That owing to the differences in the laws of the States of Louisiana and Mississippi, regulating the oyster industry of the respective States, the said statutes providing penalties for the violation thereof, much confusion has resulted and a great public demand has arisen in Louisiana to definitely mark the boundary line dividing the two States in the waters thereof; that citizens of the State of Mississippi, in violation of the laws of the State of Louisiana, have been fishing oysters with dredges on the natural reefs in the waters of the State of Louisiana, said fishermen claiming that they were in the waters of the State of Mississippi and consequently not violating the laws of the State of Louisiana;

17th. That affairs had reached such a crisis that, to avoid an armed conflict between the sheriff and officers of the parish of St. Bernard in the State of Louisiana and the sheriff and officers of the county of Harrison in the State of Mississippi, a meeting of citizens of the State of Louisiana was called by the governor of the State of Louisiana and held in the city of New Orleans, State of Louisiana, as will be seen from a certified copy of the minutes of said meeting, to-wit:—

"Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen:—

Present: His excellency, Gov. W. W. Heard; Lieutenant Governor Albert Estopinal; Major H. B. Richardson, chief of the board of State engineers; Messrs. Simon Leopold and A. T. Bonvillain, representing the commission appointed by the house of representatives of the State of Louisiana; Mr. H. C. Cage, representing the commission appointed by the senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the committee from the police jury of the parish of Plaquemines; Albert Estopinal, Jr., district attorney for the twenty-ninth judicial district; Clem Story and Gus Schoenberger, oyster inspectors, respectively of the parishes of St. Bernard and Plaquemines; Frank C. Mevers, sheriff of the parish of Plaquemines; E. E. Nunez, sheriff of the parish of St. Bernard; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the

subject of the call, stating that the oyster industry was of much greater magnitude than our people believed; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a penitentiary offense. Mr. Story called to the attention of the meeting the congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the committee that the Mississippi oyster factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the committee the fact that these tongmen and the dredges from the oyster factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

21 Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana oyster industry was susceptible of much greater development than enjoyed in any of those States; that an acre of oysters would yield 300 barrels, which at $1.00 a barrel would give gross proceeds of $300.00 from one acre of oysters; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the

Louisiana marshes. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an oyster receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction.

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Mevers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following resolution, which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the governor of the State of Louisiana request the governor of the State of Mississippi to appoint a commission of five gentlemen to confer with a commission to be appointed by the governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

22 The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the committee, to constitute the commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

(Signed) W. W. HEARD, Chairman.
(Signed) JOHN DYMOND, Jr., Secretary."

The original minutes of said meeting being made part of this bill as Exhibit "A."

18th. That to determine amicably the eastern boundary line between the said States, in the waters to the south of the State of Mississippi, and to the east of the southern portion of Louisiana, W. W. Heard, governor of the State of Louisiana, addressed the following communication to his excellency, A. H. Longino, governor of the State of Mississippi, to-wit:—

"State of Louisiana, Executive Department.

Baton Rouge, January 26, 1901.

His excellency, Governor A. H. Longino, Jackson, Miss.

Dear Sir: On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the oyster industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

23 I would therefore request that you appoint the commissioners for your State at your earliest convenience.

(Signed) W. W. HEARD, Governor."

As will be seen from a copy of said letter taken from the letter book in the hands of the governor's private secretary, sworn to by said secretary and made part of this bill, marked Exhibit "B."

19th. That his excellency, A. H. Longino, governor of the State of Mississippi, in response to the foregoing, then addressed to his excellency, W. W. Heard, governor of the State of Louisiana, the following communication, to-wit:—

"EXECUTIVE DEPARTMENT,
JACKSON, MISSISSIPPI, February 9, 1901.

His excellency, Gov. W. W. Heard, Baton Rouge, La.

DEAR GOVERNOR: I have the honor to inform you that I have this day appointed the following named gentlemen as commissioners from this State to confer with the commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.
Mr. A. Keller, Bay St. Louis, Miss.
Hon. W. A. White, Biloxi, Miss.
Mr. Harry T. Howard, Biloxi, Miss.
Hon. J. I. Ford, Scranton, Miss.

I have the honor, to be, sir,

Very truly yours,

(Signed) A. H. LONGINO, Governor."

The original of which said letter is made a part of this bill marked Exhibit "C."

20th. Your orator avers that this joint commission on boundary met in the city of New Orleans, State of Louisiana, on the 26th of March, 1901, as will appear from a certified copy of the minutes of said meeting as follows, to wit:—

24 "Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 a. m.

Present: Mississippi commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent: Hon. A. Kellar.

Louisiana commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal, Jr., chairman of the Louisiana commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story, Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 a. m. This motion was put and adopted, and the meeting then took a recess until 11:30 a. m.

At 11:30 a. m. after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present: Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana commission, then presented to the Mississippi commission the views of the Louisiana commissioners on the subject of the boundary line
25 in the waters between the two States. Mr. Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the act of 1812 annexing the territory west of the Pearl river the eastern boundary of Louisiana was extended to the mouth of the Pearl river, from which point the line joined the original water boundary and extended to

the Gulf by the deep water channel, passing to the eastward of Chandeleur islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula river, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi boundary commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana boundary commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana commission thereupon invited the Mississippi commission to luncheon at the Cosmopolitan hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

(Signed) JOHN DYMOND, JR., Secretary.
(Signed) H. T. HOWARD, Chairman."

Which said original minutes are now made a part of this bill marked Exhibit "D," and the said original map, the sub-
26 ject of discussion, is now made a part of this bill marked Exhibit "E."

21st. That the said commission appointed on the part of the State of Mississippi met, after some five months' delay, and on July 20th, 1901, submitted its reply to the Louisiana commission as follows, to wit:—

"Hon. Albert Estopinal, Jr., chairman Louisiana boundary commission:

The commission appointed by the State of Mississippi to confer with a like commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana commission, and having examined the line as delineated by that body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we

have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi commission considers as islands considerable territory which the Louisiana commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed) H. T. HOWARD, Chairman.
J. I. FORD, Secretary.
E. J. BOWERS.
W. A. WHITE.
AUG. KELLER."

Which said original document is now made a part of this bill marked Exhibit "F."

27 22nd. Your orator now avers that, as will appear from the foregoing, the State of Louisiana has exhausted all means whereby the said boundary line might be established amicably, except for the suggestion made by the State of Mississippi through its commission in its foregoing reply and contained in the following language:—

"*It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States, and we respectfully suggest that course.*"

23rd. Now your orator avers that it is entitled to appeal for relief to your honors, as one of the causes influencing the establishment by the Constitution of the United States of America, of your august tribunal, was the determining of disputed boundaries between sovereign States of the Union and that the right and power is therefore within your jurisdiction to fix and determine the boundary line dividing the States of *of* Louisiana, south of the State of Mississippi, in the waters lying between the said States;

24th. That the eastern water boundary line as claimed by your orator, viz: a line beginning at the most southern junction of the channel of the east branch of the Pearl river with Lake Borgne and thence eastward following the deep water channel to the north of Half Moon island, through the Mississippi Sound channel, to Cat Island pass, northeast of Isle à Pitre into the gulf of Mexico, thereby dividing the waters between the two States, agrees, and is in accord, with the acts of Congress creating respectively the State of Louisiana and the State of Mississippi as already shown by diagram No. 5; that any other boundary than the *deep water channel* as aforesaid would cause the limits of the two States to conflict and overlap, and that it is not to be presumed that the Congress of the United

States intended to, or would establish, in its description, a boundary for the State of Mississippi, conflicting with the already existing Louisiana eastern boundary, when there is a construction of
28 the wording of the two acts, in fact the only construction that suggests itself, that shows a boundary readily ascertained, harmonizing with the words of the acts as they now read, and clearly defining the limits of the two States in the waters between them.

25th. Your orator further avers that the use of the word "*westwardly*" in the description of the southern boundary of the State of Mississippi, as that southern boundary line extends westwardly from the Alabama State line to the Louisiana eastern boundary line, shows that it was not the intention of Congress to have it run direct or due west throughout the whole course, and that it was evidently the intention of Congress, in giving to the State of Mississippi the islands north of that westwardly drawn line, that the eighteen-mile limit shall gradually decrease as it approached the Louisiana line on the east till it met and followed it to its source. If the Mississippi line ran parallel to the southern coast of Mississippi, at a distance of eighteen miles from such coast line following the meander of the coast, and thence joined at right angles a line emerging from the mouth of Pearl river, such line would not only include Grassy, Half Moon, Round, Le Petit Pass islands and Isle à Petre, already belonging to Louisiana as being within nine miles or three leagues of the Louisiana shore line, but such line would also include part of the mainland of the State of Louisiana as will be seen from the following diagram (No. 6) made a part of this bill, and it certainly could not have been the intention of Congress to take away from the State of Louisiana any islands or mainland already belonging to it and to give them to the State of Mississippi, as such a proceeding, without the consent of the legislature of the State of Louisiana, would be in violation of sec. 3 of art. IV of the Constitution of the United States.

26th. Your orator avers that the marsh lands claimed by the State of Mississippi to be islands are in truth, with the exception of the Isle à Pitre, Grassy, Half Moon, Round and Le Petit Pass islands,
29 low lying marsh lands forming part of the mainland of the State of Louisiana; that said swamp or marsh lands and islands have been known as and called since time immemorial "the Louisiana marshes;" that they were approved to the State of Louisiana by the Commissioner of the General Land Office on May 6, 1852, as will appear from a certified copy of said record of approval from the United States Land Office made a part of this bill, marked Exhibit "G," and where not since sold by the State of Louisiana to private purchasers have always stood on the books of the register of the Louisiana State land office as State lands, to be offered for sale, until recently transferred by the State of Louisiana to the board of commissioners for the Lake Borgne basin levee district by the provisions of act No. 14 of the legislature of the State of Louisiana for the year 1892, for the purpose of enabling the said

levee board, by the proceeds of sale of said lands to secure the funds to aid in the building of levees in that levee district, to protect the lands from overflow.

27th. That parts of said disputed territory claimed by the State of Mississippi to be islands within eighteen miles of its shore line are in fact part of the mainland of the State of Louisiana, and therefore belong to and form part of said State of Louisiana, but if your honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, then as islands they are within the nine mile limit of distance from the shore line of the State of Louisiana and therefore belong to and form part of the State of Louisiana by that second provision of the act of Congress giving Louisiana all islands within three leagues of its shore line.

28th. Your orator further avers that where contiguous States or countries are separated by water it is, and always has been, the custom to regard the *channel* as establishing the boundary line of such States, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own constitution adopted November, 1890, in the following words:—

"The limits and boundaries of the State of Mississippi are as follows, to wit:—Beginning on the Mississippi river (*meaning thereby the center of said river or thread of the stream*) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and V. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi A. D. 1837 and J. D. Grahan and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yellow creek; thence up the said river to the mouth of Bear creek; thence by a direct line to what was formerly the northwest corner of the county of Washington, Ala.; thence on a direct line to a point ten miles east of the Pascagoula river on the gulf of Mexico; thence westwardly including all the islands within six leagues of the shore *to the most eastern junction of Pearl river with Lake Borgne;* thence up said Pearl river to the 31st degree of north latitude; thence west along said degree of latitude *to the middle or thread of the stream of the Mississippi river; thence up the middle of the Mississippi river or thread of the stream* to *th* the place of beginning, *including all islands lying east of the thread of the stream of said river*, and also including all lands which were at any time heretofore a part of this State."

29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government having authority in the premises, have themselves recognized the boundary line contended for by the State of Louisiana, by reason of the fact that the United States Government has confirmed to the State of Louisiana the lands composing Half

Moon island which is just south of the deep water channel, and which island is composed of section 36 of township 10 S. R. 17 east, sections 29, 31, 32 and 33 of township 10 S. R. 18 east; section 1 of township 11, S. R. 17 east; sections 5 and 6 of township 11, S. R. 18 east, in the south-eastern
31 land district of Louisiana, east of the Mississippi river; and that the lands forming what is commonly known as Isle à Pitre and being in sections 23, 24, 25, 26, 27, 28, 32, 33 and 34 of township 10, S. R. 20 east, and in fact all of the remaining lands in township 11, S. R. 17 east; township 11, S. R. 18 east; township 11, S. R. 19 east; township 11, S. R. 20 east; township 12, S. R. 16 east; township 12, S. R. 17 east; township 12, S. R. 18 east; township 12, S. R. 19 east; township 12, S. R. 20 east; township 13, S. R. 16 east; township 13, S. R. 17 east; township 13, S. R. 18 east; township 13, S. R. 19 east; township 13, S. R. 20 east; in the aforesaid land district, and parts of which are claimed by the State of Mississippi under its right angle line to belong to the State of Mississippi, have in fact been also confirmed to the State of Louisiana by the United States Government, and are recognized as belonging to and forming part of the State of Louisiana by the said United States Government and have always heretofore been so recognized by the people of the said two States; that the lands forming the Isle à Pitre were sold by the State of Louisiana to Richard Pindell on March 20, 1867, as per land patents of the State of Louisiana Nos. 194, 195 and 196, that Pindell sold to H. J. Leovy on April 18, 1867, by acts of sale before Geo. W. Christy, a notary public of the State of Louisiana, certified copies of said State land patents and said notarial acts being made part of this bill, marked Exhibits "H," "I," "J," "K" and "Z," and are now owned by the Messrs. Gilmore of the State of Louisiana, who acquired the said, and other, lands from Leovy on March 2, 1892, by two acts of purchase before Theo. Cotonio, a notary public of the State of Louisiana, certified copies of said notarial acts being made a part of this bill, marked Exhibits "L" and "M," and said lands have been assessed on the assessment rolls of the parish of St. Bernard, State of Louisiana, and taxes thereon have been paid to the State of Louisiana for the past 35 years, and said lands have
32 never been assessed on the rolls of, nor have any taxes ever been paid to, the State of Mississippi and that this is the case with all the other lands and islands now claimed by the State of Mississippi, but which in truth and fact belong to the State of Louisiana.

30th. Your orator therefore further avers that all constituted authorities competent to create, adopt or consider the said boundary line have declared the water boundary line claimed by the State of Louisiana, viz: the deep water channel running from the most southern junction of the eastern mouth of Pearl river, through Lake Borgne, north of Half Moon island, through Mississippi sound, north of Isle à Pitre and southwest of Cat island, through Cat Island pass, through Chandeleur sound northeast of Chandeleur islands, to the

gulf of Mexico, to be the true water boundary between the said States.

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief prayed for and may, according to the best and utmost of their several respective knowledge, remembrance, information and belief, full true, direct and perfect answer make to the matters and things averred in this bill, an answer under oath being herewith specially waived, may it please your honors to grant to your orator the most gracious writ of subpœna directed to the said State of Mississippi, and to said Andrew H. Longino, governor of the State of Mississippi, and Monroe McClurg, attorney general of the State of Mississippi, commanding them and each of them to be and appear in this honorable court on a day to be therein named, and to abide the judgment of this court.

And after due proceedings may it please your honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most
33 southern junction of the eastern mouth of Pearl river with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon island through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat island, through Chandeleur Island sound, northeast of the Chandeleur islands, to the gulf of Mexico, as is delineated on the original map submitted by the Louisiana boundary commission to the Mississippi boundary commission and now made part of this bill marked Exhibit "E," that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

STATE OF LOUISIANA,
Parish of Orleans.

Personally came and appeared before me the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the governor of the State of Louisiana; that he has read

the foregoing bill, and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

W. W. HEARD, Governor.

Sworn to and subscribed before me this 14th day of October, 1902.

ALVIN EDWARD HEBERT,
[SEAL.] Notary Public.

34 (Endorsed:) Supreme Court, U. S. October term 1902. Term No. 12, orig'l. State of Louisiana, complainant, vs. State of Mississippi. Bill of complaint. Filed October 27, 1902.

35 And on the same day, to wit, on the 27th day of October, A. D. 1902, Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and Z to the bill of complaint were filed in the words and figures following, towit:

36 EXHIBIT A TO BILL OF COMPLAINT.

"Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen:—

Present: His excellency, Gov. W. W. Heard; Lieutenant Governor Albert Estopinal; Major H. B. Richardson, chief of the board of State engineers; Messrs. Simon Leopold and A. T. Bouvillain, representing the commission appointed by the house of representatives of the State of Louisiana; Mr. H. C. Cage, representing the commission appointed by the senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the committee from the police jury of the parish of Plaquemines; Albert Estopinal, Jr., district attorney for the twenty-ninth judicial district; Clem Story and Gus Schoenberger, oyster inspectors, respectively of the parishes of St. Bernard and Plaquemines; Frank C. Mevers, sheriff of the parish of Plaquemines; E. E. Nunez, sheriff of the parish of St. Bernard; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the subject of the call, stating that the oyster industry was of much greater magnitude than our people believed; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not

only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a penitentiary offense. Mr. Story called to the attention of the meeting the congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the committee that the Mississippi oyster factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the committee the fact that these tongmen and the dredges from the oyster factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

37 Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana oyster industry was susceptible of much greater development than enjoyed in any of those States; that an acre of oysters would yield 300 barrels, which at $1.00 a barrel would give gross proceeds of $300.00 from one acre of oysters; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the *Louisiana marshes*. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an oyster receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Mevers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following resolution, which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the governor of the State of Louisiana request the governor of the State of Mississippi to appoint a commission of five gentlemen to confer with a commission to be appointed by the governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the committee, to constitute the commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

W. W. HEARD, Chairman.
JOHN DYMOND, JR., Secretary."

(Endorsed:) Supreme Court U. S., October term, 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit A to bill of complaint. Filed October 27, 1902.

38 EXHIBIT B TO BILL OF COMPLAINT.

"State of Louisiana, Executive Department.

BATON ROUGE, January 26, 1901.

His excellency, Governor A. H. Longino, Jackson, Miss.

DEAR SIR: On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the oyster industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

I would therefore request that you appoint the commissioners for your State at your earliest convenience.

(Signed) W. W. HEARD, Governor."

Inclosure—Copy of proceedings of meeting and clippings.

STATE OF LOUISIANA,
Parish of Baton Rouge.

I, Leon Jastremski, do solemnly swear, that I am the private secretary of his excellency, William W. Heard, governor of the State of Louisiana; that the letter on the reverse hereof addressed
39 to his excellency Governor A. H. Longino, of the State of Mississippi, is a true copy of a letter copied in the letter book of the executive department of the State of Louisiana, and mailed to said governor.

LEON JASTREMSKI.

Sworn to and subscribed before me this seventeenth day of September 1902.

EUGENE J. McGIVNEY,
[SEAL.] Ass't Sec't'y of State.

I, the undersigned authority do hereby certify that Gen. Leon Jastremski is the private secretary of his excellency, William W. Heard, governor of the State of Louisiana, and that his sig-
40 nature is to me well known, and that his signature to the above certificate is his genuine signature.

EUGENE J. McGIVNEY,
[SEAL.] Ass't Sec't'y of State.

(Endorsed:) Supreme Court U. S. October term 1902. Term No. 12 original. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit B to bill of complaint. Filed October 27, 1902.

41 EXHIBIT C TO BILL OF COMPLAINT.

R. Feb. 12, 1901.

"EXECUTIVE DEPARTMENT,
JACKSON, MISSISSIPPI, *February* 9, 1901.

His excellency, Gov. W. W. Heard, Baton Rouge, La.

DEAR GOVERNOR: I have the honor to inform you that I have this day appointed the following named gentlemen as commissioners from this State to confer with the commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.
Mr. A. Keller, Bay St Louis, Miss.
Hon. W. A. White, Biloxi, Miss.
Mr. Harry T. Howard, Biloxi, Miss.
Hon. J. I. Ford, Scranton, Miss.

I have the honor to be sir,
Very truly yours,
(Signed) A. H. LONGINO, Governor."

(Endorsed:) Supreme Court U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit C to bill of complaint. Filed October 27, 1902.

42 EXHIBIT D TO BILL OF COMPLAINT.

"Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 a. m.

Present: Mississippi commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent:—Hon. A. Kellar.

Louisiana commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal., Jr., chairman of the Louisiana commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story. Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 a. m. This motion was put and adopted, and the meeting then took a recess until 11:30 a. m.

At 11:30 a. m., after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present: Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana commission, then presented to the Mississippi commission the views of the Louisiana commissioners on the subject of the boundary line
43 in the waters between the two States. Mr. Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the act of 1812 an-

nexing the territory west of the Pearl river the eastern boundary of Louisiana was extended to the mouth of the Pearl river, from which point the line joined the original water boundary and extended to the Gulf by the deep water channel, passing to the eastward of Chandeleur islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula river, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi boundary commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana boundary commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana commission thereupon invited the Mississippi commission to luncheon at the Cosmopolitan hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

JOHN DYMOND, Jr., Secretary.
H. T. HOWARD, Chairman."

(Endorsed:) Supreme Court U. S. October term 1902. Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit D to bill of complaint. Filed October 27, 1902.

44 NOTE.—Exhibit E to bill of complaint is a map not reproduced here but bound into the Complainant's Atlas of Maps at page 60 thereof.

45 EXHIBIT F TO BILL OF COMPLAINT.

"Hon. Albert Estopinal, Jr., chairman Louisiana boundary commission:

The commission appointed by the State of Mississippi to confer with a like commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana commission, and having examined the line as delineated by that

body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi commission considers as islands considerable territory which the Louisiana commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed) H. T. HOWARD, Chairman.
J. I. FORD, Secretary.
E. J. BOWERS.
W. A. WHITE.
AUG. KELLER."

(Endorsed:) Supreme Court U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit F to bill of complaint. Filed October 27, 1902.

(Here follows Exhibit G to bill of complaint.)

4-400.

TOWNSHIP No. 12 South RANGE No. 16 East, DISTRICT OF New Orleans St. Dist. East of River.

DESCRIPTION OF TRACT. Part of Section.	Section.	Township.	Range.	Contents. Acres.	Contents. 100ths.	Rate per Acre. Dollars.	Rate per Acre. Cents.	Purchase Money. Dollars.	Purchase Money. Cents.	NAME OF THE PURCHASER.	DATE OF SALE.	Number of Receipt and Certificate of Purchase.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume.	WHERE RECORDED. Page.
All of section	13	12 S	16 E													
"	14	"	"													
"	22	"	"													
"	23	"	"													
"	24	"	"													
"	25	"	"													
"	26	"	"													
"	27	"	"													
"	34	"	"													
"	35	"	"													
"	36	"	"													
						Selected by State under					Act March 2. 1849.		Approved by Secretary of Interior May 6. 1852 According to the Provisions of Sec 2. of the Act.			
All of section	1	12 S	16 E													
"	2	"	"													
"	3	"	"													
"	10	"	"													
"	11	"	"													
"	12	"	"													
"	13	"	"													
"	14	"	"													
"	15	"	"													
"	21	"	"													
"	22	"	"													
"	23	"	"													
"	32	"	"													
"	33	"	"													
"	34	"	"													
"	35	"	"													
"	36	"	"													
						Selected by State under					Act March 2. 1849.		Approved by Secretary of Interior May 6. 1852 According to the Provisions of Sec 2. of the Act.			

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths	Dollars.	Cents.	Dollars.	Cents.	
Section	26	10 S	17 E							Selected by State under Act
	27	"	"							
	28	"	"							
	29	"	"							
	30	"	"							
	31	"	"							
	32	"	"							
	33	"	"							
	34	"	"							
	35	"	"							
	36	"	"							
Section ✓	1	11 S	17 E							✓
	2	"	"							
	11	"	"							
	14	"	"							
	22	"	"							
	23	"	"							
	25	"	"							Selected by State under Act
	26	"	"							
	27	"	"							
	28	"	"							
	33	"	"							
	34	"	"							
	35	"	"							
	36	"	"							
Section ✓	1	12 S	17 E							Selected by State under Act
	2	"	"							
	3	"	"							
	4	"	"							
	7	"	"							
	8	"	"							
	9	"	"							
	10	"	"							
	11	"	"							
	12	"	"							
	13	"	"							
	14	"	"							
	15	"	"							
	17	"	"							
	18	"	"							
	19	"	"							
	20	"	"							
	21	"	"							
	22	"	"							
+ 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35	29	"	"							
	36	"	"							

RANGE No. 17 E. , DISTRICT OF New Orleans. St. Dist E.R.

	DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED: Volume	Page
	March 2 - 1849 - Approved by Secretary Interior May 6 - 1852 -					
	March 2 1849 - approved by Secretary Interior May 6 - 1852 -					
	March 2 - 1849 - Approved by Secretary Interior May 6 - 1852 -					

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT				Containing		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER
PART OF SECTION	Section	Township	Range	Acres	Hundredths	Dollars	Cents	Dollars	Cents	
All of Section	1	13 S	17 E			Relinquished by State				
All of Section	2	13 S	17 E			"		"		"
All of Section	3	13 S	17 E			"		"		"
All of Section	4	13 S	17 E			"		"		"
All of Section	5	13 S	17 E			"		"		"
All of Section	6	13 S	17 E			"		"		"
All of Section	7	13 S	17 E			"		"		"
All of Section	8	13 S	17 E			"		"		"
All of Section	9	13 S	17 E			"		"		"
All of Section	10	13 S	17 E			"		"		"
All of Section	11	13 S	17 E			"		"		"
All of Section	12	13 S	17 E			"		"		"
All of Section	13	13 S	17 E			"		"		"
All of Section	14	13 S	17 E			"		"		"
All of Section	15	13 S	17 E			"		"		"
All of Section	17	13 S	17 E			"		"		"
All of Section	18	13 S	17 E			"		"		"

RANGE No. 17 East, DISTRICT OF New Orleans

PURCHASER	DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED: Volume	Page
Jon Act	March 2. 1849. Approved by Secretary Interior May 6. 1852					

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT				Contents		Rate per Acre		Purchase Money		NAME OF THE PURCHASER
Part of Section	Section	Township	Range	Acres	100ths	Dollars	Cents	Dollars	Cents	
All of Section	20	13 S	18 E	Selected by State under Act						
All of Section	21	13 S	18 E							
All of Section	22	13 S	18 E							
All of Section	23	13 S	18 E							
All of Section	24	13 S	18 E							
All of Section	25	13 S	18 E							
All of Section	26	13 S	18 E							
All of Section	27	13 S	18 E							
All of Section	28	13 S	18 E							
All of Section	29	13 S	18 E							
All of Section	30	13 S	18 E							
All of Section	31	13 S	18 E							
All of Section	32	13 S	18 E							
All of Section	33	13 S	18 E							
All of Section	34	13 S	18 E							
All of Section	35	13 S	18 E							
All of Section	36	13 S	18 E							

South

RANGE No. 8 East, DISTRICT OF Los Angeles

THE PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume.	Page.
Wm Hunt	2-Sep- Approved by Secretary Interior May 6 1871					

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Sections.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
All of Township (excepting Sec 16 —	1	10 S	18 E.	Selected by the State under Act —						
All of Section	5 — 6 30. 31 32 33 34 35 — 36	11 S	18 E.	Selected by State under Act —						
All of Section	1	12 S	18 E	Selected by State under Act —						
All of Section	2	12 S	18 E	"		"		"		
All of Section	3	12 S	18 E	"		"		"		
All of Section	4	12 S	18 E	"		"		"		
All of Section	5	12 S	18 E	"		"		"		
All of Section	6	12 S	18 E	"		"		"		
All of Section	7	12 S	18 E	"		"		"		
All of Section	8	12 S	18 E	"		"		"		
All of Section	9	12 S	18 E	"		"		"		
All of Section	10	12 S	18 E	"		"		"		
All of Section	11	12 S	18 E	"		"		"		

th

RANGE No. 18 East, DISTRICT OF New Orleans

ASED.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume.	Page.
ect-	March 2-1849-		Approved by Secretary Interior	May 6-1852-		
1-	March 2-1849-		Approved by Secretary Interior	May 6-1852-		
	March 2-1849-		Approved by Secretary Interior	May 6-1852-		
	" " "		" " " "	" "		
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	" " "		" " " "	" "		
	" " "		" " " "	" "		
	" " "		" " " "	" "		
	" " "		" " " "	" "		
	" " "		" " " "	" "		
	" " "		" " " "	" "		

TOWNSHIP No. 12 S. RANGE No. 18 E. DISTRICT OF New Orleans

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
All of Section	13	12 S	18 E	Selected		By	State	under act			March 2 - 1849 -		Approved by Secretary	Interior May 6 - 1852		
All of Section	14	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	15	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	17	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	18	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	19	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	20	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	21	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	22	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	23	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	24	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	25	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	26	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	29	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	30	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	31	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	32	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	33	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	34	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	35	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"
All of Section	36	12 S	18 E	"		"		"		" "	" "	"	" " "	" "	"	"

4-900.

TOWNSHIP No. 19 S.

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHA
PART OF SECTION	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
All of Section	1	19 S.	3	Selected by State under Act						
All of Section	2	19 S	3	"				"		"
All of Section	3	19 S	3	"				"		"
All of Section	4	19 S	3	"				"		"
All of Section	5	19 S	3	"				"		"
All of Section	6	19 S	3	"				"		"
All of Section	7	19 S	3	"				"		"
All of Section	8	19 S	3	"				"		"
All of Section	9	19 S	3	"				"		"
All of Section	10	19 S	3	"				"		"
All of Section	11	19 S	3	"				"		"
All of Section	12	19 S	3	"				"		"
All of Section	13	19 S	3	"				"		"
All of Section	14	19 S	3	"				"		"
All of Section	15	19 S	3	"				"		"
All of Section	17	19 S	3	"				"		"
All of Section	18	19 S	3	"				"		"
All of Section	19	19 S	3	"				"		"

RANGE No. 18E, DISTRICT OF New Orleans

	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume	Page
	March 2 1859		Approved by Secretary Interior	May 6 1852		
	" " "		" " "	" "	"	
	" " "		" " "	" "	"	
	" " "		" " "	" "	"

No. 3—2000.

TOWNSHIP No. 18 S.

DESCRIPTION OF TRACT.				Containing.		Rate per Acre.		Purchase Money.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
All of Section	19	18 S	17 E			1	25	by State		under Act
All of Section	20	18 S	17 E			"		"	"	" "
All of Section	21	18 S	17 E			"		"	"	" "
All of Section	22	18 S	17 E			"		"	"	" "
All of Section	23	18 S	17 E			"		"	"	" "
All of Section	24	18 S	17 E			"		"	"	" "
All of Section	25	18 S	17 E			"		"	"	" "
All of Section	26	18 S	17 E			"		"	"	" "
All of Section	27	18 S	17 E			"		"	"	" "
All of Section	28	18 S	17 E			"		"	"	" "
All of Section	29	18 S	17 E			"		"	"	" "
All of Section	30	18 S	17 E			"		"	"	" "
All of Section	31	18 S	17 E			"		"	"	" "
All of Section	32	18 S	17 E			"		"	"	" "
All of Section	33	18 S	17 E			"		"	"	" "
All of Section	34	18 S	17 E			"		"	"	" "
All of Section	35	18 S	17 E			"		"	"	" "
All of Section	36	18 S	17 E			"		"	"	" "

RANGE No. 17 E. , DISTRICT OF New Orleans

	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED	
					Volume	Page
	March 2 - 1849 - Approved by Secretary Interior May 1 - 1852					

TOWNSHIP No. 11 South

DESCRIPTION OF TRACT				Containing		Rate per Acre		Purchase Money		NAME OF THE PURCHASER
Part of Section ✓	Section	Township	Range	Acres	Hundredths	Dollars	Cents	Dollars	Cents	
All of Section	1	11 S	1 E	Selected by State under Act						
All of Section	11	11 S	1 E	"						" "
All of Section	12	11 S	1 E	"						" "
All of Section	13	11 S	1 E	"						" "
All of Section	14	11 S	1 E	"						" "
All of Section	15	11 S	1 E	"						" "
All of Section	20	11 S	1 E	"						" "
All of Section	21	11 S	1 E	"						" "
All of Section	22	11 S	1 E	"						" "
All of Section	23	11 S	1 E	"						" "
All of Section	24	11 S	1 E	"						" "
All of Section	25	11 S	1 E	"						" "
All of Section	26	11 S	1 E	"						" "
All of Section	27	11 S	1 E	"						" "
All of Section	28	11 S	1 E	"						" "
All of Section	29	11 S	1 E	"						" "
All of Section	30	11 S	1 E	"						" "

RANGE No. 9 East, DISTRICT OF Los Angeles.

CHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume.	Page.
Ward	2-1869- Approved by Secretary Interior May 6. 1872					
"	" " "		" " " "	" "		
"	" " "		" " " "	" "		
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TOWNSHIP No. 113

DESCRIPTION OF TRACT				Containing		Reserved Areas		Private Claims		DATE OF THE PATENT
Part or Whole	Section	Township	Range	Acres	Hundredths	Subject	Hundredths	Subject	Hundredths	
All of Section	21	113	98	Selected by State under Act						
All of Section	22	113	98	"		"		"		"
All of Section	23	113	98	"		"		"		"
All of Section	24	113	98	"		"		"		"
All of Section	25	113	98	"		"		"		"
All of Section	26	113	98	"		"		"		"

RANGE No. 9 E. DISTRICT OF Fort Nelson

		DATE OF SALE	NAME OF PURCHASER OR COMPANY'S FOREMAN	AS TO USE PURPOSED	DATE OF PATENT	AREA	
						Acres	Hds
[illegible]		[illegible]	[illegible]	[illegible]			
"		"	"	"	"	"	"
"		"	"	"	"	"	"
"		"	"	"	"	"	"
"		"	"	"	"	"	"
"		"	"	"	"	"	"

TOWNSHIP No. 12 South

RANGE No. 19 East, DISTRICT OF Columbia

	DATE OF SALE	Number of Section, Lot, Quarter Section or Fractional Section	TO WHOM PATENTED	DATE OF PATENT	Volume	Page
	Issued 2 May Approved Monday 2 May 1842					

4—600.

TOWNSHIP No. 12 South

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE		PURCHASE MONEY		NAME OF THE PURCHASER.	DA
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.		
E of Section	22	12 S	19 E	Selected by State under act							Mar
All of Section	23	12 S	19 E	"		"		"		" "	"
All of Section	24	12 S	19 E	"		"		"		" "	"
All of Section	25	12 S	19 E	"		"		"		" "	"
All of Section	26	12 S	19 E	"		"		"		" "	"
All of Section	27	12 S	19 E	"		"		"		" "	"
All of Section	28	12 S	19 E	"		"		"		" "	"
All of Section	29	12 S	19 E	"		"		"		" "	"
All of Section	30	12 S	19 E	"		"		"		" "	"
All of Section	31	12 S	19 E	"		"		"		" "	"
All of Section	32	12 S	19 E	"		"		"		" "	"
All of Section	33	12 S	19 E	"		"		"		" "	"
All of Section	34	12 S	19 E	"		"		"		" "	"
All of Section	35	12 S	19 E	"		"		"		" "	"
All of Section	36	12 S	19 E	"		"		"		" "	"

RANGE No. 19 East, DISTRICT OF New Orleans, La. Dist. L R

DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
				Volume	Page
March 1 1849		Approved by Secretary Interior	May 6 1854		
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TOWNSHIP No. 18 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
E ½ of Section	1	18	19	Selected by State under Act						
E ½ of Section	2	18	19	"		"		"		"
All of Section	3	18	19	"		"		"		"
All of Section	4	18	19	"		"		"		"
All of Section	5	18	19	"		"		"		"
All of Section	6	18	19	"		"		"		"
All of Section	7	18	19	"		"		"		"
All of Section	8	18	19	"		"		"		"
All of Section	9	18	19	"		"		"		"
All of Section	10	18	19	"		"		"		"
All of Section	11	18	19	"		"		"		"
All of Section	12	18	19	"		"		"		"
All of Section	13	18	19	"		"		"		"
All of Section	14	18	19	"		"		"		"
All of Section	15	18	19	"		"		"		"
All of Section	17	18	19	"		"		"		"
All of Section	18	18	19	"		"		"		"

RANGE No. 19 East, DISTRICT OF New Orleans

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DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
				Volume	Page
March 2-1849. Approved by Secretary Interior May 6 1852					
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4—4000.

TOWNSHIP No. 13 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
All of Section	19	13 S	19 E	Selected by State under Act Named						
All of Section	20	13 S	19 E	"		"	"	"	"	"
All of Section	21	13 S	19 E	"		"	"	"	"	"
All of Section	22	13 S	19 E	"		"	"	"	"	"
All of Section	25	13 S	19 E	"		"	"	"	"	"
All of Section	26	13 S	19 E	"		"	"	"	"	"
All of Section	28	13 S	19 E	"		"	"	"	"	"
All of Section	29	13 S	19 E	"		"	"	"	"	"
All of Section	30	13 S	19 E	"		"	"	"	"	"
All of Section	31	13 S	19 E	"		"	"	"	"	"
All of Section	32	13 S	19 E	"		"	"	"	"	"
All of Section	33	13 S	19 E	"		"	"	"	"	"
All of Section	34	13 S	19 E	"		"	"	"	"	"
All of Section	35	13 S	19 E	"		"	"	"	"	"
All of Section	36	13 S	19 E	"		"	"	"	"	"

RANGE No. 19 East, DISTRICT OF New Orleans U.S. Dist. L.R.

R.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED. Volume	Page.
ed	2- 1849 Approved		Secretary Interior	May 6- 1852		
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4—600.

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.
PART OF SECTION.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.	
All of section	2	10 S	20 E	Selected by State under Act						
All of Section	3	10 S	20 E	"		"	"	"	"	"
All of Section	4	10 S	20 E	"		"	"	"	"	"
All of Section	5	10 S	20 E	"		"	"	"	"	"
All of Section	6	10 S	20 E	"		"	"	"	"	"
All of Section	7	10 S	20 E	"		"	"	"	"	"
All of Section	8	10 S	20 E	"		"	"	"	"	"
All of Section	9	10 S	20 E	"		"	"	"	"	"
All of Section	10	10 S	20 E	"		"	"	"	"	"
All of Section	11	10 S	20 E	"		"	"	"	"	"
All of Section	12	10 S	20 E	"		"	"	"	"	"
All of Section	13	10 S	20 E	"		"	"	"	"	"
All of Section	14	10 S	20 E	"		"	"	"	"	"
All of Section	15	10 S	20 E	"		"	"	"	"	"
All of Section	17	10 S	20 E	"		"	"	"	"	"
All of Section	18	10 S	20 E	"		"	"	"	"	"
All of Section	19	10 S	20 E	"		"	"	"	"	"
All of Section	20	10 S	20 E	"		"	"	"	"	"

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RANGE No. 16 East, DISTRICT OF New Orleans - S.E.D. 8 of Kinn

CHASER.	DATE OF SALE	No. OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED	
					Volume	Page
	March 2. 1849.		Approved by Secretary Interior	May 6. 1852		
	" "	"	" " "	" " "		
	" "	"	" " "	" " "		
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	" "	"	" " "	" " "		

4—9202.

TOWNSHIP No. 10 South

DESCRIPTION OF TRACT				CONTENTS		RATE PER A'CE	PURCHASE MONEY		NAME OF THE PURCHASER.
PART OF SECTION.	SECTION.	TOWNSHIP.	RANGE.	ACRES.	100ths.	Dollars. Cents.	Dollars.	Cents.	
All of Section	21	10 S	20 E	Selected by State under Act					
All of Section	22	10 S	20 E	"		"	"	"	"
All of Section	23	10 S	20 E	"		"	"	"	"
All of Section	24	10 S	20 E	"		"	"	"	"
All of Section	25	10 S	20 E	"		"	"	"	"
All of Section	26	10 S	20 E	"		"	"	"	"
All of Section	27	10 S	20 E	"		"	"	"	"
All of Section	28	10 S	20 E	"		"	"	"	"
All of Section	32	10 S	20 E	"		"	"	"	"
All of Section	33	10 S	20 E	"		"	"	"	"
All of Section	34	10 S	20 E	"		"	"	"	"

RANGE No. 3 East, DISTRICT OF New Orleans, U.S. Surveys

NAMES	DATE OF SALE	NUMBER OF PATENT AND CERTIFICATE OF PURCHASE	TO WHOM PATENTED	DATE OF PATENT	WHERE RECORDED: Volume	WHERE RECORDED: Page
	March 2 1854		Approved by Secretary Interior May 6 1854			

TOWNSHIP No. 11 South

DESCRIPTION OF LAND				Contents		Rate per A.C.		Purchase Money		NAME OF THE PURCHASER
Part of Section	Section	Township	Range	Acres	Hundredths	Dollars	Cents	Dollars	Cents	
All of Section	4	11 S	20 E	Selected for State						
All of Section	5	11 S	20 E							
All of Section	6	11 S	20 E							
All of Section	7	11 S	20 E							
All of Section	8	11 S	20 E							
All of Section	9	11 S	20 E							
All of Section	17	11 S	20 E							
All of Section	18	11 S	20 E							
All of Section	19	11 S	20 E							
All of Section	20	11 S	20 E							
All of Section	29	11 S	20 E							
All of Section	30	11 S	20 E							
All of Section	31	11 S	20 E							
All of Section	32	11 S	20 E							
All of Section	33	11 S	20 E							
All of Section	34	11 S	20 E							
All of Section	35	11 S	20 E							
All of Section	36	11 S	20 E							

South

RANGE No. 20 East, DISTRICT OF New Orleans LAND Office

NAME OF PURCHASER	DATE OF SALE	NUMBER OF ENTRY, CERTIFICATE OR WARRANT	DESCRIPTION OF LAND ENTERED	DATE OF PATENT	WHERE RECORDED	
					Volume	Page
Act	Passed 2 May	Approved	By Secretary of Treasury May 6	1812		

TOWNSHIP No. 12 South

DESCRIPTION OF LAND				CONTAINS		SALES FOR TAXES		STATE MONEY		NAME OF THE PURCHASER
NO. OF SECTION	SECTION	TOWNSHIP	RANGE	ACRES	100THS	DOLLARS	CENTS	DOLLARS	CENTS	
All of Section	1	12 S	20 E	Selected by State under Act [illegible]						
All of Section	2	12 S	20 E							
All of Section	3	12 S	20 E							
All of Section	4	12 S	20 E							
All of Section	5	12 S	20 E							
All of Section	6	12 S	20 E							
All of Section	7	12 S	20 E							
All of Section	8	12 S	20 E							
All of Section	9	12 S	20 E							
All of Section	10	12 S	20 E							
All of Section	11	12 S	20 E							
All of Section	12	12 S	20 E							
All of Section	13	12 S	20 E							
All of Section	14	12 S	20 E							
All of Section	15	12 S	20 E							
All of Section	16	12 S	20 E							
All of Section	17	12 S	20 E							
All of Section	18	12 S	20 E							
All of Section	19	12 S	20 E							
All of Section	20	12 S	20 E							
All of Section	21	12 S	20 E							
All of Section	22	12 S	20 E							
All of Section	23	12 S	20 E							

RANGE No. 4 East, DISTRICT OF San Bernardino

					Volume / Page
Patent	[illegible] 1869 — Approved by Secretary Interior May 4 1872				

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A—900.

TOWNSHIP No. 12 South RANGE No. 14 East, DISTRICT OF New Orleans, S.E. of Pearl

DESCRIPTION OF TRACT				CONTENTS		RATE PER ACRE.		PURCHASE MONEY.		NAME OF THE PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
PART OF SECTION.	Section.	Township.	Range.	Acres.	Parts.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
All of Section	24	12 S	20 E	Selected by State under Act March 2 1849 - Approved by Secretary of Interior May 6. 1852												
All of Section	25	12 S	20 E	"		"		"		"	"		"	"		
All of Section	26	12 S	20 E	"		"		"		"	"		"	"		
All of Section	27	12 S	20 E	"		"		"		"	"		"	"		
All of Section	28	12 S	20 E	"		"		"		"	"		"	"		
All of Section	29	12 S	20 E	"		"		"		"	"		"	"		
All of Section	30	12 S	20 E	"		"		"		"	"		"	"		
All of Section	31	12 S	20 E	"		"		"		"	"		"	"		
All of Section	32	12 S	20 E	"		"		"		"	"		"	"		

TOWNSHIP No. 13 South, RANGE No. 20 East, DISTRICT OF New Orleans Land Dist. La.

DESCRIPTION OF TRACT: Part of Section	Section	Township	Range	Containing: Acres.	Rate per Acre: Dollars	Rate per Acre: Cents	Purchase Money: Dollars	Purchase Money: Cents	NAME OF THE PURCHASER	DATE OF SALE	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE	REMARKS	STATE PATENT	WHERE RECORDED: Volume	WHERE RECORDED: Page
All of	2	13 S	20 E	Excluded by State under Act March						2 1849		Approved by Secretary of Interior May 6 1850			
All of	3	13 S	20 E	"	"	"	"	"		"		"			
All of	4	13 S	20 E	"	"	"	"	"		"		"			
All of	5	13 S	20 E	"	"	"	"	"		"		"			
All of	6	13 S	20 E	"	"	"	"	"		"		"			
All of	7	13 S	20 E	"	"	"	"	"		"		"			
All of	8	13 S	20 E	"	"	"	"	"		"		"			
All of	9	13 S	20 E	"	"	"	"	"		"		"			
All of	10	13 S	20 E	"	"	"	"	"		"		"			
All of	11	13 S	20 E	"	"	"	"	"		"		"			
All of	14	13 S	20 E	"	"	"	"	"		"		"			
All of	17	13 S	20 E	"	"	"	"	"		"		"			
All of	18	13 S	20 E	"	"	"	"	"		"		"			
All of	22	13 S	20 E	"	"	"	"	"		"		"			
All of	23	13 S	20 E	"	"	"	"	"		"		"			
All of	24	13 S	20 E	"	"	"	"	"		"		"			
All of	26	13 S	20 E	"	"	"	"	"		"		"			
All of	27	13 S	20 E	"	"	"	"	"		"		"			
All of	28	13 S	20 E	"	"	"	"	"		"		"			
All of	29	13 S	20 E	"	"	"	"	"		"		"			
All of	30	13 S	20 E	"	"	"	"	"		"		"			
All of	31	13 S	20 E	"	"	"	"	"		"		"			
All of	32	13 S	20 E	"	"	"	"	"		"		"			
All of	33	13 S	20 E	"	"	"	"	"		"		"			
All of	105	13 S	20 E	Excluded by State under Act March						2 1849		Approved by Secretary of Interior June 17 1891.			

U. S. Land Office
New Orleans La
Sept 26-1902

We hereby certify that the above and foregoing is a true and correct copy of the Land Books and Records of this Office

Walter L. Cohing Charles Johnston Receiver
Register

66 [Endorsed:] Supreme Court U. S. October term, 1902. Term No. 12, origl. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit G to bill of complaint. Filed Oct. 27, 1902.

67 EXHIBIT H TO BILL OF COMPLAINT.

STATE OF LOUISIANA:

Patent No. 194.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell, of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 140 dated 20, March, 1867, the following described swamp lands subject to tidal overflow, to wit:—

The fractional sections numbers 23, 24, 25, and 26, in township 10 S. of range 20 E., in the southeastern land district of Louisiana, St. Bernard parish, containing four hundred and sixty-eight 48/100 acres, according to the official plat of the survey of said lands in the State land office,—468.48

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto th- said Richard Pindell of Orleans, and to his heirs, the above described land: To have and to hold the same, together with all the rights titles and privileges thereunto belonging unto the said Richard Pindell, his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States, the ninety-first.

By the governor.

(Signed) J. MADISON WELLS.
[L. S.] AD. DUPRE, Register.

True record of the original, this day delivered to patentee,

(Signed) AD. DUPRE, Register.

68 STATE OF LOUISIANA,
City of Baton Rouge, State Land Office.

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 194 as recorded in

Record of Patents, vol. No. 15, page 94, on file in the State land office.

Given under my hand and seal of office in the city of Baton Rouge, Louisiana, on this, the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12, orig'l State of Louisiana, complainant, *vs.* State of Mississippi Exhibit "H" to bill of complaint. Filed Oct. 27, 1902.

69 EXHIBIT I TO BILL OF COMPLAINT.

STATE OF LOUISIANA:

Patent No. 195.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell, of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 141, dated 20th. March, 1867, the following described swamp lands subject to tidal overflow, to wit:—

The fractional sections Nos. thirty-three and 34 in township 10 S. of range 20 E., in the southeastern land district of Louisiana, parish of St. Bernard, containing five hundred and sixty-nine 72/100 acres, according to the official plat of the survey of said lands in the State land office, 569.72.

Now know ye, that the State of Louisiana, in consideration of the premises, and in conformity with law, in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Richard Pindell of Orleans, and to his heirs, the above described land: To have and to hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Richard Pindell, his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States, the ninety-first.

By the governor.

(Signed) J. MADISON WELLS.

[L. S.] AD. DUPRE, Register.

True record of the original, this day delivered to patentee,

(Signed) AD. DUPRE, Register.

70 STATE OF LOUISIANA, }
City of Baton Rouge, State Land Office. }

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify that the within and foregoing is a true and correct copy of the record of patent No. 195, of record in Record of Patents, vol. No. 15, page 94, on file in the State land office.

Given under my hand and seal of office, in the city of Baton Rouge, Louisiana, on this the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12 orig'l State of Louisiana, complainant, *vs.* State of Mississippi Exhibit "I" to bill of complaint. Filed Oct. 27, 1902.

71 EXHIBIT J TO BILL OF COMPLAINT.

STATE OF LOUISIANA:

Patent No. 196.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 142, dated March 20th, 1867, the following described swamp lands subject to tidal overflow, towit:—The fractional sections Nos. 27, 28 & 32 in township No. 10 S. of range No. 20 E., in the southeastern land district of La., St. Bernard parish, containing three hundred and eighty 40/100 acres, according to the official plat of the survey of said lands in the State land office, 380.40.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Richard Pindell of Orleans, and to his heirs, the above described land: To have and to hold the same, together with all the right titles and privileges thereunto belonging, unto the said Richard Pindell, his heirs and assigns forever.

In testimony whe-eof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of New Orleans, on the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty seven, and of the Independence of the United States, the ninety first.

By the governor.

(Signed) J. MADISON WELLS.
[L. S.] AD. DUPRE, Register.
4—11

True record of the original, this day delivered to patentee.

(Signed) AD. DUPRE, Register.

72 STATE OF LOUISIANA,
City of Baton Rouge, State Land Office.

I, James M. Smith, register of the State land office, State of Louisiana, do hereby certify that the withing and foregoing is a true and correct copy of the record of patent No. 196 of record in Record of Patents vol. 15, page 95, on file in the State land office.

Given under my hand and seal of office, in the city of Baton Rouge, Louisiana, on this the twenty-sixth day of September, A. D. nineteen hundred and two.

JAS. M. SMITH, Register.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12, original. State of Louisiana, complainant, *v.* State of Mississippi. Exhibit "J" to bill of complaint. Filed Oct. 27, 1902.

73 EXHIBIT K TO BILL OF COMPLAINT.

184.

April 18th, 1867.

Sale of Lands—Richard Pindell to Henry J. Leovy, Esq.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, George William Christy, a notary public, in and for the city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared: Richard Pindell of this city who declared: that for the consideration and on the terms and conditions hereinafter set forth, he does by these presents, grant, bargain, sell, convey, assign and set over with all legal warranties unto Henry Jefferson Leovy Esq. also of this city, present, accepting and purchasing for himself, his heirs and assigns and acknowledging delivery and possession thereof all and singular the following described property situated in the south eastern land district of Louisiana, in the parish of St. Bernard, being swamp lands subject to tidal overflow and embracing the whole of the island known as "Isle a Pitre" and other lands, viz:

First. The fractional sections numbers, "twenty three" "twenty four," "twenty five" and "twenty six" in township number "ten" south of range "twnety" east, containing four hundred and sixty-eight 78/100 acres.

Second. The fractional sections "twenty three" and "thirty four," in township number "ten" south of range "twenty" east containing five hundred and sixty-nine 72/100 acres.

Third. The fractional sections numbers, "twenty seven" "twenty eight" and "thirty two" in township No. "ten" south of range No. "twenty" east containing three hundred and eighty 40/100 acres:—all of which said above described and within conveyed land was acquired by the said vendors by purchase from
74 the State of Louisiana as per patents Nos. 194, 195 and 196, dated 20th March 1867.

And here the said purchaser declared that he dispensed with the production of a mortgage certificate from the recorder of mortgages for the said parish of St. Bernard, showing the mortgages if any and to be annexed to this act as required by article "3328" of the Civil Code of this State.

The U. S. revenue stamp of one dollar and fifty cents required for this act, has been hereunto duly affixed and cancelled.

To have and to hold, the said land unto the said purchaser his heirs and assigns, to their proper use and behoof, forever; and the said vendor for himself & heirs the said land to the said purchaser his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons, whomsoever, by the presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor or against the vendors of his vendor fully authorizing the said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the price and sum of fifteen hundred dollars ($1500) which has been paid in cash by the said purchaser at the execution of these presents the receipt of which is hereby acknowledged by the said vendor and acquittance therefor granted.

And now personally came and intervened in these presents, Mistress Anna Monroe of lawful age and wife of the said vendor, who did declare unto me, notary that it is her wish and intention, to release in favor of said purchaser, the property herein described from the matrimonial, dotal, paraphernal and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon, I, the said notary, did inform, the said wife, verbally, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law, a legal mort-
gage on the property of her said husband:—First. For the
75 restitution of her dowry, and for the re-investment of her dotal property, sold by her husband, and which she brought in marriage reckoning from the celebration of the marriage. Secondly: For the restitution and re-investment of the dotal property

by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. Thirdly: For nuptial presents. Fourthly: For debts by her contracted with her said husband, and fifthly: For the amount of her paraphernal property alienated by her and received by her said husband or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal and other rights and privileges thus secured to her by law, on the property of her said husband, and that availing herself of the rights secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, &c., approved on the 27th day of March 1835; she nevertheless, did persist in her intention of renouncing, not only all the rights, claims and privileges hereinbefore enumerated and described, but all others of any kind whatever to which she is or may be entitled by any laws, now or heretofore in force in the State of Louisiana.

And the said husband being now present aiding and authorizing his said wife, in these presents, she the said wife, did again declare, that she did, and doth, hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, parapheral and other rights, claims and privileges, in favor of the said purchaser, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the city of New Orleans, aforesaid in the presence of Charles C. Van Benthuysen & Isaac N. Mayronne witnesses, of lawful age and domiciliated in this
76 city, who hereunto sign their names, together with the said parties and me, the said notary, on this eighteenth day of April one thousand eight hundred and sixty-seven.

R. PINDELL.
ANNA PINDELL.
HENRY J. LEOVY.
CHAS. C. VEN BENTHUYSEN.
I. N. MAYRONNE.

GEO. W. CHRISTY, Not. Pub.

NEW ORLEANS, LOUISIANA, October 6, 1902.

I, the undersigned, Peter Stifft, custodian of notarial records in and for the parish of Orleans, State of La., do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and seal this sixth day of October, 1902. At New Orleans, La.

[SEAL.]

PETER STIFFT,
Custodian Notarial Records.

(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit "K" to bill of complaint. Filed Oct. 27, 1902.

77 EXHIBIT L TO BILL OF COMPLAINT.

Eugene Joubert, Printer, 627 Gravier St., N. O.

No. —.

March 2nd, 1892.

Sale of Land by Henry J. Leovy to Joseph C. Gilmore.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans.

Be it known, that on this second day of the month of March in the year one thousand eight hundred and ninety-two and of the Independence of the United States of America, the one hundred and sixteenth, before me, Theodore Cotonio, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana, aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned. Personally came and appeared: *Henry Jefferson Leovy Esq.*, of lawful age and a resident of this city, *who declared* that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver, with all legal warranties up to the amount of the price herein paid; and with full substitution and subrogation in and to all the rights and actions in warranty, which he has or may have against all preceding owners and vendors, unto, *Joseph Clohecy Gilmore Esq.*, also of lawful age and a resident of this city; here present, and accepting, purchasing for himself, his heirs and assigns, and acknowledging due delivery and possession thereof, the following described property, to wit:

Certain lands situated in the south eastern land district of Louisiana in the parish of St. Bernard, embracing the whole of the island known as "Isle au Pitre" and other lands, viz:

78 First. The fractional sections, numbers twenty-three, twenty-four, twenty-five and twenty-six; in township number ten, south of range twenty east, containing four hundred and sixty-eight 78/100 acres.

Second. The fractional sections, thirty-three, and thirty-four, in township number ten, south of range twenty east; containing five hundred and sixty-nine 72/100 acres.

Third. The fractional sections, numbers twenty-seven, twenty-eight and thirty-two, in township number ten, south of range number twenty east, containing three hundred and eighty 40/100 acres.

Together with all rights of accretion, rights, ways, advantages and appurtenances thereunto belonging or in anywise appertaining; the whole according to a copy of plan, duly certified by A. Dupre, register of the land office and by A. Landry and Wm. J. McCullogh, surveyors general of Louisiana, annexed to this act for reference, and duly paraphed "*Ne varietur*" by me notary for identification herewith.

Which said above described property and conveyed lands were acquired by the present vendor from Richard Pindell, by act passed before George W. Christy, late a notary in this city, under date of April, eighteenth, 1867, by purchase; and by said Pindell acquired by purchase from the State of Louisiana, as per patents Nos. 194, 195 and 196, dated March 20th 1867 as in said act set forth.

To have and to hold the above described lands and property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of nine hundred and fifty dollars ($950.00) cash, which the said purchaser has paid in ready and current money, to the said vendor, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

And the said vendor hereupon declared that there are no taxes due or exigible upon said lands and property and the same to be free and clear of all liens, mortgages, privileges or other incumbrances and all taxes, claims, liens and privileges therefor; of which declaration the present purchaser expresses himself satisfied and dispense- with the production of mortgage certificates from the recorder of mortgages in and for the parish of St. Bernard, and
79 all other certificates required by law, herein agreeing to hold me, notary, harmless for non production thereof.

Thus done and passed, in my office, at the city of New Orleans on the day, month and year, herein first above written, in the presence of Messieurs Edward Eugene O'Brien and Charles Kummel, both of this city, competent witnesses, who hereunto signed their names with the said appearers and me, notary, after reading of the whole.

(Original signed) HENRY J. LEOVY.
JOSEPH C. GILMORE.

E. E. O'BRIEN.
CHAS. KUMMEL.

THEO. COTONIO,
Not. Pub. [SEAL.]

A true copy of the original.

Registered in the conveyance office, Book, 18, folio, 47 *et seq.* of the parish of St. Bernard, State of Louisiana.

THEO. COTONIO, Not. Pub.

(Endorsed:) New Orleans, March 2nd, 1892 (C-o-p-y) Sale of land by Henry J. Leovy to Joseph C. Gilmore Registered in con-

veyance office, Book, 18, folio, 47 *et seq.*, of the parish of St. Bernard, State of Louisiana, Theo. Cotonio, not. pub. Exhibit L.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12 orig'l State of Louisiana complainant, *vs.* State of Mississippi. Exhibit "L" to bill of complaint. Filed Oct. 27, 1902

80 EXHIBIT M TO BILL OF COMPLAINT.

Eugene Joubert, Printer, 627 Gravier St., N. O.

No. —.

March 2nd, 1892.

Sale of Land by Henry J. Leovy to Joseph C. Gilmore.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans.

Be it known, that on this second day of the month of March in the year one thousand eight hundred and ninety-two and of the Independence of the United States of America, the one hundred and sixteenth, before me, Theodore Cotonio, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana, aforesaid, therein residing and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared: Henry Jefferson Leovy Esq., of lawful age and a resident of this city, who declared that he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver, with all legal warranties, up to the amount of the price herein paid; and with full substitution and subrogation in and to all the rights and actions in warranty, which he has or may have against all preceding owners and vendors, unto, Joseph Clohecy Gilmore, Esq., also of lawful age and a resident of this city; here present, and accepting, purchasing for himself, his heirs and assigns and acknowledging due delivery and possession thereof, the following described property, to wit:

Certain lands situated in the south eastern land district of Louisiana in the parish of St. Bernard, adjacent to "Isle au Pitre," viz:

Three islands in sections twenty, twenty-one, twenty-eight and twenty-nine in township No. ten (10) south of range number
81 twenty east in south eastern east of river land district, containing fifty-one 40/100 acres.

Together with all rights of accretion, rights, ways, advantages and appurtenances thereunto belonging or in anywise appertaining, or existing under present laws; the whole according to a plan or sketch hereto annexed for reference and marked "B," for identification herewith, and duly paraphed "*Ne varietur.*"

Which said above described property was acquired by the present vendor by purchase from the State of Louisiana as per patent No. 4955 dated January twenty-sixth 1883.

To have and to hold the above described lands and property unto the said purchaser, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of fifty dollars ($50.00) cash, which the said purchaser has paid in ready and current money, to the said vendor, who hereby acknowledges receipt thereof, and grants full acquittance and discharge therefor.

And the said vendor hereupon declared that there are no taxes due or exigible upon said lands and property, and the same to be free and clear of all liens, mortgages, privileges or other incumbrances and all taxes, claims, liens and privileges therefor; with which declaration, the present purchaser expresses himself satisfied, and dispense- with the production of mortgage certificate from the recorder of mortgages in and for the parish of St. Bernard and all other certificates required by law, herein agreeing to hold me, notary, harmless for non production therefor.

Thus done and passed, in my office, at the city of New Orleans, on the day, month and year herein first above written, in the presence of Messieurs Edward Eugene O'Brien and Charles Kummel, both of this city, competent witnesses, who hereunto sign their names with the said appearers, and me, notary, after reading of the whole.

(Original signed) HENRY J. LEOVY.
JOSEPH C. GILMORE.

E. E. O'BRIEN.
CHAS. KUMMEL.

THEO. COTONIO, Not. Pub.

A true copy of the original.

Registered in the conveyance office, Book, 18, folio, 42 *et seq.* of the parish of St. Bernard, State of Louisiana.

[SEAL.] THEO. COTONIO, Not. Pub.

82 (Endorsed:) New Orleans, March 2nd, 1892. (Copy Sale of land by Henry J. Leovy to Joseph C. Gilmore. Registered in conveyance office, Book, 18, folio, 42 *et seq.*, of the parish of St. Bernard, State of Louisiana. Theo. Cotonio, not. pub. Exhibit "M."

(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit "M" to bill of complaint. Filed Oct. 27, 1902.

83 EXHIBIT Z TO BILL OF COMPLAINT.

183.

April 18th, 1867.

Sale of Lands—Richard Pindell, Esq., to Henry J. Leovy, Esq.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day, before me, George William Christy, a notary public, in and for the city and parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared Richard Pindell Esq., of this city, who declared that for the consideration and on the terms and conditions hereinafter set forth he does, by these presents, grant, bargain, sell, convey, transfer, assign and set over with all legal warranties unto Henry Jefferson Leovy Esq. also of this city present, accepting and purchasing for himself his heirs and assigns and acknowledging delivery and possession thereof, all and singular the following described property, situated in the south eastern land district of Louisiana in the parish of St. Bernard, being swamp lands subject to tidal overflow, viz:

The north west quarter of section fifteen in township fourteen south of range sixteen east, containing one hundred and sixty acres "/' being the same land which was purchased by the present vendor from the State of Louisiana, as per patent number "one hundred and ninety-three" dated 20th March 1867.

And here the said purchaser declared that he dispensed with the production of a mortgage certificate from the recorder of mortgages for the said parish of Saint Bernard, showing the mortgages, if any, on said property, and to be annexed to this act as required by article "3328" of the Civil Code of this State.

84 The U. S. internal revenue stamps of two dollars required for this act has been hereunto duly affixed and cancelled.

To have and to hold, the said property unto the said purchaser, his heirs and assigns, to their proper use and behoof, forever. And the said vendor for himself & heirs the said property to the said purchaser his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons, whomsoever, by these presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor or against the vendors of his vendor fully authorizing the said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the

price and sum of one thousand six hundred dollars ($1600.00) which has been paid in cash by the said purchaser at the execution of these presents, the receipt of which is hereby acknowledged by the said vendor and acquittance therefor granted.

And now personally came and intervened in these presents, Mistress Anna Monroe of lawful age and wife of said vendor, who did declare unto me, notary, that it is her wish and intention, to release in favor of said purchaser, the property herein described, from the matrimonial, dotal, paraphernal and other rights, and from any claims, mortgages, or privileges, to which she is or may be entitled, whether by her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said wife, verbally, apart and out of the presence and hearing of her said husband, and before receiving her signature, that she had by law, a legal mortgage on the property of her said husband:—First: For the restitution of her dowry, and for the reinvestment of her dotal property, sold by her husband, and which she brought in marriage reckoning from the celebration of the marriage: Secondly: For the
85 restitution and re-investment of the dotal property, by her acquired since marriage whether by succession or donation, from the day the succession was opened or the donation perfected: Thirdly: For nuptial presents. Fourthly: For debts by her contracted with her said husband, and fifthly: For the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said wife did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal and other rights, and privileges thus secured to her by law, on the property of her said husband, and that availing herself of the rights secured to her by the second section of an act passed by the legislature of this State, nevertheless, did persist in her intention of renouncing not only all the rights, claims and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which she is or may be entitled by any laws, now or heretofore in force in the State of Louisiana.

And the said husband being now present aiding and authorizing his said wife, in these presents, she the said wife, did again declare, that she did, and doth, hereby make a formal renunciation and relinquishment to all her said matrimonial, dotal, paraphernal and other rights, claims and privileges, in favor of the said purchaser, binding herself and her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the city of New Orleans, aforesaid, in the presence of Charles C. Van Benthuysen & Isaac N. Maynard witnesses, of lawful age and domiciliated in this city, who hereunto sign their names, together with the parties and me, the

said notary, on this eighteenth day of April one thousand eight hundred and sixty seven.

R. PINDELL.
ANNA PINDELL.
HENRY J. LEOVY.

CHAS. C. VAN BENTHUYSEN.
I. N. MAYNARD.

GEO. W. CHRISTY,
Not. Pub.

New Orleans Louisiana, September 27, 1902.

86 I, the undersigned, Peter Stifft, custodian of notarial records, in and for the parish of Orleans, State of La., do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and seal this twenty seventh day of September 1902, at New Orleans, La.

PETER STIFFT, [SEAL.]
Custodian of Notarial Records.

(Endorsed:) Supreme Court U. S. October Term 1902 Term No. 12, orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Exhibit "Z" to bill of complaint.

87 And on the same day, to wit, on the 27th day of October, A. D. 1902, the following appearances for complainant were filed, viz:

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI.
} No. 12, Orig'l, October Term, 1902.

The clerk will enter my appearance as counsel for the complainant.

(Name) WALTER GUION,
(P. O. address) Godchaux Bldg., N. O., La.

☞ NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902 Term No. 12, orig'l. Appearance for compl't. Filed Oct. 27, 1902.

88 Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, *vs.* STATE OF MISSISSIPPI. } No. 12, Orig'l, October Term, 1902.

The clerk will enter my appearance as counsel for the complainant.

(Name) JOHN DYMOND, JR.,
(P. O. address) New Orleans, La.

☞ NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902 Term No. 12 orig'l Appearance for compl't Filed Oct. 27, 1902.

89 And afterwards to wit on the 28th day of October, A. D. 1902, a subpœna was issued and delivered to the marshal for service.

And afterwards, to wit, on the third day of November, A. D. 1902, the subpœna and proof of service of same was filed in the words and figures following, to wit:

90 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded, that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding jurisdiction in equity, on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller Chief Justice of the United States, at the city of Washington, the 28th day of October A. D. 1902.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Returned executed through acceptance of service by the governor of the State of Mississippi and by the attorney general of the State of Mississippi the 31st day of October, 1902, as evidenced by their writing and signatures attached hereto.

J. M. WRIGHT, Marshal.

Nov. 3, 1902.

91 Copy.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding jurisdiction in equity on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of Washington, the 28th day of October, A. D. 1902.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

A true copy
J. M. WRIGHT,
Marshal, Supreme Court U. S.

Service of the within process is hereby accepted this 31st day of October, 1902, at Jackson, State of Mississippi.

A. H. LONGINO,
Governor of the State of Mississippi.

92 Copy.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the State
[SEAL.] of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in equity, you are hereby commanded that, laying all other matters aside and notwithstanding any excuse, you be and appear before the said Supreme Court holding

jurisdiction in equity, on the 12th day of January, 1903, at the city of Washington, in the District of Columbia, being the seat of the National Government of the United States, to answer unto the bill of complaint of the State of Louisiana in the said court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of Washington, the 28th day of October, A. D. 1902.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

A true copy
J. M. WRIGHT,
Marshal, Supreme Court U. S.

Service of the within process is hereby accepted this 31st day of October 1902, at Jackson, State of Mississippi.

MONROE McCLURG,
Attorney General of the State of Mississippi,.

(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. The State of Louisiana, complainant, *vs.* The State of Mississippi Subpœna and proof of service of same. Filed Nov. 3d, 1902.

93 And afterwards to wit on the 8th day of December, A. D. 1902, the following appearance for complainant was filed, viz:

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, *vs.* STATE OF MISSISSIPPI. } No. 12, Orig'l, October Term, 1902.

The clerk will enter my appearance as counsel for the complainant.

(Name:) ALEXANDER PORTER MORSE,
(P. O. address:) 1505 Penna. Ave., Washington, D. C.

☞NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902. Term No. 12 orig'l. Appearance for compl't. Filed Dec. 8, 1902.

94 And afterwards, to wit, on the 12th day of January A. D. 1903, the following appearance for defendant was filed, viz:

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Compl't,
vs.
STATE OF MISSISSIPPI. } No. 12, Orig'l, October Term, 1902.

The clerk will enter my appearance as counsel for the defendant.

(Name:) MONROE McCLURG,
Att'y Gen'l.
(P. O. address:) Jackson, Miss.

☞ NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1902. Term No. 12 orig'l Appearance for def't Filed Jan. 12, 1903.

95 And on the same day, to wit, on the 12th day of January A. D. 1903, an application for leave to file demurrer was filed in the words and figures following, viz:

96 Office Supreme Court U. S. Filed Jan. 12, 1903. James H. McKenney, Clerk.

Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } No. 12, Original.

Application for Leave to Demur.

97 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } No. 12, Original.

Application for Leave to Demur.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

Your petitioner, The State of Mississippi, one of the United States of America, by A. H. Longino, governor, and Monroe McClurg,

attorney general, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly represented that in the bill of complaint filed in this court upon the *ex parte* application of the governor and attorney general of said State of Louisiana without notice, it is alleged that, because of the matters and things therein set forth, there is
98 a dispute between the said State of Louisiana and the State of Mississippi as to the boundary line between said States in the waters to the south of the said State of Mississippi, and the southeast of said State of Louisiana; the prayer of said bill is as follows:

"And after due proceedings may it please your honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth of Pearl river with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon island through Mississippi sound, north of Isle a'Titre through Cat Island Pass channel, southwest of Cat island through Chandeleur Island sound, northeast of the Chandeleur islands to the gulf of Mexico, as is delineated on the original map submitted by the Louisiana boundary commission to the Mississippi boundary commission, and now made part of this bill marked Exhibit "E," that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require."

All of which will appear by reference to the said bill of complaint on file with this honorable court.

Your petitioner, The State of Mississippi, by her governor and attorney general aforesaid, humbly submits to your honors that, because of the insufficiency and fatal defects of the said bill of complaint indicated by the aforesaid demurrer, even if all of the material and well pleaded allegations of the said bill should be
99 confessed, the said bill would be, nevertheless, dismissed on the hearing and that in such case the rule of procedure in this honorable court is to sustain a demurrer and dismiss the bill of complaint.

Kansas *v.* Colorado, 185 U. S., 126 (145).
Louisiana *v.* Texas, 176 U. S., 1 (13 *et seq.*).

It is humbly submitted that by the most casual examination of the said bill of complaint it will be observed that the boundary line

between said States is definitely and permanently fixed by law, at three leagues from the Louisiana coast, and at six leagues from the Mississippi shore, and farther, that there is nothing in said bill contained showing a controversy between said States justiciable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer and that a day may be fixed by your honors for the hearing of the same. And as in duty bound your petitioner will ever pray.

MONROE McCLURG,
Attorney General of Mississippi.

100 (Endorsed:) Supreme Court U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, *v.* State of Mississippi. Application for leave to file demurrer. Filed January 12, 1903.

101 And on the same day, towit, on the 12th day of January, A. D. 1903, the following order appears of record, viz.:

102 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

On motion of Mr. Monroe McClurg, of counsel for the defendant leave is hereby granted to file the demurrer of the defendant to the bill of complaint herein.

January 12th, 1903.

103 And on the same day, to wit, on the 12th day of January, A. D. 1903, a demurrer was filed in the words and figures following, viz:

104 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } No. 12, Original.

Demurrer.

105 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } No. 12, Original.

Demurrer.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

The demurrer of The State of Mississippi, defendant above named, by A. H. Longino, governor, and Monroe McClurg, attorney general, of said State of Mississippi, to the bill of complaint of the State of Louisiana, by William W. Heard, governor, and Walter Guion, attorney general, of said State of Louisiana.

The defendant, The State of Mississippi, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, demurs thereto and for cause of demurrer shows:

106 First. Because it doth not sufficiently appear in and by the said bill of complaint that the same was filed or is being prosecuted by the authority of the State of Louisiana, or by the authority of any law whatsoever. The said governor and attorney general hath no authority in law to proceed in this matter of their own motion.

Second. This court has no jurisdiction of this cause, because it appears from the face of the bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, a controversy between the States of Louisiana and Mississippi as to their boundary line, in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana.

Third. Because it appears from the face of the bill that the boundary line between said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana are clearly, definitely and permanently fixed by the several acts of Congress referred to and pleaded by the complainant in her said bill admitting the said States into the Union; that of Louisiana at three leagues from the coast, that of Mississippi at six leagues from her

shore; that it is impossible for said lines to conflict upon either land or water.

Fourth. It appears from the face of said bill that the complainant, The State of Louisiana, has not attempted to mark and define by buoys, or otherwise, her boundary line in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Fifth. Because it appears upon the face of said bill that the action of the governors of said States in appointing so called commissioners to determine the water boundary line between the said States, and the alleged action and recommendation of the so called commissioners, or of any of them, was without authority of law as to fixing the boundary line between said States and in no wise binding upon either of said States in their sovereign or corporate capacity,
107 and it clearly appears that it was not so intended. Jurisdiction cannot be conferred by consent.

Sixth. Because said bill shows upon its face that this suit is in reality for, and on behalf of, certain individuals who reside in the State of Louisiana engaged in taking oysters and fish along the coast of said States, and that although the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is in fact loaning its name to said individuals, and is only a nominal party to said suit, that the real parties in interest are the said private individuals and persons residing in said State and interested in the oyster and fish trade.

Seventh. Because it appears from the face of said bill that the governor and attorney general of the State of Louisiana are seeking to maintain in the sovereign right of said State, this suit for the redress of the supposed wrongs of certain private citizens of said State, namely, those engaged in the oyster and fish trade, while under the Constitution of the United States and the laws enacted thereunder said State possesses no such sovereignty as empowers her to bring an original suit in this court for such purpose.

Eighth. Because it appears upon the face of said bill that no property rights of the State of Louisiana are in any manner affected by the matters alleged in the said bill; nor is there any such property right involved in this suit as would give to this court original jurisdiction of this cause.

Ninth. Because it appears from the face of said bill of complaint that the acts therein complained of are not the acts of the State of Mississippi in its sovereign or corporate capacity, nor acts of any of her officers, committed by her authority, but the acts of certain individual persons engaged in the oyster and fish trade, against whom relief is sought and who are not made parties herein.

Tenth. Because it appears upon the face of said bill that the State of Mississippi, nor any officer of said State authorized by law
108 to act for and on her behalf, has not in any manner whatsoever denied or controverted the boundary line of the State of Louisiana in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Eleventh. Because it clearly appears from the face of the said bill of complaint that its purpose is to extend, vary and change, by judicial procedure, the boundary lines between said States in the waters to the south of the State of Mississippi, differently from where they were clearly and permanently fixed by the several acts of Congress referred to and pleaded in the said bill admitting said States into the Union.

Twelfth. Because it appears upon the face of said bill of complaint that the alleged confusion as to the boundary line between the said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana, and the alleged threat of an armed conflict between the civil officers of the parish of St. Bernard, in the State of Louisiana, and of the county of Harrison, in the State of Mississippi, is but a conclusion of the pleader, the facts producing such confusion and threat not being set out in the bill as required by law.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

MONROE McCLURG,
Attorney General of Mississippi.

109 THE STATE OF MISSISSIPPI, }
Hinds County. }

Personally appeared before me the undersigned clerk of the supreme court of the State of Mississippi, A. H. Longino, the governor of said State, and Monroe McClurg, the attorney general of said State, representing the said State of Mississippi, defendant, in the above entitled cause, and say that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Sworn to and subscribed before me this the 8th day of January, 1903.

A. H. LONGINO, Governor.
MONROE McCLURG,
Attorney General.
[SEAL.] E. W. BROWN,
Clerk of the Supreme Court of Mississippi.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MONROE McCLURG,
Attorney General of Mississippi.

110 (Endorsed:) Supreme Court U. S., October term, 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Demurrer. Filed January 12, 1903.

111 And on the same day, to wit, on the 12th day of January, A. D. 1903, the following entry appears of record, viz:

112 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

Mr. Monroe McClurg, of counsel for the defendant, submitted to the consideration of the court a motion and stipulation of counsel to fix a day for the hearing of the demurrer herein.
January 12th, 1903.

113 And on the same day, to wit, the 12th day of January, A. D. 1903, the motion of defendant to assign demurrer for argument was filed in the words and figures following, viz:

114 Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI, Defendant. } No. 12, Original.

Motion to Set Down Demurrer for Hearing on Oral Argument.

And now comes The State of Mississippi, through Monroe McClurg, its attorney general, and moves this honorable court to set down the demurrer herein for hearing on oral argument for such time and date as may suit the convenience of the court, not earlier than the last week in February or the first week in March, 1903.

MONROE McCLURG,
Att'y Gen'l for the State of Mississippi.

Washington, D. C., January 12, 1903.

(Endorsed:) Supreme Court of the United States. Oct. term 1902. Original No. 12. State of Louisiana, complainant, *vs.* State of Mississippi, defendant. Motion of the defendant to set down demurrer for oral argument. Monroe McClurg, att'y gen'l for the State of Mississippi.
(Endorsed:) Supreme Court U. S. October term, 1902. Term No. 12 orig'l. State of Louisiana, complainant, *v.* State of Mississippi Motion of the defendant to assign demurrer for argument. Filed Jan'y 12, 1903.

115 And on the same day, to wit, on the 12th day of January, A. D. 1903, an agreement of counsel to assign demurrer for argument was filed in the words and figures following, viz:

116 In the Supreme Court of the United States.

LOUISIANA, Complainant,
vs.
MISSISSIPPI, Defendant. } Original, No. 12, October Term, 1902.

It is hereby agreed between counsel on both sides in the above entitled cause that by consent of the honorable court, the said cause may be heard on the — day of —— 1903, on the demurrer filed by the State of Mississippi to the bill of complaint filed by the State of Louisiana.

Both parties pray this honorable court to set the case accordingly for oral argument. All of which is most respectfully submitted. This January 12th, 1903.

WALTER GUION,
Att'y General for the State of Louisiana.
MONROE McCLURG,
Att'y General for the State of Mississippi.

(Endorsed:) Supreme Court U. S. October term, 1902 Term No. 12 orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Agreement to assign demurrer for argument. Filed Jan'y 12th, 1903.

117 And afterwards, to-wit, on the 19th day of January, A. D. 1903, the following order appears of record, viz:

118 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

On consideration of the motion to fix a day for the hearing of the demurrer herein,

It is now here ordered by the court that said hearing be, and the same is hereby assigned for Monday, March 2d next, after the cases heretofore assigned for that day.

January 19th, 1903.

[Endorsed:] Supreme Court of the United States, October term, 1902. Term No. 12, original. Order. Filed Jan. 19, 1903.

119 And afterwards, towit, on the 2d day of March A. D. 1903, a stipulation to submit demurrer on briefs was filed in the words and figures following, viz:

120 In the Honorable the Supreme Court of the United States, October Term, Nineteen Hundred and Two.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI, Defendant. } Number Twelve, Original.

It is hereby agreed between the State of Mississippi, represented herein by her attorney general, and the State of Louisiana, represented by her attorney general, that, with the permission of this honorable court, the demurrer filed herein by defendant and set down for a hearing in the honorable the Supreme Court of the United States on Monday March 2nd 1903 shall be submitted to the court without oral argument and on briefs to be filed by complainant and defendant.

MONROE McCLURG,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

Feb'y 3rd, 1903.

(Endorsed:) Supreme Court U. S., October term, 1902. Term No. 12 original. State of Louisiana, complainant, *vs.* State of Mississippi. Stipulation to submit demurrer on brief. Filed Mar. 2, 1903.

121 And on the same day, towit, on the 2d day of March A. D. 1903, the following entry appears of record, viz:

122 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

The demurrer of the defendant herein was submitted to the consideration of the court on printed arguments by Mr. John Dymond, Jr., Mr. Alexander Porter Morse, and Mr. Walter Guion, of counsel for the complainant, and Mr. Monroe McClurg, of counsel for the defendant, and leave was granted counsel for the complainant to file a reply brief within twenty days.
March 2d, 1903.

123 And on the same day, towit, on the 2d day of March, A. D. 1903, a stipulation that complainant have twenty days in which to file reply brief, was filed in the words and figures following, viz:

124 In the Honorable Supreme Court of the United States, October Term, 1902.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI, Defendant. } Number 12, Original.

It is hereby agreed between the State of Mississippi, represented herein by her attorney general, and the State of Louisiana, represented by her attorney general, that, with the permission of this honorable court, a delay of twenty (20) days from the second day of March 1903 be granted to the State of Louisiana within which to file a supplemental brief on behalf of The State of Louisiana, complainant, in reply to the brief filed by defendant, The State of Mississippi.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

(Endorsed:) Supreme Court, U. S. October term 1902. Term No. 12, original. State of Louisiana, complainant, *vs.* State of Mississippi. Stipulation that complainant have twenty days within which to file reply brief. Filed Mar. 2, 1903.

125 And afterwards, towit, on the 6th day of April, A. D. 1903, the following order appears of record, viz:

126 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 12, Original, October Term, 1902.

This cause came on to be heard on the demurrer of the defendant to the bill of complaint and was argued by counsel. On consideration whereof,

It is now here ordered, adjudged and decreed by this court that the said demurrer be, and the same is hereby, overruled, and the defendant is granted leave to answer on or before the first day of the next term.

April 6th, 1903.

[Endorsed:] Supreme Court of the United States. October term, 1902. Term No. 12, orig'l. Order. Filed April 6, 1903.

127 And afterwards, to wit, on the 13th day of October, A. D. 1903, a motion for leave to file answer and cross bill of the State of Mississippi and for process, was filed in the words and figures following, towit:

128 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } Original, No. 11.

Motion.

129 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } Original, No. 12.

Motion.

To the honorable Chief Justice and the honorable associate justices:

The State of Mississippi, defe nt, by Andrew H. Longino, governor, and William Willia orney general, humbly shows as follows, to-wit:

That the State of Louisian er complaint against the State of Mississippi, in this honora n the 27th day of October, 1902, praying a decree defi king the lines dividing said States in the waters c exico; that subpœna was issued, made returnable the January, 1903, at which date the State of Mississippi ap Monroe McClurg, her then attorney general, and demurred t aid complaint; that afterwards, to-wit: on the — day of Mar 1903, said demurrer was disallowed and overruled by this honorable court, and the State of Mississippi required to answer to the October term, 1903.

130 The State of Mississippi herewith humbly presents her answer to said bill of complaint and, according to the usual practice in such cases, accompanies her said answer by a cross-bill making The State of Louisiana defendant thereto. She humbly prays that her said answer and cross-bill may be filed, and that subpœna may be allowed to issue out of this honorable court, directed to the Honorable William W. Heard, governor of the State of Louisiana, and the Honorable Walter Guion, attorney general of said State, commanding them to appear and answer said cross-bill, upon a day to be named by this honorable court.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

MONROE McCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

(Endorsed :) Supreme Court, U. S. October term 1903. Term No. 11, original. State of Louisiana, complainant, *vs.* State of Mississippi. Motion for leave to file answer and cross bill of State of Mississippi & for process. Filed Oct. 13, 1903.

131 And on the same day, towit, on the 13th day of October, A. D. 1903, the following entry appears of record, viz :

132 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant,
vs.
THE STATE OF MISSISSIPPI. } No. 11, Original. October Term, 1903.

On motion of Mr. Fred Beall, in behalf of counsel for the defendant, leave is hereby granted to file the answer and cross-bill of the defendant herein.

October 13th, 1903.

133 And on the same day, towit, on the 13th day of October, A. D. 1903, the answer and cross-bill of the State of Mississippi was filed in the words and figures following, viz :

134 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Defendant. } No. 11, Original.

Answer and Cross-bill.

William Williams, attorney general State of Mississippi.
Monroe McClurg, Dodds & Griffith, of counsel.

135 Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA
v.
STATE OF MISSISSIPPI. } No. 11, Original. Answer and Cross-Bill.

The answer of the State of Mississippi, one of the United States of America, by Andrew H. Longino, governor, and William Williams, attorney general, by leave of this honorable court, to the bill of complaint exhibited against said State of Mississippi by the Honorable William W. Heard, governor, upon the information of Hon. Walter Guion, attorney general, for and on behalf of the State of Louisiana, also one of the United States of America.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States :

This defendant now and at all times hereafter saving to herself all, and all manner of benefit of exception or otherwise that can or

may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says :

135½ I.

To the first paragraph of said bill defendant says that she admits that the State of Louisiana was admitted into the Union by virtue of chapter 50 of the United States Statutes at Large as stated in the bill of complaint.

II.

Answering the second paragraph defendant denies that according to the description given in the act of Congress aforesaid that the said act meant that it was necessary to reach the gulf of Mexico through the Rigolets into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, and to follow said channel, north of Half Moon island, through the Mississippi sound to the north of Isle a Pitre through the Cat Island channel southwest of Cat island into the gulf of Mexico, or that it was intended by said act that the line above referred to should constitute the eastern boundary line of the State of Louisiana ; and defendant denies the correctness of diagram No. 1, filed as a part of the bill of complaint, but on the contrary thereof defendant alleges that the true intent and purport of said act of Congress admitting the State of Louisiana into the Union as to the above mentioned line, was and is as stated in the cross-bill herewith filed.

III.

Answering the third paragraph of said bill of complaint defendant admits that certain territory was added to the State of Louisiana as therein stated.

IV.

Answering the fourth paragraph of the bill of complaint, this defendant denies that the legislation therein referred to had the effect claimed in said paragraph of said bill respecting the boundary line of the State of Louisiana ; and she specifically denies that the
136 deep water channel through the upper corner of Lake Borgne north of Half Moon island, eastward through the deep water channel along the Mississippi sound until it reaches the Cat Island channel north of Isle a Pitre, and southwest of Cat island, whence, passing through Chandeleur sound, northeast of Chandeleur island, it enters the gulf of Mexico, and runs south around the delta of the Mississippi river, constitutes the true boundary line. And defendant denies the correctness of diagram No. 2, filed as a part of the bill, but on the contrary thereof charges and alleges that the effect of the legislation aforesaid was to fix the line between said States south-

ward out of the mouth of Pearl river as set forth in the cross-bill herewith filed.

V.

Answering the fifth paragraph of said bill, defendant denies the correctness of the claim of complainant as stated in said bill, but admits that eastward of the line between said States and that point stated in the cross-bill aforesaid, is the State of Mississippi, and that said State of Mississippi was admitted into the Union of the United States by an act of Congress approved March 1st, 1817, as stated in the bill creating the western part of the then Mississippi Territory into a State and that said State was and is bounded as stated in said act of Congress.

VI.

Answering the sixth paragraph of the bill, this defendant denies that the said act of Congress admitting the State of Mississippi into the Union intended that the southern boundary line of said State should be as stated in said bill of complaint, but defendant charges and alleges the true southern boundary line of said State of Mississippi was and is as stated in the cross-bill herewith filed.

VII.

Answering the seventh paragraph of said bill, defendant ad-
136½ mits that the west end of Petit Bois island, all of Horn island, all of Ship island, all of Cat island and the small islands north of these were intended to be a part of the State of Mississippi, but defendant denies that they are the only islands that belong to the said State and she denies the correctness of diagram No. 3, filed as a part of the bill.

VIII.

Answering the eighth paragraph of said bill, defendant denies that it was or is contemplated by the acts of Congress of 1812, aforesaid, creating the State of Louisiana, that all of the other islands except those named in the last paragraph to be south and west of the boundary line between said States described in the bill, were intended to be embraced in the State of Louisiana; and defendant charges and alleges that said line between said States is as stated in the cross-bill.

IX.

The ninth, tenth, eleventh and twelfth paragraphs of the bill are confessed. The thirteenth paragraph of the bill is admitted to be substantially correct so far as this defendant has information or believes the facts to be with reference to the location of the natural oyster reefs shown by the Fish Hawk's map, marked diagram No. 4 to the bill of complaint, but defendant denies that said reefs are in

the waters of St. Bernard parish, in the State of Louisiana, but on the contrary thereof, are within the waters of the State of Mississippi as set forth and stated in the cross-bill.

X.

Answering the fourteenth paragraph of the bill of complainant, defendant denies the correctness of diagram No. 5, filed as a part of the bill of complaint, and she denies the correctness of the statement in said bill that the true line between the two States in the
137 waters thereof is shown by said diagram, but on the contrary thereof she again alleges and charges that the true line fixed by the acts of Congress admitting the said two States into the Union is as stated in the cross-bill.

XI.

Answering the fifteenth paragraph, defendant admits that the line between said States, in the waters aforesaid, has never been marked in any manner by either State; she admits that the deep water channel out of the mouth of Pearl river through the upper corner of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes, but she denies that said marking of said deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said States.

XII.

Answering the sixteenth paragraph, defendant denies upon her belief that confusion has resulted in the State of Louisiana, or that a great public demand has arisen in that State, for a marked boundary line between that State and the State of Mississippi in the waters aforesaid, but she respectfully insists that if such condition actually existed in said State, it was first the duty of said State to mark, or undertake to mark, the true line dividing it from the State of Mississippi. And defendant, upon her belief, denies that any fisherman or other citizens of the State of Mississippi have violated the laws of Louisiana by fishing in her waters.

XIII.

Answering the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third paragraphs of the bill, this defendant admits that proceedings were had similar to
138 those copied into said bill, but defendant denies the allegations of the bill to the effect that there was any crisis or threatening armed conflict between the officers of Louisiana and those of Mississippi, or that there was any controversy between the two States as contemplated by article 3, section 2 of the Constitution of the United States, and this defendant now expressly denies, that

the matters and things set forth in the said sections of the bill, last above referred to, constitutes a controversy between the two States within the meaning of the Constitution, and defendant denies that there has ever been such controversy between the two States as to give this court jurisdiction of an original bill to settle the same. And defendant expressly denies the charges found in the second clause, on page 9 of said bill, to the effect that the "marsh lands" therein referred to are not islands, but alleges that they are small islands distinctly marked in said waters, and she denies that the people of Mississippi have ever shown a disposition to unlawfully invade the territory of Louisiana, and alleges that they have in fact not done so. Defendant says further that it was never intended by the governors of said States, respectively, or by the so called commissioners, appointed by them, as mentioned in the bill of complaint, that said commissioners should undertake to settle or fix the boundary line between said States in said waters, but only to make a peaceable adjustment of an unimportant dispute by an insignificant number of fish and oyster takers of the two States in the said waters. And defendant denies that the State of Louisiana had exhausted, before the filing of her said bill of complaint, all means whereby the said boundary might be established amicably except for the suggestion made by the so-called commissioners appointed by the governor of Mississippi, and she denies that the recommendation of the said Mississippi commissioners, that a friendly suit in the Supreme Court of the United States be instituted to settle the alleged controversy was sufficient to create a controversy between the two States within the meaning of the Constitution of the United States, or to give this court original jurisdiction.

139 XIV.

Responding to the twenty-fourth paragraph of the bill, the State of Mississippi specifically denies that the line claimed by the State of Louisiana, to-wit: a line beginning at the most southern junction of the channel of the east branch of the Pearl river with Lake Borgne thence eastward following the deep water channel to the north of Half Moon island, through the Mississippi Sound channel, Cat Island pass, northeast of Isle a Pitre into the gulf of Mexico, there divides the waters between the two States, or agrees with, or is in accord with the acts of Congress aforesaid, creating, respectively, the State of Louisiana and the State of Mississippi, as shown by diagram No. 5 filed with the bill, or in any other manner; and defendant expressly denies the charge contained in the bill, to the effect that any other boundary than the deep water channel as therein described would cause the line in the waters of the two States to conflict and overlap, but on the contrary thereof, defendant charges and alleges, as aforesaid, that the true boundary between the two States in the waters aforesaid, is as stated in the cross-bill herewith filed.

XV.

Answering the twenty-fifth paragraph of the bill, defendant denies the correctness of the construction placed by complainant in her said bill upon the word "westwardly" in describing the southern boundary of the Mississippi line as set forth in said paragraph of said bill of complaint, and she denies that the complainant has, in said paragraph or in said bill, correctly interpreted the intention of Congress as expressed in the act creating the State of Mississippi with reference to said southern boundary line of said State, and she denies that Congress ever intended, by said act, that the southern boundary line of the State of Mississippi should be a line drawn from the six league water limit between the States of Alabama and Mississippi in a direct course to the most eastern mouth of
140 Pearl river, but on the contrary thereof, defendant shows, alleges and charges that it was the purpose and intention of Congress, as clearly shown and expressed in the act admitting Mississippi into the Union, that her southern boundary line should extend from the six league water limit between said State and Alabama with the meanderings of the shore line to a point six leagues to the southward of the most eastern, or most southern, mouth of Pearl river, and then if such line should, at any point touch the lawful boundary of Louisiana as fixed by the several acts of Congress, admitting that State into the Union, there would be no lap or conflict, but the Mississippi line would stop at, and follow said Louisiana line. Your defendant alleges and charges the truth to be that a line drawn as contended by the complainant in her said bill from the six league water limit between Alabama and Mississippi, in a direct course to the most eastern mouth of Pearl river, would, in fact, cut off a part of the mainland of Mississippi in Hancock county opposite the Saint Joseph light house, and defendant reiterates her declaration that the true southern line of said State is as stated in the cross-bill.

XVI.

Defendant admits that the Mississippi line running parallel with the southern shore of Mississippi at a distance of six leagues from the shore line, and following the meandering of the shore at all points between the mouth of Pearl river and the Alabama line would include Grassy, Half Moon, Round, Le Petit Pass islands and Isle a Pitre, all of which named islands and all other islands within said six league water reach belong, not to the State of Louisiana, but to the State of Mississippi; that the State of Mississippi does not claim and never has claimed any part of the mainland of the State of Louisiana, as shown by diagram No. 6, filed with the bill, the accuracy and correctness of which diagram she denies, or that she has in any other manner ever made such claim; and she
141 denies that a line drawn in the waters aforesaid, at three leagues from the high tide marked on the true mainland of

the "coast" of the State of Louisiana, would include the islands last above named; and she alleges and charges that if a line so drawn three leagues from the Louisiana mainland would embrace said islands still they do not belong to the State of Louisiana since such is not the true boundary line between the States of Louisiana and Mississippi, but the said true line is that described in the cross-bill filed herewith.

XVII.

Answering further, and to the twenty-sixth paragraph of complainant's bill, defendant denies that the marsh territory claimed by the State of Mississippi is part of the mainland of the State of Louisiana; she admits that said marsh islands, except the islands named in said paragraph, have been known and called, since time immemorial as the "Louisiana marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory and while the southern portion of Mississippi also was a part of French territory, all known as Louisiana; and she denies that said fact has any significant bearing upon the location of the line between said States or as to the ownership of said States to, or sovereignty over the territory known as the "Louisiana marshes," no more so than that the parishes of Louisiana north of the River Iberville, known as the "Florida parishes" would, because of that appellation, entitle the State of Florida to the possession of, and sovereignty over those parishes. And, defendant says if it be true as stated in the twenty-sixth paragraph of the bill that any of the marsh territory rightfully belonging to the State of Mississippi under the act of Congress admitting her into the Union, have been approved by the General Land Office to the State of Louisiana, such acts by the ministerial office-s of the Government had no binding force or
142 effect as against the State of Mississippi, because such action on the part of said mere ministerial officers by a department of the Government, and on the part of the State of Louisiana in accepting said land, would not transfer the title of the State of Mississippi to said lands or her sovereign right to own and exercise jurisdiction over them because it would be a violation of sec. 3, of art. IV of the Constitution of the United States, prohibiting the taking of the territory belonging to one State, without the consent of the legislatures of the States concerned, as well as of the Congress, and defendant alleges and charges that she has exercised jurisdiction and sovereignty over said territory mentioned in said twenty-sixth paragraph of the bill, since she was admitted into the Union.

XVIII.

Responding to the twenty-seventh paragraph of the bill of complaint, defendant denies that any part of the territory claimed by the State of Mississippi is in fact part of the mainland of the State

of Louisiana, or that any of said islands referred to in said paragraph claimed by Mississippi are within the nine mile limit of distance from the coast of the State of Louisiana, as contemplated by the acts of Congress admitting that State into the Union, and she denies that said islands belong to the State of Louisiana by virtue of the second provision of the act of Congress admitting Louisiana into the Union as stated in said paragraph.

XIX.

Answering the twenty-eighth paragraph of the bill, defendant denies the correctness of complainant's statement that where contiguous States or countries are separated by water, that the channel of the waters dividing said States, constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case; and she denies that there is anything in that portion of her constitution of 1890, copied into the bill of complaint, binding her to
143 recognize the channel line insisted upon by the complainant in the instant case.

XX.

Answering further, and to the twenty-ninth paragraph of the bill, defendant admits that none of the marsh territory claimed by the State of Mississippi in this matter has ever been assessed on the tax rolls of said State or that any taxes have ever been paid to her on said territory, but she denies that such failure confers any right to the State of Louisiana to said territory; and, she says, that while it may be true that the lands described in said paragraph in said bill have been attempted to be confirmed to the State of Louisiana by the Land Department of the United States Government as belonging to and forming a part of the State of Louisiana, she denies, nevertheless, that these facts have the effect of divesting the title and sovereignty of the State of Mississippi to and over said territory, or to invest the State of Louisiana therewith, and she denies that the people of said two States, especially the people of the State of Mississippi, have recognized the territory mentioned and described in said paragraphs as belonging to the State of Louisiana. Defendant says that while it may be true that the lands composing Half Moon island and Isle a Pitre and the other territory mentioned in said paragraph have been dealt with as stated in said paragraph, the defendant, nevertheless, insists that her title to and sovereignty over said islands are protected by sec. 3 of art. IV. of the Constitution of the United States.

Defendant denies that all parts of the said territory have been assessed by the State of Louisiana, but says that on the contrary only small and separate parts and straggling portions of same have been so assessed by that State. Defendant says that, except as to a small portion of Isle a Pitre, in the whole expanse of this territory there is

not a single human habitation, nor is there any animal life
144 thereon, nor can any such be thereon. That it is a low-lying archipelago of irregular islands, sometimes entirely covered by the high tide and at all times soft and boggy, and to walk upon them is at almost all times impracticable, and no actual occupancy of any kind has ever been had of the said territory except by the boats of fishermen, and this has heretofore been almost exclusively by citizens of Mississippi, and such occupants have always insisted, without serious question heretofore, that all this territory belonged to the State of Mississippi, and defendant expressly states and charges that the alleged dealings with the said territory by the Land Office of the United States, and by the State of Louisiana were not only without the consent or acquiescence of the State of Mississippi, but wholly without her knowledge.

XXI.

Answering the thirtieth paragraph of said bill, defendant denies the statement therein that all constituted authorities competent to create, adopt or consider the boundary line between the said States in the waters thereof have declared the said line to be as stated in said paragraph, namely: the deep water channel running from the most southern junction of the eastern mouth of Pearl river through Lake Borgne, north of Half Moon island, through Mississippi sound, north of Isle a Pitre, southwest of Cat island, through Cat Island pass, through Chandeleur sound, northwest of Chandeleur islands to the gulf of Mexico, to be the true water boundary between said States, but she alleges and charges again that the true boundary is as alleged in the cross-bill filed herewith.

XXII.

This defendant now states, alleges and charges that in addition to the foregoing specific denials, she denies generally all of the allega-
tions of the bill of complaint adverse to the matters and
145 claims set up in this answer, and she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to her best knowledge and belief, humbly prays this honorable court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

Cross-bill.

For cross-complaint and for affirmative relief your orator, The State of Mississippi shows to the honorable Chief Justice and the honorable associate justices of the Supreme Court of the United States:

I.

That the southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by sec. 2, chapter 23, of the acts of the Congress of the United States creating said State and approved March 1, 1817, found in vol. 3, p. 348, of the Statutes at Large as follows:

"*And be it further enacted*, That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the
146 thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning."

II.

Your orator alleges and charges that the purpose and intention of Congress as manifested by said section of the said act above quoted was to give the State of Mississippi all lands under the waters south of her well defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl river with Lake Borgne, including all islands within said limit, and to give to said State of Mississippi sovereignty thereof, and that by virtue of the said act all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi.

III.

Your orator alleges and charges that while the boundary line from the mouth of Pearl river to the gulf of Mexico is not attempted to be defined and none was established by the acts mentioned in the bill of complaint creating and enlarging the State of Louisiana, yet said boundary line is accurately designated, and defined for the first time and established as and for the permanent southern boundary line of the State of Mississippi by sec. 2, chapter 23, of the acts of Congress approved March 1, 1817, above referred to and quoted, and your orator charges and alleges that said line by the said act established is the real true southern boundary line of said State in said waters, and that said boundary line begins at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico, and runs *westwardly with the*

meanderings of the said shore six leagues always therefrom until the said line reaches and touches the real mainland of Louisiana, which real mainland and the first touch thereof, your orator charges, in
147 the line of high tide thereon about two miles due west of the "Indian mound" and "Lake of the Mound," (see chart 192), and thence in an almost due northward direction along and on said high tide mark of the Louisiana mainland to Mississippi sound at or near Nine Mile bayou (chart 190) and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern or eastern junction of Pearl river with Lake Borgne (chart 191), and thence from said point due north to the said Pearl river, including all islands and the land under the waters within the said limits, without regard to the name, character or size of said islands, and your orator here now again alleges and charges that the said line so drawn will include no part of the mainland of Louisiana nor any islands or waters that she is lawfully entitled to. Your orator begs leave to refer to coast charts Nos. 19, (June 1900), 190, (June 1900), 192, (Sept. 1899), and 191, (June 1900), prepared and promulgated to the public by the United States Coast and Geodetic Survey, Washington, D. C., Henry S. Pri-chett, superintendent, for all descriptions herein referred to, the size and character of which charts make it impracticable to file them as exhibits to this answer and cross-bill, but your orator will file in due time proper copies thereof, now being made, as diagrams Nos. 1, 2, 3 and 4 and made parts hereof.

IV.

That the acts of 1812 of the Congress, creating the State of Louisiana and otherwise probably correctly defining her boundary line fails, as is conceded by the said State in her original bill filed in this cause, to describe the water line from the most eastern mouth of Pearl river to the gulf of Mexico; that in order to supply that part of the line between the two points aforesaid, and to make her water boundary line complete, the said complainant, in her
148 said original bill, proposes without authority in law to follow the deep water channel from the mouth of Pearl river to the gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur sound merge into the waters of the gulf of Mexico.

V.

That the said act creating the State of Mississippi was only the organization of a State government in the western part of the Mississippi Territory as such Territory had theretofore existed; that the southern part of the Territory of Mississippi was added thereto by an act of Congress approved May 14, 1812, passed by the same Congress that created the State of Louisiana and within one month of the date of said acts creating and admitting the State of Louisi-

ana into the Union. The said act of Congress making the aforesaid addition to the Mississippi Territory is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all that portion of territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said Territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi Territory, shall be entitled to one representative in the General Assembly thereof." U. S. St. at L., vol. 2, p. 734.

VI.

Your orator humbly shows that the Congress of the United States, in the enactment of both the statutes relating to the southern part of Mississippi Territory, that is, the act last above cited,
149 creating that addition to the Mississippi Territory and that creating and admitting into the Union, the State of Mississippi, both of said acts being subsequent to the passage of the act creating and admitting into the Union the State of Louisiana, recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said State and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana acts are not in conflict with the aforesaid Mississippi acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said acts creating and admitting her, as were within the gulf of Mexico and also within three leagues of her gulf coast, that is to say, within the gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl river to the gulf of Mexico dividing the Territory of Mississippi from the State of Louisiana was never defined until the passage of the act creating the State of Mississippi, when, *for the first time*, the southern boundary of the Mississippi Territory, the western part of which was, by said act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi acts, includes no islands which are within three leagues of the Louisiana mainland and also in the gulf of Mexico as the limits of the gulf of Mexico are defined by the said State in her original bill herein.

VII.

Your orator shows that the State of Louisiana claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana,

recited in the original bill of complaint herein; your orator charges that said claim to said islands and territory is not well
150 founded because of the matters herein set forth and because said islands and territory have not been susceptible to actual use and occupation and because said claim is in violation of sec. 3 art. IV of the Constitution of the United States prohibiting the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature- of the two States, and of the Congress. However, if this honorable court should, for any cause or reason, adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said State because of such transfers, then your orator prays that the claim and title of Louisiana thereto be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder. Your orator alleges and charges that she has exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union; that by her public statutes codified by authority of her legislature in 1857, she declared in terms what had hitherto been in fact the southern or water boundaries of her coast counties in art. 2, sec. 2, page 50, Code of 1857; as follows: "* * * and the counties bordering on the gulf of Mexico—towit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike *the gulf of Mexico*, or the inlets thereto, on a continuous direct course *to the southern boundary of the State, including all islands that may lie within the limits thus defined.*"
(Italics ours.)

By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the "Mississippi sound" was recognized as a body of water, six leagues wide,
151 wholly within the State of Mississippi, from Lake Borgne to the Alabama line, separate and distinct from "the gulf of Mexico."

VIII.

That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf coast or shore and carving States out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said States were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each State jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any State jurisdiction over

waters adjacent to and immediately south and in front of any other State or Territory. But your orator alleges that the deep water channel line contended for by complainant, as indicated by the maps and diagrams filed with the original bill, would take nearly all of the Hancock County water front, much of the Harrison County water front, and possibly some of the Jackson County water front over all of which Mississippi has exercised jurisdiction and sovereignty since she was admitted into the Union.

IX.

Your orator alleges and charges that all of the Mississippi territory between Pearl river and the Alabama line was organized on December 14, 1812, into two counties known as Hancock and Jackson, and that on February 5, 1841 the county of Harrison was organized between the bay of St. Louis and the bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State of Mississippi the southern boundaries of said three coast
152 counties are described as follows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says: "* * * thence along the middle of said bay of St. Louis, southwardly to its entrance, thence due south to the southern boundary of the State of Mississippi, *in the gulf of Mexico;* thence westwardly, with said boundary, including all islands within six leagues of the *shores of the gulf of Mexico and Lake Borgne*, to the most eastern junction of Pearl river, and *Lake Borgne*, and to the east mouth of Pearl river; thence up said river, by the middle thereof, to the point of beginning." (Italics ours.)

Section 45 of the code above mentioned describes the southern boundary of Harrison county to the middle of the bay of Biloxi, and proceeds as follows: "* * * thence along the middle of the said bay of Biloxi to its entrance, at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi; *on the Gulf of Mexico;* thence westwardly, along said boundary to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay including all the islands within six leagues *of the shore of the gulf of Mexico.*" (Italics ours.)

Section 50 of the code aforesaid, as to the east and southern boundary line of Jackson county reads: "* * * thence east, on the line between townships one and two, south, to the State boundary between Alabama and Mississippi; thence southerly, on said boundary *to the gulf of Mexico;* thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning." (Italics ours.)

Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said code, the boundaries of said counties are the same

as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines constituting the southern boundaries of the counties aforesaid, in the waters of the gulf of
153 Mexico, are and have been since the formation of Hancock and Jackson counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed and established southern boundary of the Mississippi territory and of the State of Mississippi up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi territory and that of the State of Mississippi has exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi sound" as a part of the three counties aforesaid. Your orator shows that the said Mississippi authorities have recognized the "Mississippi sound" as a part of the territory of Mississippi, and that her township and section lines are as well established in the waters of the "Mississippi sound" as indicated by the county boundary aforesaid, as upon the lands within said territory. That the fishermen of all kinds have been taking fish and oysters in said "Mississippi sound" during all of this long period, and have been governed, as well as all others using those waters, by the laws and jurisdictions of the Mississippi territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

Your orator further shows that this said line was also recognized by the supreme court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the act of Congress admitting Mississippi in the recent case of Leinhard *et al. v.* Harrison County, decided by our supreme court, January 12, 1903, (not yet reported), in which controversy the issue was as to the center of the said county and measurements from the eighteen mile limit in the water were held to have been correctly made.

154 *IX.*

Wherefore, your orator, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the court and your honors to grant to her your writ of subpœna, directed to the said State of Louisiana, and to William W. Heard, governor of the said State of Louisiana, and to Walter Guion, attorney general of the State of Louisiana, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And upon final hearing may it please your honors to adjudge



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and decree that the boundary line dividing the States of Mississippi and Louisiana is the line which, beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line reaches and touches the real mainland of Louisiana about two miles due west of the "Indian mound" and "Lake of the Mound," and thence in an almost due northward direction along and on the high tide mark of the said Louisiana mainland to Mississippi sound at or near Nine Mile bayou, and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern, or eastern junction of Pearl river with Lake Borgne, and thence from said point due north to the said Pearl river; that the said line be located and permanently bouyed at the joint expense of the two States; that the full title and sovereignty over all the islands and the land under the waters north and east of the said line so established be decreed and adjudged to be in the State of Mississippi, and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein, and your orator humbly prays for such other and further relief, preliminary and final, as to the court may seem meet and proper, and which the facts of the case may require, and for costs of suit.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

MONROE McCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

155 THE STATE OF MISSISSIPPI, }
Hinds County. }

Personally came and appeared before me the undersigned authority in and for said county and State, Andrew H. Longino, who on oath states that he is the governor of the State of Mississippi; that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

ANDREW H. LONGINO.

Sworn to and subscribed before me this 7th day of October, A. D. 1903.

GEO. C. MEYERS,
Clerk of Supreme Court.

(Here follows map marked page 156.)

157 (Endorsed:) Supreme Court U. S. October term 1903. Term No. 11, original. State of Louisiana, complainant, vs. State of Mississippi. Answer and cross-bill of the State of Mississippi. Filed October 13, 1903.

158 And on the same day, to wit, on the 13th day of October, A. D. 1903, the following entry appears of record, viz:

159 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, vs. THE STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1903.

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted the complainant to file answer to the cross-bill herein within sixty days.
October 13th, 1903.

160 And afterwards, to wit, on the 19th day of October, A. D. 1903, the following entry appears of record, viz:

161 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, vs. THE STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1903.

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file stipulation to correct answer and cross-bill herein.
October 19th, 1903.

162 And on the same day, to wit, on the 19th day of October, A. D. 1903, the stipulation to correct answer and cross bill was filed in the words and figures following, viz:

163 In the Supreme Court of the United States.

LOUISIANA, Complainant, vs. MISSISSIPPI, Defendant. } Original, No. 11.

Agreement.

It appearing that at the end of line 14 of paragraph VIII, page 19, of the answer and cross bill filed in this cause, the printer inadvertently omitted the word "other," it is hereby mutually agreed

by the parties to this cause, through their respective counsel, that said word should be read at said place, and the clerk of this honorable court is respectfully requested to write it at said place in the original and all of the copies filed.

Witness our signatures this the 10th day of October, 1903.

THE STATE OF LOUISIANA,
Complainant and Cross Defendant,
By WALTER GUION, Attorney General.

JOHN DYMOND, Jr.,
ALEXANDER PORTER MORSE,
Of Counsel for the State of Louisiana.

THE STATE OF MISSISSIPPI,
Defendant and Cross Complainant,
By WILLIAM WILLIAMS,
Attorney General.

MONROE McCLURG,
HANNIS TAYLOR,
Of Counsel for the State of Mississippi.

(Endorsed:) No. 11 original Supreme Court of the United States State of Louisiana vs. State of Mississippi Agreement.

(Endorsed:) Supreme Court U. S. October term, 1903. Term No. 11 original. State of Louisiana, complainant, vs. State of Mississippi. Stipulation to correct answer and cross bill Filed Oct. 19th 1903

164 And afterwards, towit, on the 5th day of November, A. D. 1903, an appearance for defendant was filed in the words and figures following, viz:

Order for Appearance.

Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, vs. STATE OF MISSISSIPPI. } No. 11, Orig'l, October Term, 1903.

The clerk will enter my appearance as counsel for the defendant.
(Name:) HANNIS TAYLOR,
(P. O. address:) Washington, D. C.

☞NOTE.—Must be signed by a member of the bar of the Supreme Court United States. Individual and not firm names must be signed.

[Endorsed:] Supreme Court U. S. October term, 1903 Term No. 11, orig'l Appearance for def't Filed Nov. 5, 1903

165 And afterwards, to wit, on the 7th day of December A. D. 1903, a motion for leave to file general replication and answer to cross bill was filed in the words and figures following, viz:

166 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complainant, vs. THE STATE OF MISSISSIPPI, Respondent. } Original, No. 11. In Equity.

Motion for Leave to File General Replication and Answer to Cross-bill.

And now comes the said complainant by its solicitor, Walter Guion, attorney general of the State of Louisiana and counsel for complainant, and respectfully asks this court for leave to file its general replication and answer to cross-bill, herewith submitted, in the above entitled cause,

December 7th, A. D. 1903.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
Of Counsel.

(Endorsed:) Supreme Court, United States, October term 1903. Original No. 11 State of Louisiana, complainant, vs. State of Mississippi, respondent Motion for leave to file general replication and answer to cross-bill Walter Guion attorney general of Louisiana, John Dymond, Jr., F. C. Zacharie, Albert Estopinal, Jr. Alexander Porter Morse, of counsel.

167 (Endorsed:) Supreme Court U. S. October term, 1903. Term No. 11, original. The State of Louisiana, complainant, vs. The State of Mississippi Motion for leave to file general replication and answer to cross-bill. Filed Dec. 7, 1903.

168 And on the same day, towit, on the 7th day of December A. D. 1903, the following entry appears of record, viz:

169 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, vs. STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1903.

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file a general replication and

an answer to the cross-bill herein, and on motion of Mr. Hannis Taylor, of counsel for the defendant, leave is hereby granted to file exceptions to the answer to the cross-bill within forty days.

December 7th, 1903.

170 And on the same day, towit, on the 7th day of December A. D. 1903, a general replication and answer to cross bill was filed in the words and figures following, viz:

171 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complainant, *versus* THE STATE OF MISSISSIPPI, Respondent. } Original, No. 11. In Equity.

General Replication and Answer to Cross Bill.

172 Supreme Court of the United States, October Term, 1903.

THE STATE OF LOUISIANA, Complainant, *versus* THE STATE OF MISSISSIPPI, Respondent. } Original, No. 11. In Equity,

General Replication and Answer to Cross Bill.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

The State of Louisiana, repliant, saving and reserving unto herself all advantage of exception to the insufficiencies of the answer of the State of Mississippi herein, for replication thereunto says: That she will aver and prove her bill of complaint in this cause to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to; all of which this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in and by her said bill she has already prayed.

173 And further, the said State of Louisiana, now and at all times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to any errors, uncertainties, or other imperfections contained in so much of the answer of the State of Mississippi, herein, as may be deemed a cross bill herein, and also the right to make further answer thereto, if the same should become necessary, for answer to said cross bill of the State of Mississippi, says she denies:

I.

That the fixing of the southern boundary of the State of Mississippi by section 2, chapter 23, of the acts of the Congress of the United States, creating said State and approved March 1, 1817, found in vol. 3, page 348, of the Statutes at Large, quoted in full in paragraph one (1) of respondent's cross bill, certainly and indisputably fixed and designated said southern boundary, as alleged and averred by respondent, but repliant avers that if the construction of said act sought to be placed thereon by respondent be true, and that act did purport so to do, which is denied, repliant avers that said act in said respect would be in violation of, and contrary to the Constitution of the United States, in as much as said act would include in the boundaries of the State of Mississippi the islands, adjacent waters, and territory in dispute and controversy in this cause, which islands, adjacent waters and territory had theretofore been by the act of Congress, chapter fifty of the United States Statutes at Large, volume 2, page 701, approved April 8th, 1812, admitting the State of Louisiana into the Union, included within the boundaries of the State of Louisiana, by the provisions of said act, and repliant avers and alleges that if the act of Dec. 10, 1817, admitting the State of Mississippi into the Union, is to be construed and interpreted as covering and including the said islands adjacent
174 waters, and the territory in dispute and in controversy herein, that said act is void, unconstitutional and of no effect in so far as the islands, territory and waters in dispute and controversy herein, are concerned, for the reason that said act is and would be in violation of, and contrary to, section 3, article IV, of the Constitution of the United States, which section and article prohibit the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature of the two States, which consent the legislature of the State of Louisiana has never granted or given, for the reason that the act of Congress of 1812, admitting the State of Louisiana into the Union, placed said territory herein in controversy within the boundary lines, and under the sovereignty and jurisdiction of the State of Louisiana.

II.

Repliant further answering, especially denies that the claim set forth in the second paragraph of respondent's cross bill, that the islands, and territory herein in dispute and controversy belong to, or are included within the lawful boundaries of the State of Mississippi for the reason set forth in paragraph one (1) of this answer, and repliant further especially and particularly denies that the limits of the State of Louisiana are to be defined and delimited from the "mainland" of said State, as claimed by respondent, but are to be defined, determined and delimited from the islands, as the "coast" of the State of Louisiana.

III.

Repliant further answering to the cross bill of respondent, denies the allegations and averments contained in respondent's third (III) paragraph of the cross bill, but repliant avers and alleges on
175 the contrary that the southeastern boundary of the State of Louisiana, in so far as the territory in dispute and controversy herein is concerned, is governed and fixed by the act of admission of the State of Louisiana into the Union, in 1812, by which all islands within three leagues of the coast were included within said State, and the boundaries therein set forth must be taken and held as the true boundaries of the State of Louisiana, being prior in time to the boundaries of the State of Mississippi, fixed on the admission of that State into the Union on December 10, 1817, and for the additional reasons hereinbefore set forth in repliant's answer to the cross bill of respondent, in paragraphs one (1) and two (2) of this answer; and repliant further avers that there is now and always has been a well-defined and continuous coast line of the southeastern coast of the part of Louisiana herein in dispute and controvesy, extending eastward as far as the eastern extremity of Isle a Pitre, intersected only by the several bayous found therein.

IV, V, and VI.

Repliant, further answering to paragraphs (IV) four, (V) five and (VI) six, of respondent's cross bill, denies the truth and correctness of the allegations thereof, except in so far as is hereinafter especially admitted, but repliant only admits that the act of Congress of May 14th, 1812, set forth in the (V) fifth paragraph of respondent's cross bill, was passed and enacted at that date, but repliant alleges and avers that said act only became a law on the 14th day of May, 1812, (14) fourteen days after the 30th of April, 1812, at which prior date the State of Louisiana had been admitted to the Union and its boundaries defined and delimited, and said act of May 14th, 1812, could not, and did not, change the boundaries
176 or territory of the State of Louisiana, for the reasons already hereinbefore set forth in this repliant's answer to the cross bill in paragraphs one (I), two (II) and three (III), of this answer. And that in truth and fact the southern portion of the said Mississippi territory as claimed by respondent was not even then in possession of the United States, and did not extend south of the thirty-first degree of north latitude, and did not reach or touch the gulf of Mexico or Mississippi sound, for it was only on February 12th, 1813, that the Congress of the United States, U. S. Statutes at Large, vol. 3, p. 472, passed "An act authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi territory and west of the River Perdido." This act was not published until 1818. It declared that the country called West Florida, which lay west of the Perdido river, was not then in

possession of the United States, and the act was not published till 1818, evidently for fear of the effect its passage might have had on the government of Spain, with which the United States was then negotiating a treaty relative to that territory, as is similarly shown by the general resolutions on the relation of the United States to Spain, U. S. Statutes at Large, vol. 3, p. 471–472, approved January 15th, 1811, and March 3, 1811, but not published until after April 20, 1818, in which the President of the United States was specially instructed not to publish same unless he deemed it wise to do so.

VII.

Repliant further answering unto paragraph seven (VII) of respondent's cross bill, denies the averments and allegations therein set forth, and repliant avers and alleges in contradiction thereof
177 that the acknowledgment of the true boundaries of the State of Louisiana by the officers of the United States Government are binding as showing that the territory here in dispute and in controversy has always been considered by the Federal Government, and its officers, as being a part of the territory of the State of Louisiana, and repliant further alleges and avers that all the cartographers who have made maps of Louisiana and Mississippi from a date shortly after the acquisition of Louisiana by the United States, have placed and delineated on all of said maps from the year A. D. 1806, up to the present year, the territory in dispute herein as belonging to Louisiana, and forming a part of its territory, and repliant further alleges and avers that the government and officers of the State of Mississippi, and of the county of Hancock in said State, have repeatedly officially recognized the territory in dispute and controversy herein as the territory of, and belonging to, the State of Louisiana:

1st. On Hardee's geographical and statistical map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas, from recent surveys and investigations and officially compiled for the State of Mississippi, and paid for by appropriation from the treasury of the State of Mississippi, all under statutes of the State of Mississippi, which map was officially approved by the then governor of the State of Mississippi, in writing, on the face of said map, which official map was published and promulgated in the year 1868, and a second edition in 1872.

2nd. On the official map of the State of Mississippi, published in accordance with an act of the Mississippi State legislature, approved March 8th, 1882, by the Mississippi State board of immigration and agriculture, prepared under the direction of E. G. Wall, in 1883.

178 3rd. On a sectional map of Mississippi compiled from the records of the offices of the surveyor general and of the board of immigration and agriculture of the State of Mississippi, published by Rand, McNally & Co., in 1896, to be found in the office of

the clerk of the chancery and circuit courts of the county of Hancock in the State of Mississippi; and,

4th. A map of Hancock county, Mississippi, compiled by Leland Henderson of Mississippi from the records of the United States and Mississippi land offices, which map repliant is informed and believes was prepared for and approved by the board of supervisors of the county of Hancock, State of Mississippi, by virtue of the powers invested in said board by the laws of said State, and by divers other official maps prepared, approved, published and issued by competent authority of State and county officers of the State of Mississippi, and repliant avers that on all of said official maps of Mississippi, the islands, waters adjacent and territory here in dispute and controversy, are delineated and set forth as belonging to, and forming a part of, the territory of the State of Louisiana. Repliant further alleges and avers that if it be conceded, and this honorable court should so decide, that the islands and landed territory here in dispute are a part of the territory of the State of Louisiana, it follows that the land and soil underneath said waters, adjacent to said islands are the property of the State of Louisiana, and that said State has full jurisdiction and sovereignty over them. Repliant especially denies that the State of Mississippi has ever "exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union," as alleged and averred by respondent in paragraph (VII) seven
179 of respondent's cross bill, but repliant especially alleges and avers the contrary; that the State of Mississippi has never exercised in any manner whatsoever, any sovereignty over said islands and waters, and repliant further avers and alleges on information and belief that the citizens of Mississippi have never enjoyed the same for lawful purposes, that is, the taking and obtaining of oysters from said disputed territory, but that it is only in the last few years, when the citizens of Mississippi had, by improvident, careless, and wasteful use of Mississippi's own oyster beds, destroyed or greatly depleted the same, that the said citizens of Mississippi began to trespass on the islands and waters, here in controversy, by taking oysters therefrom, and began to claim any rights in and to the islands and waters here in controversy, that said claims and said trespasses have been resisted by the officers of the State of Louisiana, who at all times have resisted said claims of the State of Mississippi, and the said citizens of Mississippi have been warned off from, and forbidden to use the oyster beds in said territory by said officers of the State of Louisiana. Repliant further avers and alleges that all of said citizens of Mississippi using and trespassing on the territory in controversy herein, always have called and designated, and do now call the territory here in controversy as "the Louisiana marshes" and have no other name for the same.

VIII.

Repliant further answering to the (VIII) eighth paragraph of respondent's cross bill, alleges: That if, as stated, in that paragraph of respondent's cross bill, "the Congress of the United States, in the early history of the Republic, in dealing with the Gulf coast or shore and carving States out of the Louisiana purchase, was
180 not perfectly familiar with said coast or shore line, and as is shown by the several acts of Congress," then repliant further avers and alleges that a similar unfamiliarity existed in the minds of Congress when it erected the territory of Mississippi into a State in 1817, and that if respondent's theory of construction of the acts of Congress be true, that Congress intended to comprise within the boundary of the State of Mississippi the territory in dispute herein as alleged by respondent, which, however, is denied, then it was on account of said unfamiliarity that Congress failed to recognize the fact that in placing within the jurisdiction and boundaries of that new State "*all the islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne*," that Congress, in the act of admission of Louisiana in 1812, five years before had fixed a part of the southeastern boundary of the State of Louisiana as "bounded by said Gulf to the place of beginning, *including all islands within three leagues of the coast*," and Congress thus failed to realize that in fixing the southern boundary of the State of Mississippi it was including on the western end of the Gulf boundary, as it approached Pearl river, islands and waters previously put and placed within the southeastern boundaries of the State of Louisiana in 1812, thus producing a conflict by the boundaries of both of the two States covering and including a part of the same territory. Repliant avers and alleges that if, owing to said unfamiliarity of Congress with the geography of the new acquisitions of territory, it, by mistake, attempted to take away from Louisiana a portion of its territory previously allotted to it by the act of Congress of 1812, such would be in violation of section three (3), article IV, of the Constitution of the United States.

181 IX.

Repliant further answering to paragraph (IX) nine of respondent's cross bill, alleges and avers that if the allegations of fact in said paragraph contained, in so far as they relate to the organizations of the Gulf Coast counties of the State of Mississippi by the legislature of that State, and also the sections of the Revised Code of Mississippi and other codifications of the laws of Mississippi, as therein recited, and that the supreme court of Mississippi did decide as therein recited in the case of Leinhard *et al. vs.* Harrison County, as alleged by respondent, be true, repliant especially denies that the State of Mississippi, or the local authorities of the Gulf Coast counties of the State of Mississippi, have ever exercised control, juris-

diction or sovereignty over the territory herein in controversy, and repliant especially denies that the codes, laws, codifications of the State of Mississippi, and the decision of the supreme court of Mississippi cited by respondent, have any application to, or binding effect on, this repliant, as the State of Louisiana was not in any way, nor were its citizens, parties to said proceedings, and they were all *res inter alios acta*, and neither the legislative nor judicial branch of the government of the State of Mississippi did have, or could have any jurisdiction over the sovereign State of Louisiana in any way, much less to deprive said State of any of its rights, claims or territory; and in all other respects, as to the allegations of fact contained in said paragraph IX, repliant specially denies the truth thereof.

And the State of Louisiana, as a part of her answer to said cross bill, refers to the original bill herein, and makes every averment thereof a part of this answer, the same as if said averments had been set out at length herein.

And the State of Louisiana for further answer to said cross
182 bill says to any matter or thing in said cross bill contained not herein answered unto, the same is hereby specifically denied.

Wherefore the State of Louisiana prays for relief as in her original bill prayed for; that the respondent's cross bill be dismissed and for all proper relief in the premises, and for costs of suit.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
Of Counsel.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the governor of the State of Louisiana; that he has read the foregoing replication and answer to the cross bill of the State of Mississippi, and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

W. W. HEARD, Governor.

Sworn to and subscribed before me, this 30th day of November, 1903.

[SEAL.]

ALVIN EDWARD HEBERT,
Notary Public.

183 (Endorsed:) Supreme Court, U. S. October term, 1903. Term No. 11, original. State of Louisiana, complainant, *vs.* State of Mississippi. General replication and answer to cross bill. Filed December 7, 1903.

184 And afterwards, towit, on the first day of March A. D. 1904, the following entry appears of record, viz:

185 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, *vs.* STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1903.

On motion of Mr. Alexander Porter Morse, of counsel for the complainant, leave is hereby granted to file a stipulation of counsel for the appointment of commissioners to take and report the testimony to be given in this case and fixing the time for taking said testimony, and a further stipulation of counsel as to the authentication of such maps as may be introduced in evidence. And, in pursuance of said first mentioned stipulation, it is further ordered that A. H. Longino, Esq., of the State of Mississippi, and Frank H. Mortimer, Esq., of the State of Louisiana, be, and they are hereby, appointed commissioners for the purpose of taking the testimony herein and reporting the same to the court, with authority and power to take and report such testimony separately and independently. The testimony on behalf of the complainant to be taken during the months of March and April, 1904, and on behalf of the defendant during the months of May, June and July, 1904, and the complainant shall have from August 1st to September 15th, 1904, to offer testimony in rebuttal, and the defendant to have the right to take additional evidence on and new matter brought out by the complainant in rebuttal up to the first day of October, 1904.

March 1st, 1904.

[Endorsed:] Supreme Court of the United States. October term, 1903. Term No. 11, original. Order. Filed M'ch 1, 1904.

186 And on the same day, towit, on the first day of March A. D. 1904, the motion of complainant for leave to file stipulation for appointment of commissioners &c. was filed in the words and figures following, viz:

187 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original, No. 11.

Motion for Leave to File Stipulation.

Now comes counsel for complainant and moves the honorable court for leave to file stipulation of counsel for appointment of commissioners, and for order fixing dates for beginning and closing the taking of testimony.

Respectfully submitted,

WALTER GUION,
Attorney General of Louisiana.
ALEXANDER PORTER MORSE,
Counsel for Complainant.

188 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original Bill, No. 11.

The pleadings in this case having been made up and the case being now at issue between the two States, it is agreed by respective counsel that the court grant leave to either State to file the following stipulation as to taking of the testimony and evidence;

First. The depositions may be taken by either party before Hon. A. H. Longino of Mississippi, or Frank H. Mortimer of Louisiana upon ten days' written notice to the attorney general of either State given by the attorney general of the other State.

Second. Louisiana shall take her testimony and evidence during the months of March and April 1904, and Mississippi shall take hers during the months of May, June and July 1904, while Louisiana shall have August and up to the 15th September 1904 to offer rebuttal testimony, with the right given to the State of Mississippi to take any additional evidence up to the 1st October 1904 on any new matter brought out by the State of Louisiana; it being understood that all testimony and evidence introduced by both States shall be closed on or before the first day of October 1904.

Third. Duly authenticated copies of any records, maps or official documents may be filed by either party with either commissioner hereby agreed upon, as evidence in the cause upon furnishing the adverse party copies thereof subject to exception to their competency

as evidence; it being the duty of said commissioners to send
189 up said evidence as a part of the record of the case to the Supreme Court of the United States.

It is agreed that Hon. A. H. Longino and Frank H. Mortimer shall be commissioned by the court to take the testimony as herein indicated, and that they shall have authority to administer oaths to certify to depositions, and to perform all acts necessary to carry this agreement into full effect, which said act shall be accepted by both States as official and binding, and in the event that either should die, refuse to act or become incapacitated, the attorney general of either State shall have the right to name his successor clothed with all the duties and powers herein agreed upon.

Fourth. That all maps or plats obtained from any Federal or State office or department of the Federal or State governments of the United States or from any office of any parish or county in any State of the U. S. may be offered in evidence without any authentication other than the certificate of the officer in whose office the same may be of record, on file or deposited with him, subject to such objections as may be urged to the competency of the evidence.

Fifth. That each State shall pay the expense of its own commissioner and of all witnesses summoned on behalf of each State respectively, and that all witnesses shall be paid at the same rate as witnesses in cases in the United States district court, to-wit: the sum of $1.50 per day for each day while in actual attendance, and mileage at five cents per mile going from and returning to their residences, to be determined by the mileage between such residences and the place where the testimony is given; provided, on final judgment the court may adjudge the costs.

It is further agreed that the court may fix the compensation for the commissioners for either State to take the testimony at ten dollars per day and all actual expenses. The commissioner for each State is authorized to employ a competent stenographer at the expense of each State, who shall furnish the commissioner with three type written copies of the testimony so taken, one of said copies to be
furnished to the attorney general of each of the States of
190 Louisiana and Mississippi, and the other to be filed by the commissioner as evidence in the case, after verification and correction by him, with the clerk of the Supreme Court of the United States.

Witness our signatures this the second day of February 1904 at the city of New Orleans.

WM. WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

HANNIS TAYLOR,
Of Counsel for Defendant.
ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

(Endorsed:) In the Supreme Court of the United States October term, 1903 State of Louisiana, complainant, *vs.* State of Mississippi, defendant, Original No. 11 1 Motion for leave to file stipulation of counsel, and 2, stipulation of counsel for appointment of commissioners, and for order fixing dates for beginning and closing of testimony.

(Endorsed:) Supreme Court U. S. October term, 1903. Term No. 11, Original State of Louisiana, complainant, *v.* State of Mississippi Motion of complainant for leave to file stipulation for appointment of commissioners and stipulation for appointment of commissioners and for order fixing dates for beginning and closing of testimony. Filed March 1, 1904.

191 And on the same day to wit, on the first day of March, A. D. 1904, a motion for leave to file an additional stipulation &c. was filed in the words and figures following, viz:

192 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original, No. 11.

Motion for Leave to File Additional Stipulation.

Now comes counsel and moves the honorable court for leave to file additional stipulation entered into between counsel for complainant and defendant on the 12th day of February, 1904.

ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

Washington, Feb. 29, 1904.

193 In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original Bill, No. 11.

In addition to the stipulations contained in the agreement entered into on the 2d day of February 1904 between the State of Louisiana, represented by Walter Guion, the attorney general of said State, and the State of Mississippi, represented by William Williams, attorney general of said State, it is further additionally agreed and understood as follows, to wit:

1st. That all maps printed, lithographed or otherwise published for common circulation by map publishers in the United States and

containing on their face the names of the publishers thereof, shall be admitted in evidence without any other proof of authentication for the purpose of proving *rem ipsam*, leaving the effect of such evidence to be finally determined by the court.

2nd. That where Federal or State official maps are printed, lithographed or otherwise published for general circulation or distribution, and bearing on their face a title or titles showing that they were prepared and published by State or Federal officers of the United States or of any State thereof, it shall not be necessary to furnish additional authentication of said maps by such officer or officers.

Witness this 12th day of February, 1904.

WILLIAM WILLIAMS,
Attorney General of Mississippi.
WALTER GUION,
Attorney General of Louisiana.

HANNIS TAYLOR,
Of Counsel for Defendant.
ALEXANDER PORTER MORSE,
Of Counsel for Complainant.

(Endorsed:) In the Supreme Court of the United States. State of Louisiana, complainant, *vs.* State of Mississippi, defendant. Original No. 11. 1 Motion for leave to file additional stipulation and 2 additional stipulation of counsel in respect to the authentication of maps.

(Endorsed:) Supreme Court U. S. October term, 1903. Term No. 11 original. State of Louisiana, complainant, *v.* State of Mississippi. Motion for leave to file additional stipulation and additional stipulation in respect to the authentication of maps. Filed March 1, 1904.

194 And afterwards, to wit, on the 6th day of May, A. D. 1904, a request of counsel for defendant for appointment of Wm. D. Bullard as commissioner was filed in the words and figures following, viz:

195 Department of Justice, Attorney General's Office—William Williams, Attorney General; J. N. Flowers, Ass't.

JACKSON, MISS., April 23rd, 1904.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

We have been notified that the Hon. A. H. Longino, who was commissioned as a commissioner to take testimony in the case of Louisiana *vs.* The State of Mississippi, now pending in the Supreme Court of the United States, has declined to serve as such commissioner.

Now, therefore, we, William Williams, attorney general of the State of Mississippi, Monroe McClurg and Hannis Taylor, of counsel for the State of Mississippi, under the terms of agreement executed by and between Walter Guion, attorney general of Louisiana, and William Williams, attorney general of the State of Mississippi, on the 21st day of February, 1904, now on file in the Supreme Court of the United States, do hereby request that the Honorable William D. Bullard, of Scranton, Mississippi, be commissioned by the Supreme Court as a commissioner to take testimony in the said case of Louisiana *vs.* The State of Mississippi, now pending in the said court in place of the said A. H. Longino, who has declined to serve as such commissioner.

Most respectfully, WILLIAM WILLIAMS,
Attorney General of the State of Mississippi.

MONROE McCLURG, Of Counsel.
HANNIS TAYLOR, Of Counsel.

(Endorsed:) Supreme Court U. S. October term, 1903. No. 11, original. State of Louisiana complainant *vs.* State of Mississippi Request of counsel for defendant for appointment of Wm. D. Bullard as commissioner to take testimony on behalf of Mississippi in place of A. H. Longino, declined. Filed May 6, 1904.

196 And afterwards, towit, on the 7th day of May, A. D. 1904, consent of counsel for complainant to appointment of Wm. D. Bullard as commissioner was filed in the words and figures following, viz:

197 To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

We have been notified that the Hon. A. H. Longino, who was commissioned as a commissioner to take testimony in the case of Louisiana *vs.* The State of Mississippi, now pending in the Supreme Court of the United States, has declined to serve as such commissioner.

Now, therefore, we, William Williams, attorney general of the State of Mississippi, Monroe McClurg and Hannis Taylor, of counsel for the State of Mississippi, under the terms of agreement executed by and between Walter Guion, attorney general of Louisiana, and William Williams, attorney general of the State of Mississippi, on the 21st day of February, 1904, now on file in the Supreme Court of the United States, do hereby request that the Honorable William D. Bullard, of Scranton, Mississippi be commissioned by the Supreme Court as a commissioner to take testimony in the said case of Louisiana *vs.* The State of Mississippi, now pending in the said

court in place of the said A. H. Longino, who has declined to serve as such commissioner.

Most respectfully submitted this the 2nd day of May, 1904.

WM. WILLIAMS,
Attorney General of Mississippi.

MONROE McCLURG, Of Counsel.
HANNIS TAYLOR, Of Counsel.

I hereby consent to the above.

WALTER GUION,
Attorney General of Louisiana.

(Endorsed:) Supreme Court U. S. October term, 1903. Term No. 11 orig'l. State of Louisiana, complainant, *vs.* State of Mississippi. Consent of counsel for complainant to appointment of Wm. D. Bullard as commissioner to take testimony. Filed May 7, 1904.

198 And afterwards, to wit, on the 16th day of May, A. D. 1904, the following order appears of record, viz:

199 Supreme Court of the United States.

THE STATE OF LOUISIANA, Complainant, *vs.* THE STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1903.

It appearing to the court that A. H. Longino, Esq., who was heretofore, to wit, on March 1st, 1904, appointed a commissioner for the purpose of taking the testimony herein and reporting the same to the court, has declined to serve as such commissioner, now, on suggestion of counsel for the defendant, it is ordered by the court that William D. Bullard, Esq., of Scranton, Mississippi, be, and he is hereby, appointed a commissioner in the place of said A. H. Longino, Esq.

May 16th, 1904.

(Endorsed:) Supreme Court of the United States. October term, 1903. Term No. 11, original. Order appointing commissioner, &c. Filed May 16, 1904.

200 And afterwards, to wit, on the 24th day of October, A. D. 1904, the following entry appears of record, viz:

201 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, *vs.* STATE OF MISSISSIPPI. } No. 11, Orig'l, October Term, 1904.

Mr. F. C. Zacharie, of counsel for the complainant, submitted to the consideration of the court a motion for an order granting leave to the parties to this cause to present the maps offered in evidence in this cause in atlas form instead of reproducing the same.

October 24, 1904.

202 And on the same day, to wit, on the 24th day of October, A. D. 1904, a motion in regard to the reproduction of maps to be filed in evidence was filed in the words and figures following, viz:

203 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA, Complainant, *versus* STATE OF MISSISSIPPI, Respondent. } Original, No. 11.

Walter Guion, attorney general.

204 EXHIBIT P-11.

In the Honorable the Supreme Court of the United States, October Term, 1904.

THE STATE OF LOUISIANA, Complainant, *versus* THE STATE OF MISSISSIPPI, Respondent. } Original, No. 11. In Equity.

To the Honorable William Williams, attorney general of the State of Mississippi, and to the State of Mississippi, represented by Honorable William Williams, attorney general of said State, herein:

Take notice that this honorable court will be moved, for and on behalf of the complainant, The State of Louisiana, on the 24th day of October, 1904, that complainant, The State of Louisiana, and respondent, The State of Mississippi, in the preparation of their evidence for filing and hearing in this cause, will be allowed to respectively offer in separate atlas form, each, the maps offered by them in the preparation of this cause before the commissioners authorized to take testimony herein, to be prepared under the
205 supervision and direction of the respective commissioners of each State, said atlases to be received in lieu of the twenty-five

(25) copies of the maps usually required by the rules of this honorable court in cases on appeal, or by writ of error, for consideration in the trial of this cause, and for an order in conformity with said motion, as the whole will more particularly and fully appear by a copy of the motion to be filed, which accompanies this notice and is annexed to the same.

New Orleans, October 8th, 1904.

WALTER GUION,
Attorney General of Louisiana.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans.

On the 11th day of October, 1904, I served the within notice, together with the annexed motion and exhibits, on William Williams, attorney general of the State of Mississippi, of counsel for the State of Mississippi in this cause, by handing copies of the same to him personally, in his, the attorney general's office, in the city of Jackson, and the State of Mississippi.

F. C. ZACHARIE.

Sworn to and subscribed before me, this 12th day of October, 1904.

{Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans.}

ALVIN EDWARD HEBERT,
Notary Public.

206 Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA, Complainant,
versus
STATE OF MISSISSIPPI, Respondent.
Original, No. 11.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

On motion of The State of Louisiana, complainant, represented herein by Walter Guion, attorney general of the State of Louisiana, and,

Upon suggesting and showing to this honorable court that the State of Louisiana has already disbursed in costs, in this proceeding, the sum of twenty-seven hundred and fifty-two and 16-100 ($2752.16) dollars, as will more fully appear from Exhibit P–1, hereto annexed and made part of this motion, and has incurred a further expense for costs in this suit, not yet paid, amounting to twenty-two
207 hundred and forty-three and 58-100 ($2243.58) dollars, as will more fully appear from Exhibits P–2, P–3, P–4, and P–5,

hereto annexed and made part of this motion, and that the record, as made up, will embody the following evidence on the part of the State of Louisiana, to-wit:

Fourteen hundred and fifty (1450) legal cap typewritten pages of testimony;

Seventy-seven (77) maps of various sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth,

All of which will more fully appear from Exhibits P–6 and P–7 hereto annexed and made part of this motion.

And upon suggesting and showing to this honorable court that copies of all such maps, documents, testimony, and other evidence, have been regularly furnished to the State of Mississippi as the same were, from time to time, offered, for filing by said commissioner, as will more fully appear from Exhibit P–8, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this honorable court that it is estimated by the clerk of this honorable court that the printing of the testimony and other evidence, except maps, of the State of Louisiana in the number of copies usually required in cases of appeal and writs of error, would involve an expense of about two thousand ($2000) dollars, as will more fully appear from Exhibit P–9 hereto annexed and made part of this motion, and making a total amount of expense already incurred, and to be necessarily incurred, of six thousand, nine hundred & ninety five ($6,995) dollars; and 74/100

208

Upon further suggesting and showing to this honorable court that it is estimated that to reproduce twenty-five (25) copies of the seventy-seven (77) maps offered in evidence by the State of Louisiana in this cause, would involve an additional expense of about seven thousand ($7000.00) dollars, an amount almost prohibitive in its nature and for which latter item no adequate and sufficient appropriation has been made by the legislature of the State of Louisiana, it in fact being impossible to reproduce faithful and correct copies of some of said maps owing to their age and condition, all of which will more fully appear from Exhibit P–10, hereto annexed and made part of this motion; and

Upon further suggesting and showing to this honorable court that the ends of justice would be as well subserved by permitting each State, complainant and respondent herein, to offer one copy of each of its maps, all of the maps of the State of Louisiana to be bound in one atlas, and all of the maps of the State of Mississippi to be likewise bound in one atlas, for use in the trial of this cause.

And upon further suggesting and showing to this honorable court that the State of Mississippi, through its attorney general, has been duly notified of the intention of the State of Louisiana, through counsel, to make this motion and application as will more fully ap-

pear from Exhibit P-11, hereto annexed and made part of this motion.

And thereupon the State of Louisiana moves that it be ordered that the States of Louisiana and Mississippi be respectively
209 permitted to, each, offer its maps in atlas form, an atlas for each State, the respective atlases to contain one copy of each of the maps offered in evidence herein by that State, said atlases of maps to be prepared by the respective commissioners appointed by this honorable court, and to be returned to this honorable court by the said respective commissioners when making returns under their commissions, and the clerk of this honorable court be directed to receive said atlases as being a full compliance with the requirements of this honorable court on the subject of this map evidence in preparing the record in this cause for trial and submission.

WALTER GUION,
Attorney General of Louisiana.

210 EXHIBIT P-1.

Statement of Amount Disbursed for Costs of Court in the Suit of The State of Louisiana *vs.* The State of Mississippi.

1903, July	21.	A. P. Morse, services as ass't counsel.....	$100 00
" Dec.	16.	American Printing Co. for printing briefs	15 00
1904, March	18.	Walter Guion, for copies of maps, etc...	287 34
" April	1.	Walter Guion, for costs.....	28 00
" "	2.	V. Loisel, U. S. marshal serving subpœnas.....	50 00
" April	4.	Bank of Baton Rouge, costs.....	240 10
" "	15.	F. H. Mortimer, com. witnesses's fees...	50 00
" April	16.	Walter Guion, for four bills.....	46 70
" "	18.	W. C. Hodgkins, fees as expert.....	200 00
" April	22.	F. H. Mortimer costs and expenses.....	100 00
" April	23.	O. M. Tennison, services.....	40 00
" "	25.	John Dymond, Jr., balance on bill.....	34 69
" April	29.	E. J. Bellocq, photographic work.....	70 80
" May	5.	A. C. Gonzales, extracts from assessment roll.....	25 00
" May	7.	George de Armas, services	25 00
" "	23.	Miss Bessie Mead, for maps.....	24 50
" July	19.	L. Graham & Co., for mounting maps...	9 50
" July	19.	Romanski Photo Engraving Co., for maps	25 00

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1904, July	19.	Romanski Photo Engraving Co., for halftone Majestic	3 05

1904, July	19.	F. H. Mortimer, commission mileage and expenses	60 89
" July	25.	Hibernia Bank & Trust Co., money advanced	333 89
" Aug.	1.	L. N. C. Spotorno for articles furnished	36 50
" Aug.	16.	Eugene Dietzan Co	1 80
" "	19.	L. nat. bank, bill of F. C. Zacharie	30 00
" Aug.	19.	J. D. St. Alexandre, notarial work	189 50
" Aug.	30.	F. H. Mortimer, fees and mileage for witnesses	75 00
" Aug.	30.	E. J. Bellocq, for maps	11 80
" Sept.	6.	V. Loisel, U. S. marshal, serving subpœnas	6 00
" Sept.	9.	E. J. Bellocq, maps	6 60
" "	9.	E. Hooker, fees and mileage as witness	19 50
" Sept.	9.	Stephen Maloche, fee and mileage as witness	9 60
" Sept.	13.	R. H. Carter, serving subpœnas	50 00
" Sept.	13.	R. H. Carter services stenographer	500 00
" Sept.	14.	E. Wentzel, witness	9 60
" Oct.	1.	O. H. Tennison, services	5 00
		E. H. Bellocq, maps	31 80
			$2752 16

I hereby certify the above to be a correct statement of amounts paid out for costs of court in the suit of The State of Louisi-
212 ana *versus* The State of Mississippi, as shown by the records of my office to October 1, 1904, inclusive.

MARTIN BEHRMAN, Auditor.

Baton Rouge, Oct. 7, 1904.

EXHIBIT P-2.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared:* Mr. Reginald H. Carter, official stenographer for the State of Louisiana, in the suit of The State of Louisiana *vs.* State of Mississippi, No. 11 original, of the docket of the Supreme Court of the United States, who, being by me first duly sworn, deposes and says, that his bill for stenographic services, rendered the State of Louisiana in said cause, amounts to the sum of nineteen hundred and fifty-six ($1956.00) dollars, on which there is a balance due him of twelve hundred and fifty ($1250.00) dollars.

R. H. CARTER.

Sworn to and subscribed before me, this 8th day of October, 1904

{ Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

213 EXHIBIT P–3.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public, for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared:* Frank H. Mortimer, appointed by the Supreme Court of the United States as commissioner to take the testimony and evidence on the part of The State of Louisiana in the suit of The State of Louisiana *vs.* State of Mississippi, No. 11, original of the docket of the Supreme Court of the United States, who being duly sworn, deposes and says, that there is due him by the State of Louisiana for services rendered in said cause, about two hundred and sixty ($260.00) dollars.

FRANK H. MORTIMER.

Sworn to and subscribed before me, this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

214 EXHIBIT P–4.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared Walter Guion, attorney general of the State of Louisiana, who, on being duly sworn, declares that, in addition to the amount already paid by the State of Louisiana, as costs in the suit now pending in the honorable the Supreme Court of the United States, wherein The State of Louisiana is plaintiff, and The State of Mississippi defendant, as shown by the statement of the Honorable Martin Behrman, auditor of the State of Louisiana, dated October 7th, 1904, and the amount due Commissioners Mortimer and Bullard, and R. H. Carter, stenographer, there is a further and additional amount of $309.15 due by the State of Louisiana for copies of maps and coloring of same, and for expenses of special counsel employed by the State of Louisiana in visiting Washington, D. C., for the purpose of making a special motion in behalf of the State of Louisiana, to be

permitted to offer in evidence the maps produced by the State of Louisiana in atlas form, which amount of three hundred and nine dollars and fifteen cents ($309.15) is yet to be paid by the State of Louisiana on the approval of declarant.

WALTER GUION.

Sworn to and subscribed before me this 8th day of October, 1904.

{Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans.}

ALVIN EDWARD HEBERT,
Notary Public.

215 EXHIBIT P–5.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared:* Mr. Wm. M. Jungblut, auditor of the *Oyster Commission of Louisiana*, who being, by me, first duly sworn, deposes and says:

That the *Oyster Commission of Louisiana* advanced the sum of four hundred and twenty-four and 43-100 ($424.43) dollars, in court costs in the boundary suit of The State of Louisiana, complainant, *vs.* The State of Mississippi, respondent, No. 11, original of the docket of the Supreme Court of the United States, and that the said sum has not yet been reimbursed to the said *Oyster Commission of Louisiana* by the State of Louisiana.

W. M. JUNGBLUT.

Sworn to and subscribed before me, this 8th day of October, 1904.

{Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans.}

ALVIN EDWARD HEBERT,
Notary Public.

216 EXHIBIT P–6.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

I, Frank H. Mortimer, commissioner by appointment of the Supreme Court of the United States, in the suit of The State of Louisiana, complainant, *versus* State of Mississippi, respondent, No 11, original, of the docket of the Supreme Court of the Uinted States, *do hereby certify*, that the record in this cause, as made up of evidence offered by the State of Louisiana, consists, and will consist, of the following, to-wit:

About fourteen hundred and fifty (1450) type-written pages, legal cap size, of testimony;

Seventy-seven (77) maps of various sorts and sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;
Five (5) diagrams;
Two (2) samples of earth;

I do further certify that no copy was placed in the record of maps Nos. 21 and 23, the originals obtained from the Congressional Library at Washington, D. C., being exhibited before me and returned to said library to be subsequently produced in original on the trial of this cause, it being testified before me that it was impossible to copy said maps by photographic process, by reason
217 of their age and condition, and that map No. 56, although the original was filed with me, could not be copied for the same reason.

FRANK H. MORTIMER,
Commissioner.

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared:* Mr. Frank H. Mortimer, who, being by me first duly sworn, deposes and says, that the facts stated in the foregoing certificate are true and correct to the best of his knowledge, information and belief.

FRANK H. MORTIMER.

Sworn to and subscribed before me, this 8th day of October, 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT, Notary.

218 EXHIBIT P-7.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Alvin Edward Hebert, a notary public, for the parish of Orleans, this State, duly commissioned and qualified, *personally came and appeared:* Mr. Reginald H. Carter, official stenographer for the State of Louisiana, in the suit of The State of Louisiana *vs.* State of Mississippi, No. 11, original of the docket of the Supreme Court of the United States, who being by me first duly sworn, deposes and says, that the testimony on the part of the State of Louisiana in said cause will make, when completely written out, about fourteen hundred and fifty (1450) type written legal cap pages of about three hundred words (300) each.

R. H. CARTER.

Sworn to and subscribed before me, this 8th day of October 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

219 EXHIBIT P-8.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, this State, duly commissioned and qualified, personally came and appeared, Walter Guion, attorney general of the State of Louisiana, who being by me first duly sworn, deposes and says, that, on Friday, October 7th, 1904, he personally, by direct telephonic communication, notified Hon. William Williams, attorney general of the State of Mississippi, at Jackson, Mississippi, that the State of Louisiana, would, through counsel, appear in the Supreme Court of the United States, at Washington, D. C., on Monday, October 10th, 1904, and then move the said court for an order, permitting the State of Louisiana in preparing for submission to said court, the record in the suit of The State of Louisiana *vs.* The State of Mississippi, No. 11, original, of the docket of said court, to tender her map evidence in a single atlas form, containing all maps offered by the State of Louisiana, except those on file in the Library of Congress, Washington, D. C., and which could not be copied by photographic process by reason of their age, said court being moved to accept and receive said single atlas of maps as a full compliance with the requirements of its rules in such cases and the enormous expense of reproducing further copies of said maps being thereby avoided; and,

Affiant further deposes and says that the State of Missis-
220 sippi had, from time to time, been furnished with copies of the maps, documents, and other evidence, offered as evidence, in said cause, as said maps were, from time to time, offered in evidence in said cause, save and except those maps, copies of which were formally waived by the State of Mississippi, as shown by the record, and those certain maps Nos. 21, 23, and 56, which, by reason of their age and discoloration could not be copied by photographic process.

WALTER GUION.

Sworn to and subscribed before me this 8th day of October, 1904.

{Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans.}

ALVIN EDWARD HEBERT,
Notary Public.

221 EXHIBIT P-10.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Before me, Alvin Edward Hebert, a notary public for the parish of Orleans, State of Louisiana, duly commissioned and qualified, *personally came and appeared:* Mr. John Dymond, Jr., who, being by me first duly sworn, deposes and says: That he is one of the associate

counsel representing the State of Louisiana in the suit of The State of Louisiana *vs.* State of Mississippi, No. 11, original, of the docket of the Supreme Court of the United States; that in his said capacity, as associate counsel, he has had charge of the procuring and preparing of the evidence offered by the State of Louisiana in said cause, and is familiar with the cost of reproducing copies of the maps offered in evidence in said cause, by the State of Louisiana, and that he estimates that it would cost, at the very least, the sum of seven thousand ($7000.00) dollars to reproduce by photographic process twenty-five (25) copies of each of the seventy-seven (77) maps, offered by the State of Louisiana in said cause.

JOHN DYMOND, JR.

Sworn to and subscribed before me, this 8th day of October 1904.

{ Seal of Alvin Edward Hebert, Notary Public, State of Louisiana, Parish of Orleans. }

ALVIN EDWARD HEBERT,
Notary Public.

222 EXHIBIT P-9.

Office of the Clerk, Supreme Court of the United States.

WASHINGTON, D. C., October 22, 1904.

F. C. Zacharie, Esq., Washington, D. C.

DEAR SIR: In compliance with your verbal request of today, I beg to say I estimate that the total cost of preparing and printing the record in the case of Louisiana *v.* Mississippi, No. 11, original, of October term, 1904, at about $2,000. This estimate is based on your statement that the record will contain about 1600 typewritten pages of 3 hundred words to a page.

Yours truly,

JAMES H. McKENNEY,
Clerk Supreme Court U. S.,
Per W. R. S.

223 (Endorsed:) Supreme Court, U. S. October term, 1904. Term No. 11, original. State of Louisiana, complainant, *vs.* State of Mississippi. Motion in regard to reproduction of maps to be filed in evidence. Filed Oct. 24, 1904.

224 And afterwards, to wit, on the 31st day of October A. D. 1904, the following order appears of record, viz:

225 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant, *vs.* STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1904.

On consideration of the motion for leave to present the maps offered in evidence in this cause in atlas form instead of reproduc-

ing the same, it is now here ordered by the court that said motion be, and the same is hereby, granted.

October 31, 1904.

[Endorsed:] Supreme Court of the United States. October term, 1904. Term No. 11, original. Order. Filed Oct. 31, 1904.

226 And afterwards, towit, on the 13th day of March, A. D. 1905, a motion to open, publish and file testimony was filed in the words and figures following, viz:

227 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI, Respondent. } No. 11, Original.

And now come The State of Louisiana, complainant, through John Dymond, Jr., of counsel and The State of Mississippi, respondent, through Hannis Taylor, of counsel, and upon suggesting to this honorable court that the commissioners appointed herein Mr. Frank H. Mortimer on behalf of the State of Louisiana, and Mr. William D. Bullard on behalf of the State of Mississippi, have made their returns and the said evidence is in the hands of the clerk of this honorable —

Do move that the said returns be opened and the said evidence be published and ordered filed.

JOHN DYMOND, JR.,
Of Counsel for the State of Louisiana.
HANNIS TAYLOR,
Of Counsel for the State of Mississippi.

(Endorsed:) No. 11 original Supreme Court of the United States. State of Louisiana, complainant, *vs.* State of Mississippi, respondent, Motion to open, publish and file evidence.

(Endorsed:) Supreme Court U. S. October term, 1904 Term No. 11, original. State of Louisiana, complainant, *vs.* State of Mississippi. Motion to open, publish, and file testimony. Filed March 13, 1905.

228 And on the same day, towit, on the 13th day of March, A. D. 1905, the following entry appears of record, viz:

229 Supreme Court of the United States.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI. } No. 11, Orig'l, October Term, 1904.

On motion of Mr. John Dymond, Jr., of counsel for the complainant, it is ordered by the court that the evidence in this cause be opened, published and filed.

March 13, 1905.

230 And on the same day, to wit, the 13th day of March, A. D. 1905, the evidence for the complainant was filed in the words and figures following, viz:

231 Index of Witnesses.

B. M. Harrod	Page	3
Henry B. Richardson	"	29
Andre C. Duval	"	33
Esteve E. Nunez	"	41
Alcide Gutierrez	"	53
Raymond Roberto	"	63
Albert Estopinal Jr.	"	70
Esteve E. Nunez re-called	"	83
Lieut. Gov. Albert Estopinal	"	85
Martin Nunez	"	100
Gov. W. W. Heard	"	115
Sidney F. Lewis	"	136
Albert Estopinal Jr., recalled	"	148
Edgar Pilie	"	150
William Beer	"	152
Henry Romanski	"	192
Ernest J. Bellocq	"	197
Louis Fritch	"	201
Capt. Thomas Summerall	"	203
Mrs. Bessie Meade	"	214
Capt. J. D. Railey	"	216
Charles Sanger	"	232
William Dillard	"	244
Harry Cage	"	268
J. M. Breaux	"	273
Capt. Alfred Ruiz	"	288
George H. Dunbar	"	314
Edmond McCullom	"	337
Alfred Joseph Monier	"	339
George Thiel	"	348
Dr. William C. Stubbs	"	352
232 Robert R. Barrow	"	391
James C. Hough	"	405
Wm. K. M. Dukate	"	418
Adam Duet	"	446
Joseph Tomessi	"	453
Adam Duet, recalled	"	463
Julien Labat	"	465
E. L. Lecompte	"	469
John McGraw	"	472

Volume I.

233 Frank Hastings Mortimer, Commissioner.

In the Supreme Court of the United States, October Term, 1903.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original Bill, Number 11.

In accordance with the agreement executed between the attorney general of Mississippi and the attorney general of Louisiana, stipulating how the testimony in the above numbered and entitled cause should be taken, counsel met this 17th day of March, 1904, in the city of New Orleans, Louisiana, before Frank H. Mortimer Esq., commissioner, duly appointed and designated to take the testimony on the part of the State of Louisiana, by order of the Supreme Court of the United States rendered in said cause on March 1st, A. D. 1904,—the attorney general of the State of Mississippi having waived in this instance, the ten days' delay as shown by the following communication, to-wit:

"Department of Justice, Attorney General's Office; William Williams, Attorney General; J. N. Flowers, Ass't.

JACKSON, MISS., March 14th, 1904.

234 Hon. Walter Guion, attorney general of Louisiana, New Orleans, La.

DEAR SIR: We consent to waive the delay agreed on by us in our agreed stipulation as to the ten days' delay for notifying each other, and Mississippi will have a representative present at 11 o'clock a. m. on the 17th inst. at the office of Frank Mortimer, clerk of the United States district court, in the customhouse building in New Orleans to take the testimony of your witness whom you state will leave New Orleans on the 18th inst. unexpectedly, and whom you expect to be absent for several months.

Yours very truly,

WM. WILLIAMS,
Attorney General."

In pursuance of the aforesaid agreement executed between the attorney general of Mississippi and the attorney general of Louisiana, the commissioner for Louisiana stated that he had employed Mr. R. H. Carter as the official stenographer to report the testimony on behalf of the State of Louisiana, and he was thereupon sworn as such.

AGREEMENT.—It is agreed between counsel representing the State of Louisiana and the State of Mississippi that it shall be unnecessary for the witnesses to sign their depositions taken by the stenographer on behalf of either side. This agreement is made in the presence of the commissioner and counsel for both parties.

Appearances.

On behalf of the State of Louisiana, Hon. Walter Guion,
235 att'y gen. F. C. Zacharie, Esq., and John Dymond, Jr. Esq., associate counsel.

On behalf of the State of Mississippi, Monroe McClurg and Mess. Dodds and Griffith of counsel for the State of Mississippi.

Major B. M. HARROD, sworn by the commissioner testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Major, where do you reside?
A. New Orleans.
Q. How long have you been residing in New Orleans?
A. It has been my home all my life.
Q. How old a man are you?
A. Sixty-seven.
Q. Were you born in the city of New Orleans?
A. Yes sir.
Q. What is your profession?
A. Civil engineer.
Q. How long have you been practicing that profession?
A. Since 1857.
Q. Are you the Major B. M. Harrod recently appointed to membership on the Panama Canal Commission by President Theodore Roosevelt?
A. Yes sir.
Q. When do you leave the city for the purpose of attending the first session of the Panama Canal Commission?
A. On Saturday next.
Q. This coming Saturday?
A. Yes sir.
Q. What official positions have you occupied in your capacity as an engineer?
A. Up to the date of my appointment on the Isthmian Canal Commission I was a member of the Mississippi River Commission since 1879.
236 Q. What other official positions have you occupied?
A. I have been chief State engineer of Louisiana; city engineer of New Orleans.

A. Are you familiar, Major Harrod, with that section of the parish of Saint Bernard which is in dispute as to ownership between the States of Louisiana and Mississippi?

A. I think I am, yes sir; I have been through parts of it and I am with the maps.

Q. Did you ever live below the city of New Orleans?

A. Well I spent a great part of my early youth down at English Turn about 18 miles below the city.

Q. Is that on the Mississippi river?

A. It is on the left bank of the Mississippi river.

Q. How long ago was that, Major?

A. Well, up to the war I was there frequently.

Q. What war do you refer to?

A. The '61 war.

Q. Did you ever have occasion, at that time, to go out into the marsh to the eastward?

A. Yes sir; I went through the prairies back of there, on several occasions.

Q. On fishing expeditions?

A. Fishing and hunting.

Q. How old were you at that time?

A. I was born in '37 and this extended up to '61.

Q. Did you ever get, on any of your excursions——

A. No, I beg your pardon, up to about '53 or '54; after that I was getting an education at the North.

Q. Then these trips of yours were made before 1854?

A. Yes sir

Q. Did you ever, on these excursions, get into the neighborhood of Point Chico on the eastern coast?

237 A. I was down there once, yes, sir.

Q. Eastern coast of the parish of Saint Bernard?

A. Yes sir.

Q. Why is Point Chico called Point Chico?

A. I always supposed from chico meaning stump, from the existence of stumps along the shore there.

Q. Is chico French, is that the French for——

A. I understand it to be the French for stump, Point Chico, stumpy point.

Q. Did you ever see any stumps at Point Chico?

A. Yes sir; there were cypress stumps out in the water there.

Q. Did you examine those stumps?

A. I saw them from the shore.

Q. How far off from the shore were they?

A. I should say from a quarter to a half a mile out into probably three or four feet of water, five may be.

Q. You saw those stumps there yourself?

A. Yes sir.

Q. Are you sure they were cypress stumps?

A. I could say, with that decided expression, yes, from the shape of them.

Q. Are you familiar with the peculiarities of cypress stumps in their conformation?

A. Yes sir.

Q. Like cypress knees and things of that sort?

A. Yes sir; from the spread of the lower part of the trunk.

Q. Did you notice those peculiarities in the case of these stumps?

A. Yes sir, they were cypress stumps.

Q. Could you fix about the time that was?

A. No, I could not, more definitely than I have already done.

Q. But it was prior to 1854?

A. Yes sir.

238 Q. Have you seen cypress trees growing in other portions of the State of Louisiana?

A. Oh, yes.

Q. In what sort of water do cypress trees grow?

A. If they grow at all, it is fresh or perhaps in brackish water. I never saw them growing in really salt water.

Q. What was the character of water where those trees were located?

A. This was the open coast; it was salt water.

Q. Were those trees growing at the time you saw them?

A. No sir.

Q. What caused the death of those trees?

A. My belief has always been by the subsidence of the land; they grew when the land had sufficient elevation and then the subsidence of the land killed them.

Q. Could those trees have grown in salt water as it existed at the time that you saw the situation?

A. I should think not. I never saw cypress trees grow in similar situations.

Q. Have you ever had, in your experience as an engineer, and in your connection with the Mississippi River Commission, any occasion to examine into the question of the subsidence of this section of the country?

A. We have had lines of levels run from Baton Rouge down and duplicated on two or three occasions; but I do not think the interval between has been long enough to positively establish it; the general indications are that there is a subsidence. The clearest case is down at the mouth of the river where, on the petition of the jetty contractor, the Eads Company, the plain of reference was examined into and changed; that added to the conclusion that there was a subsidence down there and it would be only fair to him owing to that, to change the plain of reference to which his channel

239 depths were referred.

Q. This section of the country that you are now referring to is south of the area in dispute between Louisiana and Mississippi?

A. Yes sir. It is down at South pass, the banks above.

Q. Have you ever known, in any other locality, an instance where there was evidence of the subsidence of the country?

A. I think I have observed evidences of subsidence; I think it is generally admitted by geologists and all who had any occasion to look into it, that there was an undoubted subsidence of the coast east of the Mississippi river and probably west; but the observations have been more frequently east of the Mississippi river. I have seen evidence that I consider proof of subsidence.

Q. Would you give us another instance, if you know, of it, of where you saw proof of subsidence?

A. Well, when the New Orleans and North Eastern railroad replaced their trestle along the south side of Lake Pontchartrain with an embankment, they dug a canal there; that surface was marshy, very much such a marsh as exists around the parish of Saint Bernard; but down at the bottom of the trench they dug, probably six or eight feet, there was a tier of cypress stumps, a great number of cypress stumps; that depth was five or six feet below tide level, and I do not suppose those trees grew there; I suppose they grew on the surface of the ground when it was above tide level and that ground had since sunk and been filled up by river deposit above.

Q. Were those stumps upright, in a growing position?

A. Yes sir. A similar thing is found throughout the city; not throughout the city but a great many places in the city where we had been digging in the past few years for drainage and sewerage purposes, that is, tiers of stumps below sea level.

Q. Could those stumps have been carried there by overflow or were they grown there?

240 A. There were some fallen trees, but most of them were roots in place where they had grown.

Q. What was on top of the stumps in this North Eastern Railroad canal?

A. The usual marshy formation which I think is most exclusively river mud and decayed vegetable matter.

Q. Was this section you are speaking about, in connection with the North Eastern Railroad canal, north of the disputed area between Louisiana and Mississippi?

A. It was west of it.

Q. Well, was it on——

A. I think it was pretty nearly on the same parallel; a reference to the map would settle that.

Q. In your connection with the Mississippi river as a member of the Mississippi River commissions, have you had occasion to study the Mississippi river, the hydrography of the Mississippi river?

A. Yes sir, that is my duty.

Q. And this lower country?

A. Yes sir.

Q. How was this lower country formed, say from New Orleans south or a line drawn east and west through New Orleans south?

A. I think it was formed by water escaping in overflows from the

Mississippi river and the deposit of the silt that that water contained.

Q. When, so far as you know, if you have any knowledge, did the Mississippi river cease to flow over its banks from New Orleans down, say to English Turn?

A. Well, the first levee completed, I think, was in 1728, and from that time it was pretty steadily extended in both directions up and down the river. Without fixing any exact date, I suppose the left bank of the river that far down and a great deal farther up, was leveed about 1750; the levees had extended down that far about 1750 I think; of course that is not an exact date.

241 Q. Since that date, has there been any alluvium deposited in this disputed area?

A. Very little except through crevasses. I think I might mention in that extension of levees down the river was involved the closure of Bayou Terre Aux Bœuf which was a channel that formed a great part of this Saint Bernard area. That, in the neighborhood, I suppose of 1700 was an open channel discharging in high water quite freely, and these levees that were built, closed that.

Q. Well, since the closure of Bayou Terre Aux Bœuf has there been any alluvium deposited out in the eastern section of the Saint Bernard archipelago?

A. Only what got through crevasses.

Q. Was that appreciable?

A. Locally; I should not suppose it was general; right in the vicinity of the crevasse there would be a deposit; I don't think those crevasses were frequent enough or continued long enough to raise the entire surface of that tract.

Q. Would any crevasse south of English Turn affect that section of the country?

A. South of English Turn, I think they would run right down into the sea below; I don't think they would extend back into the Saint Bernard peninsula.

Q. Did the Bonnet Carre crevasse have any appreciable affect on Lake Pontchartrain?

A. Yes sir. I had occasion to make a survey of that once and discovered very, very great effects from the overflow through Bonnet Carre opening, not any particular crevasse, but the result I found was probably from the overflow before that opening was leveed, and then the overflow that came from several crevasses that occurred there after it was leveed; but the deposit in Lake Pontchartrain was very marked.

242 Q. Would the silt or sediment or alluvium carried by the water from Bonnet Carre crevasse reach as far south east as the Saint Bernard archipelago or peninsula?

A. Most of it would be deposited in the lake; what was transported would be carried out through the Rigolets and Chef Menteur and other bayous that were open at that time connecting Lake Pontchartrain with Lake Borgne.

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J. H. Mortimer
Commissioner.

Q. Would that have produced any appreciable effect in the formation of the Saint Bernard peninsula?

A. I should not think so, because the Saint Bernard peninsula, the level of it is about mean high tide and the amount of overflow from the crevasse running into the lake, Lake Pontchartrain, would have been, well, less than a foot, and whatever deposit was made would have—running into the grass covering a marsh of that character would have been right on the edges. I don't think it would have been general.

Q. If, then, there has been no deposit of alluvium in that section, would it be correct to suppose that there had been no elevation of the surface?

A. I don't think there has been from that cause. I think all the coarser material was deposited in Lake Pontchartrain. If I could make a little sketch I could show you very clearly what I found there. (Witness is handed paper and pencil by counsel) This is the land surface extending from "A" to "B"; then this is the old bed of the lake from "B" to "C" composed of clay and shells; just off shore we went down to a depth of about nine feet and off shore was a bar composed exclusively of river deposit over which there was only about three feet of water; and this shaded area extended along the shore of the lake for many miles and was evidently the deposit that the waters of the overflow from Bonnet Carre
243 made when its velocity was stopped in the lake; all the coarse stuff was dumped right there.

OFFER.—Counsel for the State of Louisiana, in connection with the testimony of witness, offer, produce and file in evidence, the diagram drawn by him in lead pencil marked Exhibit P-1.

(Here follows diagram marked p. 243*a*.)

Q. The area or locality that you are speaking of, in connection with the diagram, and as I understand it, is Lake Pontchartrain?

A. Along the south shore of Lake Pontchartrain.

Q. How many miles distant, in a rough way, would that be from the Saint Bernard archipelago east of what is called Petite pass, about?

A. I suppose it was about 20 to 25 miles from the west end of the Rigolets; the Rigolets is about nine miles long, I believe, and the distance of this Petite pass I don't know.

Q. That is, the locality that you investigated was 25 miles distant from the west end of the Rigolets?

A. Yes sir.

Q. And you would have to add the distance from the west end of the Rigolets to Petite pass to get the distance?

A. Yes sir.

Q. The tendency of crevasse water when it meets an open body of water, especially salt water, is what in regard to the load of sediment carried by the fresh water?

A. When its velocity is arrested, or reduced, it deposits a sediment.

Q. Would it be likely to have carried it 25 miles further than the point which you examined?

A. No; all the coarser sediment, I think would be and was deposited in Lake Pontchartrain.

Q. The distance of at least 25 miles plus the distance from the west end of the Rigolets to Petite pass——

A. Well, no; after it struck the Rigolets there is considerable velocity and any sediment that was not deposited in Lake Pont-
244 chartrain, upon reaching the Rigolets would probably be carried through it by the velocity you find there; but that would be only the finer stuff, the heavier stuff would be already settled in the still water of Lake Pontchartrain.

Q. Any carried through the Rigolets would be deposited——

A. In the next still water it met, where the lake widened out.

Q. What body of water would that be?

A. Lake Borgne.

Q. What effect has the heavy salt water in regard to the precipitation of the load carried by the out-going fresh water?

A. It has a chemical effect in precipitating it. The chemical effect depends not on the velocity altogether but on the influence of the salt water.

Q. Does the contact of this crevasse fresh water with salt water, does that condition retard or accelerate precipitation when it comes in contact with salt water?

A. It hastens precipitation.

Q. Have you had any occasion in recent years to examine the coast line from Petite pass to Isle au Pied?

A. No sir.

Q. Major Harrod, are you aware of what the engineers of the

country have recognized as being the boundary between the States of Louisiana and Mississippi to the south of the State of Mississippi and to the north of the south eastern portion of the State of Louisiana, and more particularly the parish of Saint Bernard?

EXCEPTION.—Mr. McClurg on behalf of the State of Mississippi reserves an exception to this interrogatory as being incompetent.

A. No; I do not think I have been connected with any work in which they have had to hold an opinion of that sort.

By Mr. ZACHARIE:

245 Q. You have spoken of one visit to this territory at the point called Point Chicot?

A. Yes sir.

Q. Have you made other trips to this peninsula of Saint Bernard?

A. Never to Point Chicot. I have been down by Lake Leary and that neighborhood repeatedly.

Q. Did you, on any of these trips, ever penetrate to the interior of this peninsula?

A. I followed the bayous; I went down the canals to Lake Leary and went down to the bayou beyond that—I was trying to call the name—Saint Malo.

Q. Were you hunting or fishing?

A. I have been down there on both errands, hunting and fishing.

Q. Did you have occasion to traverse the land in hunting?

A. Not beyond Lake Leary, except for camping purposes; but this side of Lake Leary I hunted through the country between Lake Leary and the Mississippi river.

Q. So far as you have been able to observe, what was the character of the soil?

A. The character of the soil is river deposit and decayed vegetable mat r

Q. Was it dry land or marshy land?

A. Marsh land. Its level is mean high tide generally, that is the physical law.

Q. Do you know, Major Harrod, either of your own knowledge or by tradition and report, what effect autumnal gales have had upon the configuration of the Gulf coast to the eastward of this peninsula and generally along that Gulf coast, either of your own knowledge or by tradition.

A. No sir; except the outlying sand islands. I have heard and I think I have observed the position of some of them have been changed by storms; Ship island was said to have been cut in half a few years ago; Chandeleur islands have been moved some;

246 Horn island has been moved some. But the coast line composed of this river deposit and grass—covered with that grass, I do not know of any serious washing away; there, of course, must be a little subsidence.

Q. Have you ever visited Round island in the past years or do you know of it?

A. Let us see, that is off Pascagoula.

Q. No; lying between Saint Bernard and the Mississippi River coast?

A. No sir; I never landed there—near Grassy island?

Q. Yes?

A. I have passed there but never landed there.

Q. Major Howard, from the date of your appointment as chief of the State engineers and your subsequent occupation of the positions on the Mississippi River Commission, have you paid a great deal of attention or study to the hydrography of this lower country?

A. Generally, of the river, and especially to the lower part to the extent of having had lines of level re-run, from Baton Rouge down. I think there have been three lines run.

Q. As far back as your knowledge extends from the researches which you have made, has there been any crevasse which would materially affect by deposit or alluvium the territory in dispute here, so far as your knowledge goes either personally or by research?

A. No sir; there has been no serious crevasse on the left bank of the river below Baton Rouge since I have been connected with it, since 1887, except Bonnet Carre.

Q. Well, in so far as your researches have gone in reports of prior crevasses, going back into the eighteenth century, have there been from your researches any crevasses which would tend to deposit alluvium?

A. I do not think, as far back as any records, there have been any crevasses of magnitude there at all except Bonnet Carre which has broken repeatedly. It was open when I first went on
247 the river commission and it had been broken previously several times. The others had already been closed, the small ones, as soon as the water fell, but Bonnet Carre had been open two or three years on account of its magnitude and difficulty of closing it.

Q. Where is Bonnet Carre?

A. About 35 miles above here.

Q. On which bank?

A. On the left bank.

Q. That is the eastern bank of the Mississippi river?

A. Yes sir.

Q. And you have already testified that, in your opinion, that crevasse could not and did not affect any appreciable change in the condition of this peninsula or archipelago?

A. I think an immense portion of the sediment was deposited in Lake Pontchartrain in its passage.

Q. And Lake Borgne?

A. And Lake Borgne; Lake Pontchartrain particularly.

By Mr. DYMOND:

Q. Do you know the River Iberville now called Bayou Manchac was closed by levees?

A. I do not know the year, no sir.

Q. If I understood you correctly, you stated a few moments ago that the section below New Orleans, as far down as English Turn, had been leveed since some time about 1750?

A. Yes sir; I did not give that as an exact date; I said I believed about 1750 the levees had been extended as far down as beyond Bayou Terre Bœuf and probably a little further up.

Q. How far up?

A. I couldn't say; the upward extension was more rapid.

By Mr. ZACHARIE:

Q. To what distance, about, above the city of New Orleans?

248 A. I could not say; I do not think those records are in existence except very generally.

By Mr. DYMOND:

Q. Did you say 1750 or 1850?

A. 1750.

Q. How far back, to your knowledge, do you know that the River Iberville was closed with levees?

A. My first connection with the river was in 1877; it was closed then.

Q. How far above New Orleans is Bayou Manchac, formerly the River Iberville?

A. Let me see; that is the open between Donaldsonville and Plaquemine?

Q. Yes?

A. It is about ninety miles.

Q. Well, was not the River Iberville closed with levees before 1877?

A. Oh, yes.

Q. According to tradition?

A. O, yes.

Q. Well, about how far back, according to tradition was that closed?

A. I could not tell you, a long time though.

Q. Would it have been closed in 1850?

A. I have no doubt it was closed in 1850. I think we know it was open in 1812 so it was closed between 1812 and 1850. General Jackson obstructed it, I believe in 1812 or 1814, with trees.

Q. Is that tradition?

A. So I have always heard.

Q. Was that in connection with the battle of New Orleans?

A. Yes sir, for the defense of New Orleans.

By Mr. McCLURG:

Q. What was it General Jackson closed?
A. Bayou Manchac, or River Iberville. But that was with trees.

By Mr. DYMOND:

Q. About what point was it that General Jackson is reputed to have closed the River Iberville?
A. I could not tell you.

249 Q. Now, where would the River Iberville, in carrying the water from the Mississippi river discharge its water?
A. Discharge it into the Amite and then down into Lake Maurepas and then in through Pass Manchac into Lake Pontchartrain and so on out to the Gulf.
Q. Where would the sediment be dropped by the water coming from the Mississippi river through the River Iberville?
A. Most of it, in Lake Maurepas I think.
Q. What was not dropped in Lake Maurepas would be dropped where?
A. Next into Lake Pontchartrain.
Q. What was not dropped in Lake Pontchartrain would be dropped where?
A. Next in Lake Borgne.
Q. Would there have been any alluvium deposited on the Saint Bernard archipelago or peninsula on the north shore to the eastward of Petite pass by the water coming from and through the River Iberville after it had passed through Lake Maurepas, Lake Pontchartrain, and Lake Borgne?
A. I should think not; there would be nothing left but the finer material and the level of that marsh is mean high tide and any overflow of it by this water would have been for a few inches only, probably not more than a foot at the outside, and any sediment that did not get on it would be arrested by the grass that would stop the flow of the river along the margin, along the shore; I do not think it would have any effect in the general elevation of that land.

Q. Well, since the partial and final completion, or, during the course of this completion of the levee system since 1812, or the construction of the levee system, do you know of any crevasse between Baton Rouge and New Orleans which would have affected this disputed territory?
A. I think not; I think that peninsula was built up by Bayou Terre Bœuf.

250 Q. Did I understand you to say about when Bayou Terre Bœuf was closed where it connected with the Mississippi river?
A. I said that I thought, from the vague histories that come down about that, that the levees had extended as far as Bayou Terre Bœuf about 1750.
Q. Do you mean to say by that, that Bayou Terre Bœuf was closed in 1750?

A. Yes sir; that would be closed in the natural extension of the levees down the coast.

Q. You are relying, as I understand it, on tradition and vague history?

A. It is very vague; all the facts are contained in Humphrey and Abbot's book Physics and Hydraulics, of what is known about the time of the extension of the levees.

Q. Did I understand you to say a moment ago that it was your opinion that this Terre Bœuf peninsula had been built up by the deposit coming through Bayou Terre Bœuf?

A. I think so.

Q. Well, when that bayou was finally closed at whatever time it was closed, what effect would that have had on the continuation of the building up of that country?

A. The progress of land building was checked, if not entirely arrested.

Q. Major Harrod, from your studies of the geology and hydrography and topography of this southern portion of the State of Louisiana, namely, the alluvial formation by the deposits from the Mississippi River water previously running over the banks on to the east and west country on both sides of the river prior to the construction of levees, what, in the opinion of scientists and geologists, is the transformation, if any, or change, if any, which has occurred in this section today as to raising or lowering?

EXCEPTION.—Counsel for the State of Mississippi reserve an exception to this interrogatory as being incompetent because the witness has not qualified himself.

251 Question withdrawn.

Q. Major Harrod, are you prepared from the studies which you have made, to say what is the general opinion of scientists as to the change in the matter of raising or lowering of the alluvial lands east and west of the Mississippi river in the southern portion of the State of Louisiana, since the completion of the levee system?

A. I think I am familiar with the consensus of geologists, yes sir.

Q. Now, Major Harrod, what is the general opinion?

A. It is, that the Gulf coast, the entire Gulf coast, east of the Mississippi river, is a region of subsidence.

Cross-examination.

By Mr. MCCLURG:

Q. You have stated, Major Harrod, that you understand the contention between these two States as to the dividing boundary lines and the waters of the Gulf or Mississippi sound; and I understand that you have been examined as an expert on civil engineering, as a man of wide experience, because of your association with the Mississippi River Commission. The trend of your examination by counsel for Louisiana is to show that the territory lying to the

east of Louisiana is the result of deposits from over flow of the Mississippi river of long standing? Is that correct?

A. Yes sir.

Q. And your opinion is, that there is a recession of the waters that extends the land further to the east or is it the subsidence of the land that extends the water further to the west on the eastern coast of Louisiana?

A. I believe there is a general subsidence of the land here which extends the boundaries of the waters except where the subsidence is compensated by the additional deposit brought by the river.

252 Q. These stumps that you spoke of are east of Saint Bernard parish?

A. Yes sir, off a point called Point Chicot, one of the extreme eastern points of that peninsula.

Q. Stumps of trees, cypress trees?

A. I took them to be so.

Q. You observed them when?

A. I should think it was in the early '50's, between '50 and '55.

Q. What was their condition with reference to decay, at that time?

A. They were some distance out in the water; they seemed to be badly decayed; they had been killed and rotted off substantially near the water surface and I suppose the trunks had floated away.

Q. How long *it had* been since they were live trees of course you have no idea?

A. None whatever.

Q. You are not prepared to say they were not dead trees in 1812 or 1817?

A. No sir.

Q. Are you prepared to say, Major, that the water line on the eastern main land of this State had made any material changes in its course or in its mark, since 1812 or 1817?

A. No sir. I suppose that coast has been subsiding and there has been a compensatory building up by the piling up of sand by the sea. There is evidence that those islands have subsided, but yet their present height has been restored by fresh material from the sea; but there is no doubt but what they have subsided.

Q. You mean the marsh islands of which you spoke?

A. No sir; I am speaking of the islands off the main coast of Mississippi, Ship island, Horn island, in particular. Then such formations as Mobile bay, Pensacola bay, Bay Saint Louis, are accredited as evidence of subsidence. Around the river mouth

253 I think there is evidence that the coast has subsided.

Q. And those stumps indicate what, then, the filling in, the taking in of the soil, the stumps under the Northeastern Railroad canal you spoke of?

A. That there was a subsidence and after that the land was filled up to about its previous level.

Q. So that the rule works both ways, it subsides at places and then fills again?

A. Well, it subsides every where and it fills where the deposit from the river has continued access to it; or, it may fill from decayed vegetable matter.

Q. The change of those islands is due, I understand you to say, to the action of the water, storms, and the like of that?

A. Well, their outline has been interfered with by storms; one of them I have been told has been washed through, Ship island, about eight or nine years ago.

Q. The same influence that would affect those islands, would it in any degree affect the channels leading out of the Lake Borgne into the Gulf proper?

A. I think the bed there is generally clay and a harder material than the islands. I made a great many borings at one time in connection with that and found a hard clay bottom underlying everything.

Q. Where?

A. That was on the land between Chef Menteur and the Rigolets; I made 100 borings there at one time.

Q. The channel that leads out of the Rigolets?

A. The Rigolets is the channel connecting Lake Pontchartrain and Lake Borgne, and Chef Menteur is another channel of the same sort.

Q. Where does that channel reach the Gulf, leading out of the Rigolets?

A. They both discharge into Lake Borgne and then through
254 Mississippi sound.

Q. Is there a channel out of Mississippi sound southward near the Louisiana shore of any depth?

A. There is a channel to the south of Cat island and there is a channel between most of the other islands; there is quite a channel between Ship island and Cat island; there is a small channel but a well defined one south of Cat island.

Q. I will ask you to please state, how far Bayou Terre Bœuf is south of the line claimed by Mississippi to be the boundary between these two States?

A. I do not think I am familiar with these claims. I have seen maps but I have not fixed them in my mind.

Q. Do you know where Nine Mile bayou is?

A. I know Nine Mile bayou is three or four miles beyond Proctorville, the mouth of it.

Q. Then how far is it to Bayou Terre Bœuf?

A. Well, I should think Terre Bœuf was three or four miles, the distance from Terre Bœuf, from the ridge above Proctorville is three or four miles more, but it is long since I have been there and I do not carry distances——

Q. Do you know where Indian mound or——

A. No sir; I simply know that it is in that marsh but I have never been there and I do not know where it is.

Q. These influences of overflows and deposits of silt and the like of that of which you have spoken, are most permanent in the Bayou Terre Bœuf neighborhood are they not?

A. Well, the Bayou Terre Bœuf was an outlet of the river and the banks of that are higher than the marsh beyond, that was formed by the overflow from the banks of the bayou, the heavier material, a large part of it, was deposited immediately on the banks of the bayou.

Q. And the levee was extended that high up about 1750 you think?

255 A. I think, from the descriptions, the levee was carried that far down, about 1750.

Q. I desire to put to you this general question and have you to answer it, of course in your own way, whether you think there has been any material change in the mainland coast of Louisiana from the mouth of Pearl river to a distance of 18 miles due south, since 1812 or 1817?

A. I could not connect it with time at all; but I think there is no doubt but what subsidence has been going on and is going on, on that coast down there; but the rate of it I could not positively say, but it has been going on for a long time and is going on now, there is no doubt of it.

Q. You make that statement, as I understand it, from general observation?

A. From reading geology and then from general observation; I have seen instances myself.

Q. But I mean with relation to this particular location. You have no definite knowledge of any material change within this limit?

A. Not within that limit of time, but within that limit of space I have.

Q. Not within that limit of space or within that limit of time?

A. Within that limit of space I have. I think the instance I cited about the Northeastern railroad is within that limit of space, south of Pearl river, that would include the evidence of subsidence of the marsh through which the Northeastern railroad runs.

Q. You mean to say you made that observation since you have——

A. I mean I saw the excavation of that canal when it was going on and saw the stumps dug out and I talked to the engineer about it.

Q. But you have no idea when those changes were made?

A. Not the rate of the subsidence, nor how long it took.

Q. The Mississippi shore on the sound is better defined than

256 the Louisiana shore; I mean to say it is more permanent, more marked?

A. It is different material, yes, it is out of reach of the deposits of the Mississippi river

Q. Less change in that you think——

A. Changes——

Q. Along the Mississippi shore than along the Louisiana shore for that reason?

A. Changes of outline you mean?

Q. Yes?

A. Well, I should think, yes, generally speaking. It is pretty hard clay. Some of those sand islands have shifted in their outlines very considerably, but the main shore of Mississippi I should say is more permanent than Louisiana.

Q. You have not undertaken to testify as an expert geologist?

A. No sir.

Q. Nor with reference to being an expert except to anything in your profession as a civil engineer?

A. Except from a general interest in an allied science.

By Mr. GRIFFITH:

Q. Major, have you ever seen Nine Mile bayou?

A. No sir.

Q. You have never been on it at all?

A. I do not recall going along that shore beyond Proctorville.

Q. The counsel for Louisiana have spoken of the Saint Bernard archipelago Is there an archipelago in that neighborhood, in the neighborhood of Saint Bernard parish?

A. Well, I have not heard the expression before There is an area of land there which is pretty well cut up by bodies of water, lakes and bayous, which I have attributed to tidal movements and subsidence.

Q. Well, do you believe that since the years 1812 or 1817 the conformations of those islands have been material- changed
257 either by an action of tidal waters or subsidences or by any other agencies. And we mean by those islands in this question those nearest and adjoining Saint Bernard—the main land of Saint Bernard parish?

A. I could not give any answer about the time, since 1817 or 1818. I believe that peninsula was formed by the river deposits being placed out in a shallow sea that had tidal movements and instead of forming a solid peninsula it left these open areas through it for the tidal movement in and out of Lake Borgne and Lake Pontchartrain and that those lakes or spaces of water have been enlarged since their formation, by subsidence. That is my opinion about the formation of that peninsula; that water areas were left there when it was originally formed and have been subsequently enlarged by subsidence.

Q. How long do you think since this process has been going on; how many years?

A. For centuries I have no doubt.

Redirect examination.

By Mr. DYMOND:

Q. You spoke a moment ago on your cross examination, in reference to a channel south of Cat island. Is that channel between Cat island and Isle au Pied.

A. Yes sir, there is a channel there.

Q. Is that the one you referred to?

A. Yes sir.

Q. You spoke of another channel on your cross examination, coming out of the Rigolets. Is that correct?

A. Well, the Rigolets is a channel connecting Lake Pontchartrain and Lake Borgne, one of several.

Q. And Lake Pontchartrain discharges through the Rigolets into Lake Borgne?

A. Yes sir, the Rigolets is very deep.

Q. So far as you know, is there any channel through Mis-
258 sissippi sound connecting the Rigolets with the Cat Island channel you have just mentioned?

A. There is a channel, yes sir, a seven or eight foot channel, it is not as deep as the Rigolets but it is a channel. In leaving the Rigolets at both ends you have to follow a channel going east or west.

NOTE.—At this state of the proceedings the taking of testimony was adjourned.

New Orleans, La., March 17th, 1904.

FRANK H. MORTIMER,
Commissioner.

Pursuant to notice to counsel of the State of Mississippi, the hearing of evidence on behalf of the State of Louisiana was resumed at the same place, at 11 o'clock a. m. April 4th 1904.

Present: Frank H. Mortimer Esq. commissioner.

Present: Judge Walter Guion attorney general of Louisiana Mess. F. C. Zacharie and John Dymond Jr. associate counsel for the State of Louisiana and Albert Estopinal Jr. associate counsel for Louisiana. Hon. William Williams attorney general of the State of Mississippi Mess. Monroe McClurg and Hannis Taylor, associate counsel for the State of Mississippi.

AGREEMENT.—It is agreed between counsel in this case that the proceedings shall be commenced each morning at half past ten and continued until half past one, when a recess of half an hour shall be taken, the proceedings to re-commence at two o'clock and continue until four o'clock, unless otherwise changed by mutual agreement.

Major HENRY B. RICHARDSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Major Richardson, you are a resident of the city of New Orleans?

259 A. Yes sir.

Q. What is your profession?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. Fifty years, I think, I may say nearly, I have been connected with civil engineering.

Q. How old a man are you?

A. I am in my 67th year.

Q. What official positions have you held in the State of Louisiana?

A. I have been a member of the board of State engineers from 1877 until the first of the present month; chief State engineer during that time from 1880 until the first of the present month.

Q. You refer, do you not, to the State board of engineers of Louisiana?

A. Board of State *of* engineers of Louisiana, I mean.

Q. What is your present official position?

A. I am a member of the United States Mississippi River Commission.

Q. When were you appointed to membership on that commission?

A. I qualified for that commission on the 31st of March, I forget the exact date of appointment, it was some days previous.

Q. In what year?

A. The present year.

Q. Prior to that, I understand, you were the chief of the Louisiana board of State engineers?

A. I was chief State engineer.

Q. In your capacity as chief of that board were you given any charts of the United States Coast and Geodetic Survey by counsel for the State of Louisiana in this case?

A. I was.

Q. What did you do with those charts?

A. I instructed the chief draftsman of the board of State engi-
neers, Mr. Duval, to place certain lines upon those charts in
260 accordance with the directions of the gentlemen who gave
them to me, what should I call you in that respect, I said gentlemen.

Q. Counsel for the State of Louisiana.

A. The counsel for the State of Louisiana.

Q. What are the initials of this Mr. Duval?

A. A. C. I believe, is it not. A. C. Duval.

Q. Will you please look at this——

By Mr. ZACHARIE:

Q. You have stated, to place upon those charts certain things that you were told by the counsel for the State of Louisiana; was it not a part of that request to have a map prepared from the Geodetic and Coast Survey charts and to delineate certain projections on that map?

A. It might be considered to involve that request. As a matter of fact the charts were prepared except the certain lines that have been placed upon them by Mr. Duval.

Q. You mean to say by the charts being prepared, you mean that the map was prepared from those charts do you?

A. Not quite. I mean that the charts published by the United States Coast and Geodetic Survey were all ready, printed and prepared, and were brought to my office at that time, and that in one case, this before me, three of those charts were attached to each other so as to form one single chart which is before you at this time. On that chart the certain lines that I have spoken of were placed by Mr. Duval. There were other maps there other charts of the Coast Survey on which practically the same lines were placed by Mr. Duval.

By Mr. DYMOND:

Q. Major Richardson, will you please look at this assembly of charts which is before you, and which, for identification we call map No. 6, and state whether it is made up of charts pub-
261 lished by the United States Coast and Geodetic Survey?

A. This map, or chart, or assembly of charts, is made up of three charts made and published by the United States Coast and Geodetic Survey which are entitled coast chart No. 191, coast chart No. 190, and coast chart No. 192.

Q. Are these the charts which were given to you by counsel, for the purpose of assembling them into a foundation map?

A. They are.

Q. Referring, Major Richardson, to this map No. 6 and noting the projections in ink made thereon in lines, can you say by whom those projections were made and placed on this map?

A. Mr. A. C. Duval, chief draftsman of the board of State engineers of Louisiana, placed these lines to which you refer, upon this chart.

Q. Major Richardson, will you please look at this map which we will, for the purpose of identification, call map No. 7 and state what it is?

A. This chart is a publication of the United — Coast and Geodetic Survey and is entitled general chart of the coast No. 19, Gulf coast, approaches to the Mississippi river, Mobile bay to Atchafalaya bay. That is the title.

Q. Was this one of the charts given you by counsel of the State of Louisiana?

A. Yes sir.

Q. Was this chart turned over by you to Mr. A. C. Duval, chief draftsman of the board of State engineers?

A. It was.

Q. You will notice certain projections or lines that have been placed on that map No. 7. Will you please state by whom those were placed, under whose instructions?

A. They were placed upon this map by Mr. Duval under my direction or by my instruction perhaps it is better to say.

262 Cross-examination.

By Mr. McCLURG:

Q. These ink markings on the maps and charts which you have just identified, were made, you say, by a draftsman in your office?

A. Yes sir.

Q. They were not made by you?

A. Not by me.

Q. And that these ink lines in red and black were indicated to him by you and to you by the counsel for Louisiana in this case?

A. Yes sir.

Q. You do not undertake to show, of your personal knowledge, that those lines are accurate?

A. No, I think not. I believe they are; I have looked at them and revised them.

ANDRE C. DUVAL, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. What is your employment?

A. Draftsman.

Q. Where?

A. For the board of State engineers of Louisiana.

Q. How long have you been connected with that body?

A. Since 1889; not in that capacity.

Q. How long have you been draftsman of the board of State engineers of Louisiana?

A. 1895.

263 Q. You mean since 1895.

A. Yes sir.

Q. Did you receive any charts from Major Richardson chief of the board of State engineers?

A. Yes sir.

Q. Will you please look at this assembly of charts which has been

designated by map No. 6 and state whether they are the charts that you received from Major Richardson?

A. They are.

Q. Will you please look at these ink lines on the chart and state by whom they were made?

A. By me.

Q. Were they made according to a scale?

A. Yes sir, according to the scale——

Q. Scale on the map?

A. Yes sir.

Q. Under whose instructions were they made?

A. Under instructions of Major Richardson.

Q. Are they accurately made in accordance with the scale upon which the map itself is made?

A. To the best of my belief.

Q. What do they designate?

A. Well, now, this line designates——

Q. The one most to the eastward?

A. I would call it to the northwest. Well, it represents nine statute miles or nine nautical miles from Isle a Pitre.

Q. You mean the two outer lines?

A. The two outer lines represent nine nautical miles or nine statute miles from Isle a Pitre.

Q. Which end of Isle a Pitre?

A. From the center.

Q. Is that the northeast end of Isle a Pitre?

264 A. The north end of Isle a Pitre.

Q. What do the next two lines more in the direction of southwest represent?

A. Nine nautical miles or nine statute miles from Grand pass.

Q. Where is Grand pass located with reference to Isle a Pitre?

A. To the southwest.

Q. Is it immediately adjoining the southwestern end of Isle a Pitre?

A. Well, it is separated by a pass by the name of Grand pass.

By Judge GUION:

Q. I notice that you have just made in the presence of all the counsel in this case, both of Louisiana and Mississippi, made certain marks, or, rather, you have done certain lettering on this map or chart No. 6. State what the lettering is that you have done and what you intend to indicate by such lettering?

A. The lettering is intended to identify——

Q. What is the lettering, first; that was my first question, what is the lettering you have made?

A. Designating points of lines.

Q. What is that, there?

A. A.

Q. Just indicate it to the stenographer the lettering.

A. The line lettered A–A.

Q. Is what?

A. Is the nine nautical miles from Isle a Pitre. A'–A' is nine statute miles from Isle a Pitre.

Q. What part of Isle a Pitre?

A. The north end. B–B represents nine nautical miles from Grand pass. B'–B' represents nine statute miles from Grand pass. I have made some other marks up here, C–C and that represents the deep water sailing line from Pearl river to the gulf of Mexico.

By Mr. DYMOND:

Q. Are all of those lines accurately scaled in accordance with the proportions of the map?

265 A. They are scaled according to the proportions of the map and from the scale on the map,——

By Mr. ZACHARIE:

Q. That is, the scale of the United States Coast and Geodetic Survey?

A. —so that the shrinkage or anything of the paper would not affect—make errors of scaling by using another scale.

By Mr. DYMOND:

Q. Were those checked by you to ascertain if they were correct?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

Q. These measurements that you have made on the maps identified by you, Mr. Duval, were taken from the north end of Isle a Pitre and from Grand pass, as I understand it?

A. Yes sir.

Q. You made these measurements at the direction of Major Richardson?

A. Yes sir.

Q. You state that from those starting points, that those lines indicated, are correct measurements?

A. Yes sir.

Q. Did you make the mark across that map that indicates the deep water channel out of the mouth of Pearl river?

A. I followed the lines indicated on the chart; they were printed on the chart before.

Q. By whom?

A. They are part of the survey published by the United States Government.

Q. That deep water channel mark that you followed out was on that map originally?

A. Yes sir. It has only been engrossed to show it out.

266 Q. What is the date of those charts, please?

A. Published at Washington D. C. September 18th, 1899, this one is No. 192. And this one here, published at Washington, D. C. No. 191, in 1900. And this one No. 190, in 1900.

Q. There are no indications made by you upon any of those charts which you have identified undertaking to show where the statute or nautical miles are measured from the east shore of Louisiana is there?

A. I do not understand the question very well.

Q. You have not made any indications upon that map which will show a point six leagues from the main land or shore or coast of Louisiana, have you?

A. That is a pretty hard question to answer. I have not put any points here from which I made my measurements.

Q. I want to know whether you have undertaken to make any other measurements or lines from the Louisiana shore except those you have indicated there?

A. On other maps? On this map you are talking about?

Q. Yes.

A. I have not.

Q. Do you understand why it is those measurements were taken from the north end of Isle a Pitre and Grand pass?

A. Why they were taken from those points?

Q. Yes?

A. I followed only instructions.

Redirect examination.

By Mr. DYMOND:

Q. You spoke about the date at which these charts were issued by the Government. Will you please examine them and state whether there is anything on them to indicate to what date they have been approved by the Government. In doing so please refer to each chart or map.

267 A. Chart 192 I see has been—aid to navigation—corrected from information received to August 8th 1903. Chart No. 191, aid to navigation corrected for information received to Nov. 17, 1903. And this map was corrected also but that has been cut and pasted on the other.

Q. Are you able to state to what date chart No. 190 has been corrected by the Government?

A. No sir.

Q. Why not?

A. Because in putting these maps together I had to cut the border.

Q. And was the data in regard to the correction on that border?

A. I could not—generally they have the—all those maps have that. Now, I don't remember, I didn't take any particular look at it. Generally the map has information to what date it is revised.

Q. Was the lower border of chart No. 190 cut off in assembling it?

A. Yes sir, both of the borders.

Recross-examination.

By Mr. McCLURG:

Q. These maps of which we have just been speaking, are the three maps that you have put together at the request of Major Richardson, are they?

A. Yes sir.

Q. Is it not true that in joining together chart 191, 190 and 192, that there is an imperfection just west of Lake Eugenie?

A. Your question was is it correct. I can't say it is incorrect, it may be deficient, but there is no information cut off.

Q. Don't it indicate that the map is not full at that point?

A. Maps 190 and 192 are full; but 191 is incomplete.

By Mr. DYMOND:

Q. Referring to the question just propounded by counsel for the State of Mississippi, did you omit anything in putting these three maps together?

268 A. No sir, nothing. Just the border, of course I had to take the border out.

Q. Well, what was the imperfection in the chart referred to by counsel for the State of Mississippi?

A. It is a blank shown on the chart.

Q. On what chart?

A. On chart No. 191.

Q. In what portion?

A. In the sout'western portion of the chart.

Q. In what sense?

A. In the sense that the—well it is really hard to answer, there is a blank with a legend in it instead of the topography or any topography around there.

Q. Why was it made blank?

A. Why was it made blank?

Q. Was it for the purpose of carrying the legend?

A. Yes sir, I suppose for the purpose of carrying the legend and that chart was complete as far as its name was concerned.

Q. By whom was that done?

A. By the Government.

Q. What Government?

A. United States Government.

By Judge GUION:

Q. Then you repeat that when you put these three charts, 190, 191 and 192 together, you put them together accurately just as they were completed by the Coast and Geodetic Survey?

A. Yes sir.

By Mr. McCLURG:

Q. You have stated, also, that in putting them together you trimmed the borders of some of them and may have trimmed off some of the aids. Now, may it not be true that you trimmed off some of the topography of that country there?

269 A. No sir, it could not be, because in cutting the edge, I have cut at the edge of the border and no topography passes the border.

By Mr. TAYLOR:

Q. Is it not a fact that that particular chart at that particular point, made by the Government, is defective; it does not cover the particular territory under investigation?

A. As far as defective I don't know.

Q. But deficient?

A. It is deficient.

Q. Deficient. It does not cover that part of the subject matter?

A. It is deficient.

OFFER.—Counsel fo- the State of Louisiana now offer, produce in evidence, the said map marked Map No. 6.

By Mr. McCLURG: Counsel for the State of Mississippi reserve an exception to the introduction of these maps because they are insufficient, uncertain, incomplete and incompetent.

ESTEVE E. NUNEZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your present position?

A. Sheriff for the parish of Saint Bernard.

Q. How long have you occupied that position?

A. 24 years. Since 1880 I was elected.

Q. When were you first elected?

A. In 1880.

270 Q. Is that the parish of Saint Bernard, State of Louisiana?

A. Yes sir.

Q. With what duties are you charged as sheriff of the parish of Saint Bernard?

A. I am charged with the duties as sheriff, as tax collector for the parish of Saint Bernard.

Q. Are you charged with the duty of keeping the peace and seeing to an observance of the laws of Louisiana in the parish of Saint Bernard?

A. Yes sir.

Q. As the sheriff of the parish of Saint Bernard, are you supposed to enforce the oyster laws enacted by the State of Louisiana?

A. Yes sir.

Q. Was it your duty?

A. Yes sir.

Q. To enforce those laws?

—. ——.

AGREEMENT.—Counsel for both the State of Louisiana and the State of Mississippi now agree in the presence of the commissioner, that in trial of this case and the argument before the supreme court in reference to the laws of the two States, reference shall be made to the official publications by the respective States of their respective laws without the necessity of filing copies of said laws in the record or offering the same in evidence. But, for the convenience of counsel typewritten or printed copies of the laws of the respective
271 States to which reference shall be made shall be furnished by the respective counsel to the opposite counsel and used in evidence by either side if desired.

Mr. DYMOND: In accordance with and in connection with the above agreement, counsel for the State of Louisiana now present to counsel for the State of Mississippi, typewritten or printed copies of the following acts of the Louisiana legislature, to-wit, act 18 of 1870; act 91 of 1871; act 106 of 1886; act 98 of 1888; act 110 of 1892; act 35 of 1894; act 121 of 1896; act 159 of 1900; and act 153 of 1902.

Q. Mr. Nunez, you have just heard the reading of the list of laws of Louisiana on the subject of her oyster industry as enumerated by counsel. Did your duties as sheriff charge you with the necessity of enforcing the provisions of these oyster laws, in the parish of Saint Bernard?

A. Yes sir, it did at the time.

Q. Did you ever have any complaint brought to you in regard to non-residents of this State fishing oysters in the parish of Saint Bernard?

A. Many and many complaints.

Q. About when were these complaints?

A. Most of the complaints came, I think, in 1897, '96 and '97 and '98, even after that, in 1900 but they started from '96 or '97, I don't remember exactly.

Q. Who were these people about whom complaint was made?

A. How is that, you say?

Q. Who were these non-residents?
272 A. Residents from Mississippi.

Q. In what part of Saint Bernard parish were they fishing oysters?

A. I don't know much about the country. I know it is in the parish of Saint Bernard, but way out.

Q. Way out in which direction?

A. I couldn't tell you exactly, but I heard mention Nine Mile bayou, Lake Karako, somewhere around there.

By Mr. McCLURG:

Q. It is all hearsay as far as you are concerned?
A. It was reported to me.

By Mr. DYMOND:

Q. Was any action taken on the subject by the police jury of the parish of Saint Bernard?
A. Yes sir.
Q. Can you give the names of any of the parties who brought complaints to you?
A. I don't remember now. I never kept that record and I don't really—— It is so long I don't remember now. I remember of having reported the matter to the police jury at the time.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of being filed in evidence, a certified copy of a resolution of the police jury of the parish of Saint Bernard under date of January 10th, 1898 and now tendered to counsel for the State of Mississippi a certified copy of said resolution in accordance with the terms of the agreement between counsel which said document is now for identification to be marked "Document No. 1."

Q. Did you take any action in connection with the resolution which has just been referred to?
A. Yes sir; I sent an expedition——

By Judge GUION:

Q. Just read the resolution and see whether you are testifying concerning the resolution.

(Witness reads resolution.)

273 A. Yes sir.

By Mr. DYMOND:

Q. Please state in detail what you did in connection with this resolution marked "Document No. 1?"
A. I appointed several special deputies, deputy sheriffs, to go with that expedition.
Q. Please give the names of the parties who went on the expedition?
A. I remember now, Raymond Roberto.
Q. Is he alive?
A. Yes sir. Alcide Gutierrez.
Q. Is he alive?
A. Yes sir. Albert C. Gutierrez.
Q. Where is he?

A. He is now in the parish of Saint Bernard.
Q. What is his condition?
A. He is very sick, he is in a dying condition.
Q. Next?
A. I don't remember which was the other one. Albert Estopinal. He is dead, he died some years ago.
Q. Did this expedition start out?
A. Yes sir.
Q. What were your instructions to the expedition?
A. My instructions from the president of the police jury was to appoint deputy sheriffs and that they should notify the non-residents who were fishing in Louisiana waters, fishing oysters.
Q. Who was president of the police jury at that time?
A. Lieut. Governor, Albert Estopinal. That was my instruction, to notify them not to fish oysters within the limits of Louisiana, in Louisiana waters, that we would prosecute them according to law, to our laws.

By Judge GUION:

Q. Did you designate what you considered to be Louisiana waters?
274 A. I did not know exactly myself. We sent a man that was supposed to know.
Q. Who was that?
A. Mr. Roberto, he was supposed to know something about it.
Q. Mr. Raymond Roberto?
A. Yes sir.
Q. Are you able to tell where they were fishing?
A. My return was they were fishing in Louisiana waters, that was my return.

By Mr. DYMOND:

Q. Do you know what subsequent developments took place as a result of this expedition?
A. Well, the subsequent consequences I received a letter from Mr. Neville who was then district attorney of Hancock county.
Q. Of what State?
A. Of the State of Mississippi.
Q. Have you got that letter?
A. No sir.
Q. What has become of the letter?
A. I destroyed it, I don't remember, I may have it home, I don't remember what I did with it. And he asked me to meet him. He came down——
Q. Are you prepared to state that you can produce that letter?
A. No sir.
Q. Will you make a search for it?
A. I can make a search for it but I don't think I have the letter.

By Judge GUION:

Q. What was the result of your receiving the letter?
A. The result was that we agreed, he agreed to meet me.
Q. Did you meet him?
A. Yes sir.

275 Q. Where did you meet him?
A. At the slaughter house in the parish of Saint Bernard.
Q. Mr. Neville came over here?
A. Yes sir.
Q. He was then district attorney in Mississippi?
A. Yes sir.
Q. Of what district?
A. Hancock county. He was in Biloxi then, Mississippi.
Q. And you, as sheriff of Saint Bernard, and he, as district attorney of that district, met at the slaughter house in the parish of Saint Bernard?
A. Yes sir.
Q. What took place at that interview?
A. That it was agreed between him and me that he should meet our district attorney, Mr. Albert Estopinal Jr. in New Orleans some time, I don't know what date.
Q. For what purpose?
A. To discuss this oyster matter. And it was decided there with me and himself, we agreed—after that he saw Mr. Estopinal, but we agreed to that, to go in a friendly suit between the State of Mississippi and Saint Bernard to decide the limits between Mississippi and Louisiana.
Q. When was that?
A. That was in 1898.
Q. Shortly after this expedition went out?
A. Shortly after this expedition.
Q. And that expedition you say went out under your authority?
A. I appointed the officers to attend to it under the authority of the president of the police jury, first and——
Q. Subsequent to the introduction of this resolution?
A. Yes sir.

276 Mr. MCCLURG: Counsel for The State of Mississippi reserves an exception to the statement of any agreement between the district attorneys mentioned by the witness in regard to bringing a friendly suit,——

A. I didn't say it was an agreement between me and him, it was an agreement between him and our district attorney.

—because which testimony is incompetent they having no authority to bring such suits nor to agree that any controversy be settled that way.

By Judge GUION:

Q. Did I understand you to say there was no agreement between you and Mr. Neville?

A. No sir, between Mr. Neville and the district attorney.

Q. Were you present?

A. I don't think I was.

Q. I didn't know that; I thought you were present at the interview.

Q. He told me he——

Q. The only interview you had with him was with reference to the alleged violation of the oyster laws of this State?

A. Yes sir.

Q. And at that interview he told you he would see the district attorney of your district?

A. In fact I made an agreement to fix to meet the district attorney and they met in New Orleans shortly after.

By Mr. MCCLURG:

Q. Let me ask the witness this. You stated about a report of this expedition; was that report made in writing?

A. What report?

Q. Was the report of this expedition that you sent out, made in writing?

A. No sir; I never made any report in writing.

By Mr. DYMOND:

Q. Where is the present court house of the parish of Saint Bernard located?

A. In Terre Bœuf, on Bayou Terre Bœuf.

277 Q. What is the place called?

A. Called Terre Bœuf, call it Saint Bernard.

Q. Where was it located previous to the present court house?

A. At the slaughter house. I don't want to be misconstrued. The court house was located there for years and years, and then it was removed to the slaughter house, after the civil war it was removed to the slaughter house. The court house was destroyed by fire and then it was removed back to Saint Bernard.

Q. When was the court house destroyed by fire?

A. In 1883.

Q. Where was the court house located that was destroyed by fire?

A. At this slaughter house.

Q. Is that in the upper end of the parish of Saint Bernard?

A. Yes sir.

Q. What was the result of the fire on the records which the court house contained?

A. Most all the papers were destroyed at the fire; all the records except a few.

Q. Were the conveyance records of the parish of Saint Bernard destroyed?

A. All except one book, one conveyance book I think that is le

Q. Were the records of the clerk and court of the parish of Sai Bernard destroyed?

A. All destroyed.

Q. Were the records of the assessor of the parish of Saint Bernar destroyed?

A. I don't remember; the book of assessment was destroyed, th old books previous- filed in the clerk's office were destroyed, yes si

Q. Was it the custom in the parish of Saint Bernard to keep al of the parochial papers and records in the court house?

A. Yes sir, as it is now.

Q. And were all of those records and papers and documents de stroyed?

A. Yes sir; we had no vault in that court house, it was a wooden court house built without any vault whatsoever.

278 By Judge GUION:

Q. Were all the records taken to that court house from the court house near Terre Bœuf at the time you say the records were removed?

A. Every particular paper, there was not a thing left.

Q. You are satisfied there was nothing left at the old court house down at Terre Bœuf?

A. Nothing whatever.

Q. And everything was brought up to the court house at the slaughter house?

A. Yes, sir, in fact the court house was left open all the time.

Q. Which one do you mean?

A. The old court house.

Q. At Terre Bœuf?

A. Yes sir, nothing was left there whatever, not a paper, everything was brought up here.

By Mr. ZACHARIE:

Q. Then, as I understand you, with the exception of this one conveyance book there are no records, maps or other official documents of the parish of Saint Bernard in existence to 1883?

A. Not that I know of. If there is it does not belong to the parish, it is not in the hands of the parish authorities.

By Judge GUION:

Q. There are no public records existing?

A. No sir, in fact after the fire the legislature passed a law, there was a law passed by the legislature authorizing any person that had real estate, property, in the parish, giving them such time to record their act of sale so as to have a record of that; I think a year or so it gave them to record all their acts of sale so as to have records, and a good many of them have done it.

By Mr. ZACHARIE:

Q. That was done in order to replace——
A. Some of the old records.
279 Q. The burned records?
A. Yes sir.

Cross examination.

By Mr. MCCLURG:

Q. I notice in the certified copy of the resolution filed with your deposition herein, that the knowledge came to the police jury of a great number of citizens of other parishes and the State of Mississippi fishing oysters within the limits of Saint Bernard parish. Was there an ordinance of the police jury or law that prohibited the citizens of other parishes from taking oysters in the waters of Saint Bernard?

A. I never understood it to be so; it was to be a law prohibiting other citizens from other States, not from other parishes; that is the way I understood it to be, from other States not other parishes, we never attempted to prevent any citizen from another parish, not through me, from fishing oysters.

Q. This expedition that you sent out, if I remember correctly, you said they were not instructed as to where the boundary line was between the two States?

A. Well, as much as we could, not exactly because I didn't know the boundary, we took a man that we supposed knew something about the boundaries, he was a fisherman all his life, he was born and raised in that country, so we supposed he knew something, that was the best we could do.

Q. This resolution required of that expedition an intelligent report of all the information gathered to be made to the police jury, and you state that there was no written report?

A. No sir; the report was made to the president of the police jury and to the police jury but mostly to the president and he represented the matter before the police jury and explained the thing to the police jury more fully.

Q. But was it not in writing?

A. I don't remember. I can't tell exactly, I don't think it
280 was, it may be but I don't remember, it is so long that I don't remember really, I don't think it was made in writing.

Q. And as to the actual existence of violation of any of the oyster laws of this State or the ordinances of St. Bernard parish by citizens of Mississippi you have no actual knowledge personally?

A. Myself personally, no sir, except by information.

ALCIDE GUTIERREZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. What official position in the parish of Saint Bernard, if any do you now hold?

A. I am secretary of the police jury.

Q. How long have you been secretary of the police jury of the parish of Saint Bernard?

A. Ever since 1892.

Q. Were you secretary of the police jury in January 1898?

A. Yes sir.

Q. Will you please look at this document which has been offered as Document No. 1 and state whether that is your signature to it on the certificate and whether it is a true copy of the resolution as it purports to be?

A. Yes sir, it is.

Q. Was the expedition made as contemplated by that resolution?

A. Yes sir.

Q. Did you accompany that expedition?

A. I did.

Q. How many expeditions were made?

A. There were two made.

Q. What was the result of the first expedition?

281 A. Well, the first expedition, we went only to the mouth of Bayou Terre Bœuf and returned owing to the inclemency of the weather.

Q. How soon thereafter was the second expedition made?

A. 20 or 30 days after.

Q. Did you accompany the second expedition?

A. Yes sir.

Q. What was the route of the second expedition?

A. Well, we went by way of Bayou Terre Bœuf down to the Gulf; I don't remember the names of those lakes back there.

(Witness has before him now map No. 7.)

A. We went in through the bayou here and we——

Q. As I understand it you started out through Bayou Terre Bœuf?

A. Yes sir.

Q. What body of water did you next enter?

A. Lake Machias we crossed it and then we crossed right over to the mouth of Bayou La Loutre, and we slept there one night.

Q. Thence where did you go?

A. Into Morgans harbor; there we met Mississippi boats fishing, catching oysters, from that point this way we met——

Q. Say which way so the stenographer can put it down.

A. This is east—northeast.

Q. Did you go by the inside route or outside?

A. By the inside route, to Bay Boudreaux and there we met a good many boats there from Mississippi.

Q. Was that in the neighborhood of Three Mile bayou?

A. That is right at Three Mile bayou, that is what they call Three Mile bayou, there is an opening right here in the mouth of Three Mile bayou, right at that mouth was stationed the Josephine Lopez which was a large schooner used to carry oysters across to Biloxi; there were small boats around fishing oysters and loading them into this schooner.

282 Q. Was that south from the shore line from Malheureux point to Isle au Pitre?

A. Yes sir.

Q. Thence, from Three Mile bayou where did you proceed?

A. From there we came on over; we ended our journey and we came over to Shell beach and boarded the train there and came back home.

Q. Did you stop at Nine Mile bayou?

A. Yes sir, that is, we went through Nine Mile bayou, we didn't stop there, there was no necessity, there was nothing there.

Q. Were there many boats from Mississippi fishing in that locality?

A. Quite a number of them.

Q. What was said to those boats and by whom?

A. Well, I was the spokesman of the party and I warned them off, I just told them they were violating the then Louisiana laws, the act of 1896 which prohibited them from fishing in Louisiana waters, and told them if they came back they were liable to be arrested.

Q. In what capacity were you acting at the time?

A. I was acting as deputy sheriff, I was an officer sent down by the sheriff.

Q. Had you been appointed by the sheriff for that trip?

A. Yes sir.

Q. Did you advise them of your official capacity?

A. Yes sir.

Q. Did you show them your commission as deputy sheriff?

A. I don't know that I did, and—I don't know that I showed them my commission, I am not positive as to that, I didn't think it was necessary.

Q. What did these fishermen state in regard to their presence there?

A. Well, they all acknowledged that they were fishing, as they called it, in the Louisiana marsh, and that if they were kept away from there they would actually starve; some of them told me that.

283 Q. Why?

A. There were no oysters anywhere else.

Q. Did you make a report on the return of your expedition?

A. Yes, sir, a verbal report not a written report.
Q. Whom did you make your report to?
A. To the sheriff and to the police jury.

By Judge GUION:

Q. Who was the sheriff?
A. Mr. Nunez our present sheriff.
Q. You spoke just now about a boat lying at the mouth of Three Mile bayou?
A. Yes sir.
Q. It was carrying oysters across to Biloxi?
A. Yes sir.
Q. What State is Biloxi in?
A. The State of Mississippi. That was the Josephine Lopez. It was a boat of that name belonging to Mr. Lopez, Lopez and Ducate.
Q. Who was with you on that expedition?
A. Mr. Raymond Roberto who had charge of the boat, the owner of the boat; and Mr. Albert Estopinal, now dead; and Mr. A. C. Gutierrez, who is very ill.
Q. Too ill to attend as a witness?
A. Oh, yes.
Q. How far east did you go; what was the extreme eastern point that you gentlemen went on that expedition?
A. We went through Lake Karako up, it leads up to Three Mile bayou, somewhere around there.
Q. Were these fishermen, that you saw, from Mississippi, gathering oysters at any point other than Morgan harbor?
A. They were all along here, strewn all along.
Q. You know the court will not know what you mean by all along here?
A. We met some at Morgan harbor.
284 Q. Did you find any up in here?
A. We found a good many in Bay Boudreaux and Lake Karako.

By Mr. ZACHARIE:

Q. How close did you go to Isle au Pitre?
A. Really I don't know.
Q. Did you go within sighting distance?
A. No, we did not.
Q. Then the most easterly point to which you went was what, Lake Karako?
A. Or Morgan harbor.

By Judge GUION:

Q. And you say at the mouth of Three Mile bayou——
A. Yes sir.
Q. —the Josephine Lopez was gathering oysters?

A. She was not gathering—yes sir, she was gathering oysters and other boats.

Q. Where were those other boats furnishing the Josephine Lopez with oysters gathering them?

A. All around there in the Louisiana marsh.

Q. How far from the mouth of Three Mile bayou, about?

A. I could see them all around gathering.

Q. What distance would you say?

A. About a quarter of a mile or so.

Q. South of the mouth of Three Mile bayou?

A. That is, inland?

Q. Inland?

A. Yes sir.

By Mr. DYMOND:

Q. Will you please look at this document which is now for identification marked Document No. 2 and state whether it is a correct copy of a resolution of the police jury and whether your signature is attached to it?

A. Yes sir, this is a correct copy and my signature is attached to it.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce the said document marked "Document No. 2."

285 Q. Will you please look at this document which for identification is to *to* be marked Document No. 3, and state whether it is a correct copy of a resolution passed by the police jury of the parish of Saint Bernard and if your signature is thereto attached?

A. Yes sir, this is a correct copy.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce said document and it is marked "Document No. 3."

Cross-examination.

By Mr. MCCLURG:

Q. Did you find any people from other parishes of Louisiana, fishing in what you thought to be the waters of Saint Bernard on either of those expeditions?

A. I did. I found a few, very small proportion, they came from Orleans, parish of Orleans, from the old basin I suppose.

Q. They were warned to keep out also?

A. No, sir; they were not warned to keep out, but they were told they were not paying the license to the parish and that they would have to pay a license to the parish. They were violating the law also of the State in that respect.

Q. The Mississippians were not permitted to pay the license were they?

A. They were not permitted in the waters at all, not to fish at all.

Q. Can you recall the name of the captain of any of those boats?

A. I could not.

Q. The name of any person——

A. I took their names in writing but I don't know what has become of it, it has been so long since.

Q. You did which?

A. I took their names in writing, it has been mislaid.

Q. Have you any idea where that writing is?

A. No sir; it was a little memorandum, I don't know exactly where I put it, I couldn't lay my hands on it now.

Q. Will you kindly look that up and if you are called back, let us have it.

A. Yes sir, if I am able to find it.

Q. Tell us, if you know, how far it is from Three Mile bayou to the Mississippi shore, due north?

286 A. I don't know.

Q. Your best judgment?

A. It may be 25 miles across or 20, I don't know exactly, I have never crossed there, I don't know.

Q. Don't you think it is less than ten miles?

A. I don't know.

Q. How far is Three Mile bayou from the Saint Bernard court house?

A. I could not say, I don't know.

Q. Have you any idea how far Nine Mile bayou is from Saint Bernard court house?

A. Nine Mile bayou is about half a mile from Three Mile bayou.

Q. Have you any idea how far it is from the north end of Isle au Pitre *from* the Saint Bernard court house?

A. No sir.

Q. You suppose that Three Mile bayou and Nine Mile bayou and the places where these Mississippi boats were found fishing, must have been about 25 miles from the Mississippi shore?

A. Well, I don't know, I can't say positively, I don't know.

Q. Your best judgment is that they were that far?

A. What is that?

Q. Your best judgment is that is the distance?

A. My judgment is that all that belonged to the parish of Saint Bernard.

Q. But, you know, I didn't ask you that. I asked you about the distance. We are going to try and get the court to settle that question. But, your best judgment as to the distance——

A. I don't know.

Redirect examination.

By Judge GUION:

Q. Mr. Raymond Roberto was with you?
A. Yes sir.
Q. He knew that country down there?
A. Yes sir.
Q. Or professed to know it?
A. He did know it pretty well.
Q. How many times had you been down there?
A. I never have been there since.
Q. How many times had you been down there previously?
A. That was my first trip down there.
Q. You have only been there once in your life?
A. Yes sir.
Q. You went as a deputy sheriff under instructions from the
eriff?
A. Yes sir.
Q. And Mr. Roberto went for what purpose?
A. He went to take us down there because we didn't know any-
ing about that country and he knew the country and he was hired
r that purpose.

Re-cross examination.

By Mr. MCCLURG:

Q. What kind of crafts did you go in?
A. We went in one of these little luggers, one of these small
nts.
Q. Sail or steam?
A. Sail.

At this stage of the proceedings the hearing was adjourned for
ess until 3 p. m.

NEW ORLEANS, April 4th, 1904—3 p. m.

At the same place and at the hour of 3 p. m. the proceedings were
umed pursuant to adjournment.
All parties present.

NOTE.—Mr. Raymond Roberto witness produced by the State of
isiana not being able to speak or understand the English lan-
ge, Mr. A. C. Gutierrez was sworn in, by consent of counsel, to
as interpreter for said witness.

RAYMOND ROBERTO, witness sworn and examined on behalf of State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Mr. Roberto, where do you live?
A. I live in Plaquemines parish.
Q. What is the name of the place where you live.
A. I don't know the name of the place, but it is in the parish Plaquemines.
Q. How old a man are you?
A. Fifty-nine.
Q. How far do you live from the parish of Saint Bernard line?
A. Half an arpent, right across the bayou.
Q. On what bayou do you live?
A. On Bayou Terre Bœuf.
Q. How long have you lived there?
A. Some 45 years.
Q. Does Bayou Terre Bœuf divide Saint Bernard parish fro Plaquemines parish?
A. Yes sir; it is the dividing line.
Q. What is your occupation?
A. I am a fisherman.
Q. How long have you been a fisherman?
A. Some 45 years.
Q. Do you know the country in the parish of Saint Bernard wher the oysters are fished?
A. More or less, I know it belongs to the parish of Saint Ber nard.
Q. Have you ever fished oysters in Saint Bernard?
288 A. No sir.
Q. Do you own a boat?
A. Yes sir.
Q. Did you ever go with any one on a trip through Saint Ber nard parish on your boat?
A. The trip I made with Mr. Alcide Gutierrez.
Q. Who was with you on that trip?
A. Mr. A. C. Gutierrez, Mr. Albert Estopinal, Mr. Alcide Gu tierrez.
Q. What was that trip made for, what was the object of that trip?
A. The object of that voyage was simply to enforce the law. I went with Mr. Alcide Gutierrez, I don't know exactly.
Q. Was it on your boat?
A. Yes sir.
Q. Where did you start from?
A. From Bayou Terre aux Bœuf.
Q. Where did you go from Bayou Terre aux Bœuf?

A. That day we went and stopped at Karako island.
Q. Where is Karako island?
A. In Saint Bernard; it is right at the mouth of the bayou, at Point La Fortuna.
Q. Which direction did you go from Point La Fortuna?
A. To Point Chicot. We went to New Rigolets, they call it.
Q. Then where did you go, through the New Rigolets?
A. From there to Point Comfort.
Q. Then where did you go?
A. To Bayou Julia.
Q. Then where did you go, from Bayou Julia?
A. From there to Karako Campo.
Q. Is Karako Campo on Karako bay?
A. I never heard it named by that.
Q. Where did you go from Karako Campo?
A. To Three Mile bayou.
Q. Where did you go from Three Mile bayou?
A. From there to Nine Mile bayou.
Q. Then where did you go, from there?
A. To Shell beach.
Q. Did you see any boats fishing oysters on that trip?
A. Yes sir.
Q. Where was the first time you saw these boats on that trip, fishing oysters?
A. At Point Comfort.
Q. Do you know that place by the name of Morgan harbor?
A. Yes sir.
Q. Is that the same place?
A. Yes sir, that is the same place.
Q. Where did those boats come from?
A. From Biloxi.
Q. Were there many boats?
A. There, there was but one.
Q. Was the boat fishing oysters?
A. Yes sir.
Q. How do you know that boat was from Mississippi?
A. Because they, themselves, told us.
Q. Where did you next see boats fishing oysters?
A. Tobacco bayou, Cat Fish pass.
Q. Was that near Karako Campo?
A. Yes sir, that is right near Karako Campo.
Q. Did you see any boats fishing oysters in the bay by Karako Campo?
A. One.
Q. Where was that boat from?
A. From Mississippi, from Biloxi.
Q. How do you know that boat was from Mississippi?
A. Because by their answers to our questions as to where they were from.

Q. Did you see any boats fishing near Three Mile bayou, fishing oysters?

A. Yes sir. There were a good many of them fishing there.

Q. Where were those boats from?

A. They were loading there for Biloxi.

Q. How do you know they were loading oysters for Biloxi?

A. Mr. Lopez's boat was there.

289 Q. What Mr. Lopez is that?

A. The man who has this factory across the lake at Biloxi, I don't know his initials.

Q. What kind of factory?

A. I don't know.

By Judge GUION:

Q. Is it cotton goods, fish or what?

A. For oysters.

By Mr. DYMOND:

Q. Did you see a boat of Lopez in Three Mile bayou?

A. Yes sir; I saw it.

Q. What was the name of that boat?

A. I don't know; I didn't pay any attention. Mr. Alcide Gutierrez took the name.

Q. Did you hear any of the talks of Mr. Gutierrez with the Mississippi oyster fishermen, at that time, on that trip?

A. I heard a conversation, but, as I did not understand English, I did not know what they were talking about.

Q. Do you know where Isle au Pitre is?

A. I know that it is further out than Grand pass, way out yonder.

Q. In which direction, east or west of Three Mile bayou?

A. I never paid any attention to that.

Q. Do you know where Petite pass is?

A. What we call Petite pass finds itself in Lake Borgne.

Q. Were these boats in the Louisiana marsh?

A. I don't know because I never measured it.

Q. Were they south of the shore line running from Petite pass to Isle au Pitre?

A. Yes sir, very much south.

By Mr. ZACHARIE:

Q. How close did this party go to the Isle au Pitre?

A. I don't know, I could not say.

Q. Well, about?

A. From five to six miles.

Q. What was the furthest point to the east that this party or expedition went?

A. To Point Comfort.

Q. But on the northern shore, the shore facing Mississippi, what was the furthest point you went, east towards the gulf of Mexico?

A. We were cruising about, here and there, and we didn't know altogether.

By Judge GUION:

Q. Did you go further east than Three Mile bayou?
A. We found ourselves a little to the east of Three Mile bayou.
Q. How far from where Three Mile bayou enters the marshes to the east?
A. Perhaps six to seven miles.
Q. To the east?
A. Yes sir.
Q. Did you see any vessels there catching oysters?
A. Yes sir, we saw boats there, all around there, Karako Campo.
Q. Why did you go with that expedition?
A. Because I was sent, I was asked to go.
Q. Do you know why you were sent?
A. I was sent about this oyster question.
Q. Was it known that you knew this territory down there?
A. Yes sir, because I knew that territory better than any one else.
Q. Who sent you?
A. I was sent by Albert Estopinal.
Q. Which one, father or son?
A. The father.
Q. The present lieut. governor?
A. Yes sir.
Q. Did the sheriff, Mr. Nunez, say anything to you about going down there with Mr. Gutierrez and others?
A. I was a deputy sheriff, I was made a deputy sheriff.
Q. By whom?
A. A man by the name of Jago Morales was sent by Albert Estopinal and Mr. Albert Estopinal made me a deputy sheriff.

Q. Did Mr. Esteve Nunez, the sheriff, send you down there
290 with Mr. Gutierrez; did you have any talk with him?
A. No sir.

Q. And it was Mr. Albert Estopinal?
A. No; Mr. Estopinal never spoke to me; in person, but he sent a man.
Q. Who was the man?
A. Jago Morales.
Q. What did Jago Morales tell you he wanted you to do?
A. He wanted me to go down on that trip.
Q. Were you sent there to show where Louisiana territory was, or not?
A. No sir, because I did not know where the boundary was; because I knew more or less what belonged to Saint Bernard, from Nine Mile bayou to the south.
Q. Were you sent there because you claimed to know the territory of Saint Bernard?
A. Most places I don't know by name; I know it from memory.

Q. Were you supposed to know the parish of Saint Barnard in that section of country?

A. No, I don't know it.

Q. I don't ask you whether you knew it; I ask you whether you were sent down because you were supposed to know the territory down there?

Mr. McCLURG: We make the exception that the question is irrelevant; that after having stated affirmatively he did not know the locality or its name it is immaterial that he was sent there from the supposition that he knew it or not.

A. I didn't know, only I know I was sent down for the oyster question, that is all, nothing was explained to me.

Q. When was that that you went down there?

A. I don't remember the date.

Q. Do you remember the year?

A. No sir.

No cross examination.

ALBERT ESTOPINAL, JR., witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your official position at present, in relation to the parish of Saint Bernard?

A. I am district attorney of the 29th district which includes Saint Bernard.

Q. And what other parish?

A. Plaquemines parish.

Q. How long have you been in that position?

A. Since 1892.

Q. Are you, in your position, charged in any way, with seeing to the enforcement of the State laws in the district over which you have control as district attorney?

A. Yes sir.

Q. Were you aware of the fact that there was a law passed by the legislature concerning the oyster industry of the State of Louisiana?

A. I was.

Q. Did you ever have occasion to consider the question of oyster fishermen from Mississippi fishing oysters in the parish of Saint Bernard?

A. Yes sir, I have.

Q. When was that?

A. In the early part of 1898.

Q. What was the occasion that led you to consider that?

A. This whole thing was provoked by an expedition that was sent out at the instance of the police jury.

Q. Of what parish?

291 A. Parish of Saint Bernard.

Q. As based on what?

A. As based on complaints made by fishermen, but who they were I don't know, but some complaints had been made to the authorities and the police jury instructed the sheriff by resolution, I believe, to send an expedition down there to enforce the law and collect licenses from native fishermen and to drive off Louisiana territory all fishermen who did not belong to the State, in other words, Mississippi, Alabama, Texas or Florida.

By Mr. McCLURG:

Q. Your police jury is what we call board of county commissioners?

A. Yes sir, they have the same power. And I remember, if you will allow me to go along, this expedition went out and shortly afterwards I got a message of some kind, whether it was in writing or whether an interview was arranged for me with Judge Neville of Biloxi, I don't quite remember. But the fact remains that I met Judge Neville on two occasions or three, twice here in New Orleans and once in Biloxi.

Q. Who was Judge Neville, will you please state?

A. He was, at that time, the district attorney, if they call him such, over in Hancock county, I believe, State of Mississippi.

Q. Did he so represent himself to you?

A. Yes sir; it was in his capacity as prosecuting or district attorney over there that he consulted with me in regard to this matter.

Q. Had this matter been referred to you?

A. No, not particularly. My attention was first called to the matter, in fact I became—I was brought into the matter by Judge Neville, he requested an interview on the subject with me and my recollection of it is that he came over here and we lunched together over at the Cosmopolitan hotel. I think my father was with us at the time, right across on Royal street, and this whole matter was gone over with Judge Neville. Judge Neville at the time went on to say that the authorities of the parish of Saint Bernard had sent out an expedition and that the officers of this expedition had attempted to arrest some of their people and that it had caused bad blood and that he was very much in fear that a conflict of some kind, an armed conflict possibly, would occur between the authorities of Saint Bernard and the Mississippi fishermen. I knew at the time that the officers of Saint Bernard on this expedition had attempted to drive the Mississippi fishermen off of these marshes and that they had refused to go off; but, Judge Neville's statement in regard to a possible conflict in the event of our insisting upon the enforcing of the Louisiana law in that territory I knew nothing of. The Judge suggested, either at this conference or at another, because there were two or three conferences between Judge Neville and myself, that it would be best to hold the matter in abeyance for some time, that

the authorities of Saint Bernard do nothing for a while, and that in the meantime he, Judge Neville, or myself, or the attorney general, should institute proceedings in the United States court, a friendly suit, by which the boundary line between the State of Louisiana and the State of Mississippi might be ascertained. I acquiesced to that proposition and I know that nothing was done about this matter after that agreement was entered into between Judge Neville and myself; in other words, there was no more attempt on the part of the authorities—no further attempt on the part of the authorities of Saint Bernard to enforce the law or drive the Mississippi people away from there, nor was this suit instituted and the whole matter dropped right there.

Q. Until when?

A. Until about two years ago when it was again agitated, which has brought about this suit.

Q. By this suit do you refer to the pending suit between the State of Louisiana and the State of Mississippi?

A. Yes sir.

Q. In the United States Supreme Court?

A. Yes sir.

292 Q. In your conferences with Judge Neville, did he indicate that this armed resistance would come from the fishermen of Mississippi or from the authorities of Mississippi?

Mr. McCLURG: We must except to that question on the ground that the witness has not stated anything about an armed resistance or indicated from which side the conflict would come, and we insist that the witness be not led; let him state the facts as he knows them.

Question withdrawn.

Q. Did you make any statement to Judge Neville that would indicate the intention of the State of Louisiana or the parish of Saint Bernard to enforce the State oyster law in what the parish of Saint Bernard considered to be its boundaries?

A. Yes sir.

Q. What response did you receive from Judge Neville in answer to that suggestion on your part?

A. Judge Neville then stated he was afraid there would be a collision between the Mississippi people and the Louisiana people.

Q. Did Judge Neville indicate in any way what he meant by the expression Mississippi people?

A. No; but I drew an inference from his statement——

Mr. McCLURG: We want no inferences but facts.

Q. Are you able to give any reply in his words?

A. No sir, I am quite sure I cannot. I do know he said he feared very much there would be a collision between the Louisiana and Mississippi people.

Q. Did he use the word people?

A. To the best of my recollection he did.

Q. Did he in any way give any expression as to what the attitude of the Mississippi authorities would be in the event that Louisiana or the parish of Saint Bernard persisted in her contention?

A. Yes sir, he, as district attorney, was quite determined to oppose the contention of the Louisiana people.

Q. He, as an officer, district attorney, of that district said he was quite determined to oppose the Louisiana contention?

Mr. McCLURG: The State of Mississippi reserves exception to this upon the ground that the district attorney of Mississippi had no authority under the laws of that State, to interfere in any manner or to suggest any prosecution or settlement of this case; that such matters, under the laws of Mississippi, the grand juries, have exclusive jurisdiction of, and a district attorney has no authority except to advise grand juries upon their request, and to prosecute persons indicted by the grand juries. Hence the foregoing questions and answers are excepted to as incompetent and irrelevant. And in addition to this objection we are compelled to except to the leading character of the interrogatories propounded to this witness; we think he ought to be permitted to state the facts.

Q. Did he in any way, indicate the extent to which this resistance would be carried?

A. My recollection is, that he stated that there would be an armed conflict. That there would be blood shed. The fact is, that the judge, that the district attorney, Mr. Neville, appeared to be very anxious and very zealous to do something for the Mississippi people, and as I said a moment ago he went on to state that the Mississippi authorities would contest any such right of the State of Lou-
293 isiana as contended by Louisiana represented in this particular instance by the parish of Saint Bernard.

By Judge GUION:

Q. You say that Judge Neville is the one who provoked these interviews?

A. Yes sir.

Q. And not yourself?

A. No sir.

Q. Did he say what caused him to interview you on the subject?

A. Yes sir; these interviews were brought about by this expedition.

Q. What expedition?

A. The expedition of which we have heard about, sent out by the police jury of the parish of Saint Bernard or at the instance of the police jury, sent out by the sheriff.

Q. Did he mention that to you?

A. Yes sir.

Q. What did he say to you with reference to that particular subject?

A. He said that these Saint Bernard authorities had gone over to

these points on the coast in the Louisiana marshes and had attempted to drive away from there Mississippi people who were fishing oysters.

By Mr. DYMOND:

Q. Was the locality that he referred to, south of the shore line extending from Petite pass to Isle au Pitre?

A. That I can't say.

By Mr. ZACHARIE:

Q. During these interviews with District Attorney Neville, did he state whether he knew, or not, by what authority this expedition was sent out; if so, by whom did he state?

A. I don't know that he stated that he knew by what authority the expedition was sent out, no sir.

Q. Did he speak, in any way, as if he knew that this was an official proceeding by the officers of——

A. I judge so, yes sir, he spoke—yes, there can be no doubt about it because he stated to me that the officers, deputy sheriffs or sheriff's officers of the parish of Saint Bernard had attempted to drive Mississippi people away from there.

Q. You remember that distinctly?

A. Yes sir, oh, yes.

Cross-examination.

By Mr. MCCLURG:

Q. We understand Mr. Estopinal that you were at that time the prosecuting officer for Saint Bernard parish?

A. Yes sir.

Q. And that the expedition was sent out as stated in the resolution prepared by your police jury?

A. Yes sir.

Q. Originated from rumors of fishermen that people from other States and other parishes than Saint Bernard, were violating the laws of this State by fishing in her waters?

A. Yes sir.

Q. I believe you were present this morning when the sheriff, Mr. Nunez, testified about sending out the expedition?

A. Yes sir; I was here.

Q. And about having a conference with Judge Neville?

A. Yes sir; my recollection is, while you are on that point, if — will allow me, that the interview between Judge Neville and myself was arranged for by the sheriff. I met Judge Neville after he saw the sheriff.

Q. So the sheriff stated?

A. Yes sir, that is my recollection.

Q. Now, you had heard of no complaints either from the sheriff or the police jury or Judge Neville or others, about Mississippi taking any aggressive action in the matter; she was the defendant?

94 A. I don't know that——

Q. She was rather on the defensive. You people, as I understand it, the Louisiana authorities were driving out what Judge Neville thought, Mississippi people from Mississippi territory?

A. That is what he seemed to contend.

A. And whatever he said was in the shape of a protest against what he looked upon as an aggression on the part of Louisiana?

A. Practically, he seemed to look at it in that way.

Q. He was simply speaking in the defense of these people against his conduct?

A. Yes sir.

Q. Of your own personal knowledge you don't know what territory these people were in?

A. Except in a general way I don't know much about the country; I have been through it once, and in a general way from some slight study of the maps and having gone over the country once I know a little about it.

Q. Are we to understand that the allegation in Louisiana's bill of complaint to the effect that there was a threatened armed conflict between the officers of Saint Bernard parish of Louisiana and the officers of Hancock county Mississippi was based upon this Neville interview?

A. Well, that certainly is one ground for alleging it.

OBJECTION.—Judge GUION: This question is objected to because the witness is not competent to testify as to the conclusions or inferences in the bill of complaint which was prepared by the attorney general of the State.

Q. Are you the Albert Estopinal that appears as one of the counsel in this case?

A. Yes sir.

Q. You had something to do with the framing of the bill of complaint?

A. In a very slight measure if at all, as the attorney general states.

Q. You conferred with your attorney general?

A. Yes sir.

Q. Gave him the information about this Neville interview?

A. Yes sir.

Q. Now, then, I will ask you to say if you have any information other than the Neville interview upon which the charge in your bill of complaint to which I have referred was based?

A. I, personally, have none except that I repeat, at the time of our interview, the interview between Judge Neville and myself he was very determined and very serious about the assertion that there would be a conflict between the people of Mississippi and the people of Louisiana.

Q. Did you know at that time, what authority Judge Neville had to act in that matter under the laws of Mississippi?

A. I did not know, but he spoke as if he had, and if he did not he assumed it.

Q. Do you know of your personal knowledge of any real danger about the time mentioned in the bill of complaint of any armed conflict between the officers of your State and ours?

Q. Of my personal knowledge I do not know and could not possibly know, but if I were permitted to state what was reported to me by the members of this expedition I could possibly explain. I have some knowledge in regard to that but not personal knowledge; in other words, I have never been out on the waters and never had any discussion or interview with fishermen out there.

Q. We are seeking to escape the danger of wild cat reports and general hearsay about these matters and to get as near as we can to the actual conditions. Now, the time to which you refer, I believe you fixed at 1898. Is that correct?

A. Yes sir.

By Mr. TAYLOR:

Q. When you speak of Mr. Neville's indicating that a conflict might take place, when he put it in that hypothetical way, was it not on the basis that if Louisiana continued her aggression such as has been made, the result would be a conflict. Wasn't that
295 the idea involved in his statement.

A. Yes, sir. I understood him to mean that if the parish of Saint Bernard or the State of Louisiana attempted further to enforce what it thought to be its right there would be a conflict.

Q. He meant simply it would result in resistance to what he considered further aggression on the part of Saint Bernard parish. That was the contingency to which he referred when he said there would be a conflict?

A. My understanding was that Judge Neville meant if the authorities of Saint Bernard attempted further to enforce its rights that there would be a conflict with the Mississippi people.

Redirect examination.

By Judge GUION:

Q. You have given us to understand that there was one expedition that went out into this Saint Bernard territory?

A. Yes sir.

Q. And that after that expedition had returned, you had an interview with Judge Neville?

A. Yes sir.

Q. Did I understand you, or not, to say that Judge Neville at the interview or at one of the interviews he had with you, suggested a friendly suit? I so understood?

A. Yes sir, he did.

Q. What was it he said about this friendly suit?

A. Well, when discussing the question of a conflict, that is, of a possible conflict between the authorities of Saint Bernard parish and Mississippi people, he said the best thing you can do in order to avoid that is to hold the matter in abeyance now for a while and let the authorities of Saint Bernard parish make no further attempt to enforce what they conceived to be the law of Louisiana, and we will go into the United States court in a friendly suit and ascertain the boundary line between Louisiana and Mississippi.

Q. After that interview when he thus spoke to you about a friendly suit, was any attempt made by any of the Louisiana authorities or the Saint Bernard authorities, to drive out any of the Mississippi boats in this marsh?

A. No sir; there was no further attempt made on the part of the authorities here to drive them off.

Q. Why not?

A. Well, I don't remember the occasion, but I no doubt reported the result of my interview with Judge Neville to the authorities down there and I having acquiesced in the suggestion of Judge Neville I advised the authorities down there to hold everything up, then, in abeyance, not to endeavor any further attempt to drive out these people, that this friendly suit would be instituted and pending the institution of this suit the authorities did nothing on my advice, you see, but the suit was never instituted.

By Mr. DYMOND:

Q. Was there not a suit instituted in the United States Supreme Court by the State of Louisiana?

A. I have referred now to the suit suggested by Judge Neville at the time. Subsequently the present suit was instituted in the United States Supreme Court.

Q. Who was to have brought the suit that Judge Neville spoke of?

A. The attorney general of the State, at that time?

Q. Who was that?

A. Mr. Cunningham.

Q. You are speaking of Louisiana, are you?

A. Yes sir. Judge Neville led me to believe that he had authority to do likewise, or to represent the State of Mississippi in a suit of that character.

By Mr. ZACHARIE:

Q. According to the understanding that you had with Judge Neville who was to institute this suit?

A. Who was to institute the suit?

Q. The State of Mississippi or the State of Louisiana?

296 A. I think—well, I don't know that that was decided upon; if it was I don't remember.

Q. And you say that that was the reason for the agreement by

which the authorities of the parish of Saint Bernard rested from any further attempt?

A. Yes sir, that suspended all further action, on that account, pending this suit which was never brought.

By Judge GUION:

Q. Was not the suit instituted as soon as the attorney general of the State now in office, was informed of the facts and notified by the governor to bring this suit?

A. Yes sir.

At this stage of the proceedings the proceedings were adjourned by the commissioner to be resumed on April 5th 1904 at the same place at the hour of 10:30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 5th, 1904—10:30 a. m.

Pursuant to adjournment, the proceedings were this day resumed.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, attorney general of the State of Louisiana.
Mess. F. C. Zacharie, John Dymond, Jr., and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. William Williams, attorney general of the State of Mississippi.
Hon. Hannis Taylor, associate counsel for the State of Mississippi.

E. E. NUNEZ, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Judge GUION:

Q. You were a witness yesterday?

A. Yes sir.

Q. And you testified that you had sent Mr. Raymond Roberto with certain other parties down into a certain country for the purpose of notifying Mississippi fishermen to leave that territory and to quit fishing oysters?

A. Yes sir.

Q. I understood Mr. Roberto, yesterday, to state that you had no conversation with him on that subject, will you please state what took place and what you did in reference to your sending Mr. Roberto?

A. Mr. Roberto is correct as to that part. I sent my deputy sheriff to him, a regular deputy sheriff there, with a commission and

told him to arrange the matter with him to go out on that expedition with his boat, etc.

297 Q. What was the name of that deputy sheriff?

A. Diego Morales.

Q. What was your object, Mr. Nunez, in selecting Mr. Roberto as a part of that party that you sent down there?

A. My object was that I was under the impression and we all were, we understood Mr. Roberto to be well acquainted with that part of the country where we sent him, being a fisherman all his life we were under the impression and belief that Mr. Roberto knew all that country, in fact he went there and he could go further out and come back easy from there, he knows all that country, whether he knows it by names, I don't know but he knows that country; that is the reason we picked him out.

Q. Then, your idea in selecting Mr. Roberto as I understand it, was that you understood that he knew that whole country and knew where the Louisiana territory was?

A. Yes, sir, he was familiar with that country, with that part of the territory.

Mr. TAYLOR: We desire to note an exception to these questions on the ground that Mr. Raymond Roberto has testified that he had no such knowledge as the sheriff imagined he had. He has already testified that he was not in possession of that knowledge. It is entirely irrelevant what misconception the sheriff might have had.

By Mr. DYMOND:

Q. Are you aware of the existence of an official map of the parish of Saint Bernard?

A. Yes, sir, I am aware of it, we have an official map of the parish.

Q. Where is that official map usually kept?

A. At our court house in Saint Bernard parish.

Q. Was that map completed and in the court house at the time this expedition was sent out by you in January or February 1898?

A. I don't remember about that; I don't remember exactly when it was completed, but I think it was in 1898.

Q. Do you remember whether the map was in the court house at that time?

A. I don't remember.

Q. I refer, Mr. Nunez, to the map made by Mr. H. C. Smith?

A. Yes sir.

Q. Is that the map you have reference to?

A. Yes sir, that is the map.

No cross examination.

Lieut. Governor ALBERT ESTOPINAL, witness on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. What is your name?
A. Albert Estopinal.
Q. Where do you live?
A. In the parish of Saint Bernard.
Q. How long have you lived there?
A. Fifty-nine years.
Q. All your life?
A. Yes sir.
Q. What official position do you now occupy?
A. I am lieut. governor of the State of Louisiana.
Q. Have you occupied other official positions during your life?
A. Yes sir.
Q. Will you please state what?
A. I have been sheriff of the parish of Saint Bernard; I have been a member of the police jury for many years and a member of
298 the General Assembly of Louisiana for 24 years.

Q. What time did you enter into office as sheriff of the parish of Saint Bernard, about?
A. In December 1872.
Q. December 1872?
A. Yes sir.
Q. How long were you sheriff of the parish of Saint Bernard?
A. Four years, from 1872 to 1876.

Q. Can you state, if any complaints were made to you, during your incumbency of the sheriff's office as to non-residents of the State fishing oysters in the territory claimed by Saint Bernard?

A. I can't say distinctly how many times, how many complaints were lodged with me, but there were frequent complaints by residents of the lower section of the parish of Saint Bernard contiguous to what is called the oyster territory.

Q. Could you state about what time these complaints were made to you?

A. Well, while I was sheriff, '74, '75, along there, and often afterwards, during my incumbency as president of the police jury.

Q. Can you give us the names of any persons who made these complaints?

A. One, yes, I remember distinctly, old Doctor Albrecht, he was a prominent citizen down there and owned property and his estate is there yet.

Q. Is he alive?

A. No sir, he is dead. But Captain Ruiz who is to testify before this court, he made frequent complaints.

Q. During that time?

A. Yes sir.

Q. Doctor Albrecht is he living?

A. No sir, he is dead.

Q. What was the tenor of these complaints?

A. They said that fleets of boats were fishing, were carrying away the oysters from the reefs just below or in the neighborhood of Isle au Pitre, in that territory contiguous to that, east of that and west of that even. They came sometimes inland, in some of the small lakes there back of what is called La Chincha.

Q. Do you know how far to the eastward in the parish of Saint Bernard these complaints were made about?

A. No sir, I could not say to what territory exactly they alluded but they claimed, these parties, as we all claim that all that part east of Bayou La Loutre and extending northeasterly, as far as the coast line, is Louisiana territory, we always regarded it as such.

Q. What was done with these complaints?

A. Well, no attention was ever paid to them or, rather, there was no authority, or the matter was reported to the police jury, it was supposed to be the only body having the authority to control such matters, having control of such matters, but nothing was ever done officially.

Q. Do you know why the police jury and the officers of the parish yourself as sheriff, did not act on those complaints

A. Well, my impression is, that at the time, there was no law existing on the subject preventing aliens or foreigners from fishing in Louisiana waters.

By Judge GUION:

Q. You had not spoken about aliens or foreigners, you said fleets of boats——

A. Yes, there were fleets from Alabama and Mississippi.

By Mr. ZACHARIE:

Q. Both?

A. Yes sir; there have been there as many as 300 boats at one time, counted in one fleet.

Q. The reason you believe that no action was taken on these complaints, was, that the statutes of Louisiana then in existence did not prohibit non residents from fishing in these waters?

A. Yes sir.

299 Q. Do you know of any other matters which relate to any controversy upon this subject of non residents; did you have any conversations with any of these Mississippians or persons outside of the State at any time?

A. Well, later, I think about 1898 I had, I met Mr. Neville from Mississippi who had a conference with my son the district attorney, I was present at one of their conferences.

Q. Can you state in your own way, as near as you can, what transpired at that conference?

A. It was just after that, we, or the police jury or Saint Bernard parish had sent out an expedition to order away these people from Mississippi who were then fishing on Louisiana territory and it created quite an alarm; our people went down there with instructions to warn them off and they offered resistance, or rather they said they wouldn't get off except by force which they were ready to resist and as a consequence of this, this interview took place here. Mr. Neville either in an official capacity or representative of these fishermen, I don't remember, came over here and met the sheriff and the sheriff suggested that he see the district attorney.

Q. Who was then the district attorney?

A. My son, Mr. Albert Estopinal Jr.

Q. The gentleman who testified yesterday?

A. Yes sir.

Q. Albert Estopinal Jr.?

A. Yes sir. I was present at one of these interviews, I believe there were two of them, and after discussing the subject it was agreed that if it were best, a friendly suit might be brought between the two States; I don't know what methods they were going to use.

Q. What was the contention of Mr. Neville?

A. He contended that this territory had never been, or, he contended that it belonged to Mississippi as much as it did to Louisiana in his opinion. That these people had been fishing there for a great many years and that they did not know they were on Louisiana territory, they supposed they were on Mississippi territory.

Q. What was Mr. Neville's suggestion, if any, in regard to action in the premises?

A. He suggested that some of the Mississippi fishermen be arrested, if I remember right, and that that would be a means of bringing the matter before the courts.

Q. Was there any suggestion made as to a *modus vivendi* or maintaining things in their present status. Did you contemplate action through the courts?

A. I don't remember distinctly, I can't remember that. I would not state it as a fact, that he suggested any *modus vivendi.*

Q. Did Mr. Neville indicate in any way, what method of resistance these Mississippians would adopt?

A. No sir; he did not; but the inference was to be drawn that they would resist by force if they were attacked.

Q. Were there any legal proceedings, and if so, what were they, instituted in this matter, up to the bringing of this suit?

A. No sir. If you will allow me, it might be the proper moment now, to state that as a result of these conferences this thing was—stirred up this dispute, and some of us interested in the Louisiana oyster industry down here thought it best to bring together the authorities of the two States of Mississippi and Louisiana, and to try to adjust the matter without even going into court, and Mr. Dymond here and myself and some others called on Governor Heard and explained the situation to him and showed him the importance of the

thing, and he appointed a *a* commission took upon himself the authority to appoint a commission and communicated with the governor of Mississippi asking him to appoint a similar committee which he did and the two committees had several conferences without any result and then it was that the matter was brought into court finally.

Q. Let me come back a little. This expedition which went out from here down there, how came it that this expedition was set on foot and went out?

A. I believe under the law of 1896 it was that we acted oyster law, oyster law, of '98 possibly——

300 Q. '96?

A. In '96 there was an oyster law passed which authorized the collection of licenses and taxes on boats and it was thought that a fairly good revenue could be gotten out of this. An oyster commissioner, I believe the name was, was appointed by the parish of Saint Bernard and he called on the police jury for means to go down and enforce these collections. I don't remember now whether he went out at all under the authority of the police jury or whether it was——

By Judge GUION:

Q. Could you remember if your memory was refreshed by looking at a copy of the resolution adopted by the police jury?

A. Yes sir.

By Mr. ZACHARIE:

Q. You say you don't remember whether the oyster commissioner——

A. I don't remember whether he collected any licenses at all. I think, rather, that he reported that he could not collect them, and that, coupled with the constant complaints, or frequent complaints of the people of Louisiana, fishermen, that boats from Mississippi and Alabama were carrying off oysters, was the reason for sending out these expeditions as there were two of them.

Q. Will you be good enough to examine this document marked Document No. 1 and say what you know about that resolution?

A. Yes sir, I remember——

Q. The passage of such a resolution?

A. Yes sir.

Q. You were president of the board at that time?

A. Yes sir.

Q. And you were present when this resolution was passed?

A. Yes sir.

Q. Will you examine Document No. 2 and offered by the State of Louisiana and state what you know about that document?

A. Yes sir, I know all about it.

Q. Were you president of the police jury at that time?

A. Yes sir.

Q. Governor, you have spoken of two expeditions having gone?

A. Yes sir; one didn't amount to much because it turned back, it was driven back by the stormy weather, it reached the mouth of Bayou Terre aux Bœuf and was driven back after several attempts to get out.

Q. The first attempted expedition and the second expedition went out in pursuance of what?

A. In pursuance of an ordinance or resolution of the police jury?

Q. The one that you have just examined?

A. Yes sir.

Q. Do you know who composed that expedition?

A. No sir. Mr. Alcide Gutierrez was one of the expedition. The men were selected by the sheriff. Mr Roberto who testified here yesterday was also of the expedition, he was the sailing man of the expedition.

Q. Did you as president of the police jury, take part in any of the instructions given to this posse of deputy sheriffs?

A. Yes sir.

Q. What were the instructions that were given to them?

A. The instructions were to gather all information they could on the subject of trespassing by Mississippians and other—because there were Alabamians also, reached from Mobile, and to report to the police jury.

Q. Were they instructed as to what to say to these Mississippians or Alabamians or persons from other parishes of the State of Louisiana?

A. Yes sir; they were told to warn these people that they were trespassing on Louisiana territory and to keep off.

Q. That was in regard to the people from what portion of the country?

A. From Mississippi or Alabama.

Q. What were the instructions in regard to people fishing
301 coming from other parishes of the State of Louisiana?

A. They were to be allowed to fish.

Q. On what condition, if any?

A. Upon the condition of paying the license imposed by law.

Q. Was there any report made, written or verbal, of this expedition?

A. Yes sir.

Q. In what form or shape was it made?

A. The report was that this expedition had found a good many boats out there and had notified them that they were fishing, they were trespassing and they must get off.

Q. To whom was this report made?

A. To the police jury.

Q. Through whom?

A. Through one of the members of the expedition, I think through Mr. Gutierrez or Diego Morales, I think he told the chief deputy of the expedition.

Q. Was this report written or verbal?
A. I don't remember.
Q. There is no record, is there, of any written report in the proceedings of the police jury?
A. I don't know.

By Mr. DYMOND:

Q. Governor Estopinal, are you aware of the existence of an official map of the parish of Saint Bernard?
A. Yes sir.
Q. When was that map made?
A. It was made in 1897.
Q. By whom was it made?
A. By Mr. H. C. Smith.
Q. Where was it kept?
A. At the court house.
Q. Was it in the court house in January and February 1898?
A. Yes sir.
Q. At the time this expedition was made?
A. Yes sir.
Q. Was it where any and every body could see it?
A. Yes sir, it was hung up in the sheriff's office.
Q. Was that map intended to show the extent and limits of the parish of Saint Bernard?
A. Precisely, yes sir.
Q. Is that the same H. C. Smith who was parish surveyor?
A. Yes sir.
Q. And is now chief surveyor of the Oyster Commission of Louisiana?
A. Yes sir.
Q. Is that the same map that is in existence today.
A. The same map, yes sir.

Cross examination.

By Mr. TAYLOR:

Q. Did you ever make any personal excursions to this domain in which these boats were, did you ever make any personal investigation as to the localities, lines etc., of all this contested territory?
A. No sir.
Q. You have no personal knowledge whatever as to where what is supposed to be the territory claimed by Louisiana ended or where it began or where the territory of Mississippi began, in that contested area?
A. Not by exploration of the territory, no sir. I only know it by the maps and charts we have.
Q. You have said that when these complaints were made you were sheriff, that no attention was paid to them because there was no authority for any body to do anything?

A. I said that under the existing laws at the time——

Q. At that time there was no authority——

302 A. —people from other States were permitted to fish on this territory without interference.

Q. Then, in referring to your conversation with Mr. Neville you gave the substance of what he said, I can't repeat your exact words, but the substance was that there would be resistance on the part of Mississippi if an attack should be made by the authorities on the part of Louisiana?

A. Whether he used the word resistance I don't remember, but he said there would be a collision.

Q. Didn't you use the term defense or resistance to an attack, in substance of what you just stated in your testimony?

A. I said, if an attempt was made to drive them off they would meet force by force.

Q. If an attempt to apply force was made by the Louisiana authorities through these expeditions——

A. Yes sir.

Q. The only affirmative act of expulsion was made by the Louisiana authorities?

A. There was no attempt at expulsion: it was simply to notify them, those were the instructions given to these expeditions.

Q. The only threat that attempts of expulsion would be made, was made by the Louisiana officials; no expedition was sent from Mississippi?

A. No sir.

Q. Whatever affirmative act looking to expulsion was an act of aggression on the part of Louisiana officials?

A. It was an act of assertion.

Q. Assertion of a right?

A. Yes sir.

Q. And the only response on the part of Mr. Neville speaking for Mississippi was, there would be resistance to such an attempt of expulsion?

A. He said he feared there would be.

Q. You said you have been living 59 years in this parish; being an official and representative of that parish, is there anybody better qualified to know what the extent of Louisiana's claims were than you are. Are you not, by your office and experience as well qualified to know what the claims of the parish as to its limits are as anybody?

A. From time immemorial we have always looked upon the territory that we now claim, as the parish of Saint Bernard.

Q. But you say you have no personal knowledge?

A. I said I have never explored the territory and never have been over it and know nothing of it except by the maps and charts we have that say that territory is Louisiana territory.

Q. Suppose at the time this expedition was sent out, at the time you were president of the police jury, suppose you had been in com-

mand of that expedition and the Mississippians had called upon you to indicate whether this particular locality or that was in one State of the other, could you have indicated the limits to your knowledge?

A. I think I could. Our people went out armed with maps and charts to show these people Louisiana territory.

Q. But you wouldn't have known from knowledge of natural monuments, without referring to papers——

A. No sir, I never navigated the waters, it would have been difficult for me to say.

Q. You stated as I understand that you were president of the police jury at the time of these expeditions?

A. Yes sir.

Q. So that at the time of this expedition, you, an official head of that country, had no personal knowledge where the claim of Louisiana ended and where Mississippi began?

A. No more than any other man would have unless he surveyed the——

Q. You had no personal knowledge of natural monuments where, at the time this threat of expulsion was made, the territory of Louisiana ended and that of Mississippi began?

A. No sir.

303 Redirect examination.

By Judge GUION:

Q. Were you, as president of the police jury, placed in the possession of any information as to where this so-called alleged illegal fishing of oysters was being carried on?

A. Yes sir.

Q. Would you be kind enough to tell us——

A. I can remember a few of the names. In Bay Bodreaux, in Lake Coquille and Lake Calbas and Lake Eloi. I remember those names, but they fished all over that territory from Bay Bodreaux down towards the Gulf.

By Mr. DYMOND:

Q. Was Karako bay mentioned?

A. Yes sir.

Q. Was Treasure bay mentioned?

A. I don't remember about that, but I remember distinctly Karako bay because it was such a peculiar name.

Q. Was Cat Fish pass mentioned?

A. Yes sir, that also; all these points were reported to me by Captain Ruiz who has navigated there, navigated those waters for a great many years and knows every nook and corner there.

Q. Was Dead Man's point mentioned?

A. I don't remember.

By Judge GUION:

Q. Now, as the president of the police jury, when these various points were given you as the places where this fishing of oysters was being carried on by Mississippi, what led you to believe that this fishing was in Louisiana territory not having made, as you say any personal exploration of that country?

A. Because according to all our official maps, that is recognized as Louisiana territory, we always looked upon that territory as the parish of Saint Bernard.

Recross-examination.

By Mr. TAYLOR:

Q. You say that was always looked upon as part of Saint Bernard parish?

A. Yes sir.

Q. Had any discussion of the subject ever arisen as to whether it was or not, prior to these expeditions; did anybody ever raise that question?

A. I don't believe that anybody ever questioned, ever claimed any right to this territory.

Q. That is not my question. Prior to these expeditions, had there been any discussion or attempt to fix where the lines were? Had any discussion of it ever arisen before?

A. Of course what I will state here cannot be substantiated, but my recollection is that a great many years ago, when I was a boy myself, that there was a murder committed in the sea marsh back there and there was a record of it once but that was destroyed by fire in 1874 by the burning of the court house, but a man was murdered down there in the sea marsh and the murderer was taken either to Harrison or Hancock county Mississippi to be tried and that judge there refused to try him because he had no jurisdiction and he sent him back and he was tried in the parish of Saint Bernard. I have tried to get some of the oldest inhabitants there to remember, to recall the fact, but I cannot get them. All the old people who were familiar with that incident have died and there is no record to show it.

Q. As you say it could not be substantiated; you know it as a mere tradition?

304 A. I say it could not be substantiated because the records are destroyed and the attorneys did not bring this out because they cannot substantiate it. It is mere tradition and I believe that gentlemen of my age and even younger than myself——

Q. Have you any knowledge of where the location in that marsh was or any knowledge of the spot where this murder was committed?

A. No sir.

Q. You could not tell where it was?

A. It must have been——

Q. Even if it was true you would have no knowledge of——
A. It must have been located at some point near the Mississippi shore because the man was taken over to Mississippi.
Q. You say that was mere tradition, you don't know it?
A. No sir, I cannot substantiate it.

MARTIN NUNEZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. Neptune.
Q. In what parish?
A. Parish of Plaquemine.
Q. What is your business?
A. Merchant.
Q. Conducting a store there?
A. Yes sir.
Q. Is that near the Neptune canning factory?
A. About a block from the Neptune canning factory.
Q. Were you ever a resident of the parish of Saint Bernard?
A. Yes sir.
Q. When?
A. In the year 1900.
Q. When did you leave the parish of Saint Bernard?
A. In the year 1900.
Q. And then where did you move to?
A. To the parish of Plaquemine.
Q. In the year 1900, did you hold any official position in connection with the parish of Saint Bernard?
A. Yes sir, oyster commissioner.
Q. When were you appointed oyster commissioner?
A. In 1900.
Q. In that position as oyster commissioner for the parish of Saint Bernard, did you ever go into these waters for the parish of Saint Bernard?
A. I did.
Q. What part?
A. Point Fortuna.
Q. Where is Point Fortuna?
A. Right at the mouth of Bayou Terre Bœuf, about a mile, I am not positive what distance, about a mile anyhow.
Q. Is that the bayou that divides the parish of Saint Bernard from the parish of Plaquemine?
A. Yes sir.
Q. Was that at the point where the bayou enters the sea?
A. Yes sir.

Q. In your position as oyster commissioner for Saint Bernard, did you see any boats fishing there at that time?

A. Yes sir.

Q. From what State were those boats?

A. From the State of Mississippi.

Q. How do you know that to be a fact?

A. Because the boats were marked Biloxi and Biloxi is in the State of Mississippi.

305 Q. Did you board any of the boats?

A. I told some of the boys that they had no right to fish in our waters and to keep away from our waters or else I would have them arrested.

Q. What did they do?

A. They staid there.

Q. What did they say?

A. They didn't say anything to me. They never paid any attention to me at all.

Q. What did you do?

A. I went back to the parish of Saint Bernard and reported to the police jury.

Q. Did you have any talk with these fishermen along the line of the locality as to where they came from?

A. Yes sir.

Q. Where did they come from, from this talk you had?

A. From Biloxi.

Cross-examination.

By Mr. TAYLOR:

Q. You say that you are oyster commissioner?

A. Yes sir.

Q. At this particular time?

A. Yes sir.

Q. And that you warned these people that you supposed came from Mississippi, that they had no right to fish in the waters of Louisiana. Upon what basis of authority did you assume to tell the citizen of one State of this Union he had no right to fish in the waters of another State, how did it come into your head that——

A. I had the law to act upon it.

Q. What kind of a law?

A. Law of the parish.

Q. Law of the parish?

A. Yes sir.

Q. What do you mean by the law of the parish?

A. That is the authority that the police jury gave me.

Q. You assumed then that the police jury of Saint Bernard parish could hinder the citizens of another State from fishing in the waters of Louisiana; is that the idea?

A. That is the authority I had.

Q. That was all you had; that the police jury of Saint Bernard could hinder the citizens of another State from fishing in the waters of Louisiana?

A. Yes sir.

Q. That was the only authority for that you had?

A. Yes sir.

Q. Well, did you have any personal knowledge of the limits; could you have pointed out the natural boundaries where the limits, the claimed limits of Louisiana ended and those of Mississippi began, along through that archipelago?

A. No sir, I could not do that.

Q. You did not have any personal knowledge?

A. No sir.

Q. So then, if you attempted to expel these people that you assumed were trespassing and they had asked you to show them where the limits of your claim were, you could not have told them?

A. I don't suppose that I or anybody else could tell where the lines could be drawn.

Q. You or nobody else could have told them that?

A. I don't know anything about the boundaries.

Q. Governor Estopinal says he couldn't; you say you couldn't; was there anybody that knew better than you and Governor Estopinal where these limits were. If they had asked you we want to keep off, we don't want to trespass, could you have shown them what you claim your limits are?

A. No sir.

Q. You could not; could you tell us of anybody else you think could. Do I understand that you don't know anybody else
306 that could have told?

A. I know that I don't know.

Q. You can't suggest anybody else that knew more about it than you did that we can find out from. We will take your silence as an admission that you can't tell.

By Judge GUION:

Q. You said, did I not understand you to say that the point at which you found these fishing boats was Point Fortuna?

A. Yes sir.

Q. How far is that point, Point Fortuna from Lake Fortuna?

A. I couldn't exactly tell you where is Lake Fortuna.

Q. Who told you that that was Point Fortuna?

A. Our fishermen.

Q. What was his name?

A. Well, there was Ramon Roberto. Do you want any more?

Q. Yes?

A. Louis Roberto, Alphonsa Turano, Jose Roberto.

Q. Those are the parties who were along with you?

A. Yes sir, at that time.

Q. Did they know that country down there?
A. Yes sir, they were born and raised there.
Q. What was their business?
A. Fishermen.
Q. Did they go down there often or infrequently?
A. At the time they were there they were fishing for Mr. Lopez.
Q. Where was Mr. Lopez living at that time?
A. In Mississippi.
Q. What was he doing?
A. Canning oysters.
Q. In Mississippi?
A. Yes sir.
Q. These men were his employees?
A. No sir, they were my employees. I was then selling the oysters to Mr. Lopez.
Q. You were selling oysters to Mr. Lopez?
A. Yes sir.
Q. And these men were working for you?
A. Yes sir.
Q. Fishing oysters?
A. Yes sir, for Mr. Lopez.
Q. I didn't exactly understand you. Did you tell these men to quit fishing oysters?
A. No sir; these were not the parties I told. These parties were fishing at the time for myself. I was selling then the oysters to Mr. Lopez, but there were other schooners there from Mississippi from Biloxi fishing oysters, and carrying the oysters to Biloxi.
Q. At the same point you were?
A. Yes sir.
Q. And that was what place?
A. Point Fortuna.
Q. These men that were fishing oysters for you, where do they live?
A. They live in the parish of Saint Bernard.

By Mr. DYMOND:

Q. Is Point Fortuna where Bayou Terre Beuf enters the gulf of Mexico?
A. Yes sir.

By Judge GUION:

Q. Could you show us on this map that point at which you say you found these Mississippi oystermen gathering oysters?
A. Yes sir.
Q. Take your time and examine it. Just point out on that map No. 7.
A. Here is Lake Fortuna.
Q. Just mark it there. (Witness marks the place with a pencil, "A.")

307 Mr. TAYLOR: I object, Mr. Commissioner, to the witness being assisted. He has been asked the question, let him answer it in his own way. I object to the witness——

By Judge GUION: Assisted in what way?

Mr. TAYLOR: Assisted even by that suggestion "Mark it." I do not think that is a fair suggestion. Let the witness put it himself.

Objection continued—being assisted by the suggestion being made to him to mark certain points with a pencil.

Judge GUION: Counsel for the State of Louisiana absolutely disclaims any intention to suggest to the witness what his testimony should be and disclaims any desire or purpose to assist him in giving his testimony. That in asking him to mark the place found by him on the map No. 7 then being examined by him, counsel did so for the purpose of enabling the Supreme Court to understand by the mark made by the witness whether or not he was testify- intelligently in reference to the point that he declared in his testimony was that at which he had discovered the fishing smacks from the State of Mississippi.

By Mr. ZACHARIE:

Q. Can you find the point?

By Mr. DYMOND:

Q. Read the question. (Question read.)

By Judge GUION:

Q. Well, what is your answer, Mr. Nunez, can you, or can you not, we don't want to be here all day.

A. I give it up, I can't find it.

Q. What was your reason for marking the letter "A" on this map just now?

A. Because I found Lake Fortuna.

By Mr. DYMOND:

Q. Can you find Bayou Terre Bœuf on that map?

A. Yes sir.

Q. What is the name of the point on this map at which Bayou Terre Bœuf enters into the gulf of Mexico?

A. What is the name of that bayou?

Q. What is the name given on this map as the point where Bayou Terre Bœuf enters into the gulf of Mexico; please look at the map?

A. What is the name of the bayou?

Q. What is the name of the point where Bayou Terre Bœuf enters the gulf of Mexico?

A. At Point Fortuna.

Q. Can you point out Bayou Terre Bœuf on this map?

A. Yes sir.

Q. Will you please point it out and mark it? (Witness mar
it.) How have you marked it, with what letter?
A. With the letter A.
Q. Where does that bayou enter the gulf of Mexico. Can y
point out the point on this map where that bayou enters the gulf
Mexico?
A. Right at Point Fortuna.
Q. Can you point out on this map the spot at which that bay
enters the gulf of Mexico?
308 A. You want me to mark it?
Q. That is what I am asking you, whether you can po
it out or not?
A. Where that bayou enters the gulf of Mexico?
Q. Yes. I want you to indicate the spot on this map.
A. This is where it empties at Lake Fortuna.
Q. Will you mark that B in place of A?
A. Here it is, B.
Q. What is the name of the point as given on this map at t
place you have marked B?
A. Lake Fortuna.
Q. What is the name of the point?
A. Point Fortuna.
Q. As given on this map, what is the name given on this ma
A. Lake Fortuna.
Q. Can you read English?
A. Yes sir, I think I can.
Q. Will you please look at the point designated on the map whe
you have marked it B and read the letters that compose the wo
at the end of the point?
A. "A."
Q. Will you please look at the word? Do you understand wh
a word is?
A. Yes sir.
Q. What is it?
A. A word is a syllable.
Q. Is it an assemblage of letters, a word, of more than one letter
A. Yes sir.
Q. Do you find anything on this map that looks like a word,
that point?
A. I see L and then a dot between and then La.
Q. What word——
A. I don't know what that L stands for, but the La stands fo
lake but that L I don't know what it stands there for.
Q. Is that at the point or is that in the lake?
A. That is in the lake.
Q. What is the name at the point?
A. Point Fortuna.
Q. Is that shown there as the name, Point Fortuna, on that map
A. At the point of it is Point Fortuna but I don't see the point

Q. Don't you see any point sticking out into the gulf of Mexico at the mouth of that bayou; don't you see a point there?
A. No sir.
Q. Do you see any name there?
A. No sir.

By Judge GUION:

Q. All that you know about the particular location where you say you found these boats fishing oysters and carrying them to Mississippi is what you got from these people that went along with you and showed you the place?
A. Yes sir.
Q. And what is the name of the place that you were told by them was the place where you found these men fishing oysters?
A. Yes sir.
Q. I say what was the name of it?
A. Point Fortuna.
Q. How far was that point from Lake Fortuna?
A. I couldn't tell you.
Q. Did you have it shown to you?
A. I don't know the place by the name of Lake Fortuna, I just know that point by the name of Point Fortuna.
Q. How do you know it by that name?
A. By these fishermen telling me so.
Q. Did you go any further at that time?
A. I didn't go any further.
Q. Did you go out there any other time?
A. No sir. We remained around Point Fortuna for several months fishing.
Q. During those several months, did you remain out in that country the whole time?
A. No sir, only for awhile with my fishermen.
309 Q. How long did you remain there?
A. About fifteen days.
Q. While you were there was any fishing of oysters going on?
A. Yes sir.
Q. By whom?
A. By my fishermen and some fishermen from Biloxi.
Q. Did you ever make any other trip besides the one you have just detailed, down there?
A. I made one more trip.
Q. Who went with you at that time?
A. Some of my boys.
Q. What do you mean by your boys, your sons?
A. Our men.
Q. Employees, do you mean?
A. Yes sir, my employees.
Q. Do you know where you went on that occasion?
A. I went there.

Q. Went there; where is there?

A. I went there to see my fishermen while they were fishing there.

Q. To what place?

A. Point Fortuna.

Q. The same place?

A. Yes sir.

Q. Then you did not go anywhere else except to Point Fortuna?

A. No sir, I did not.

Q. During the time that you were acting as oyster commissioner?

A. That is the only place I went to.

Q. On that second trip did you find any boats fishing oysters then?

A. Yes sir.

Q. Whose boats were they?

A. There was another boat but I don't remember the name, but the men who were employed on the boat were some of Martinez' sons from Biloxi.

Q. Gathering what?

A. Gathering oysters.

Q. To take where?

A. To Mississippi.

Q. How do you know that?

A. Because the boat was marked Biloxi.

Q. Did you know these men that were working on the boat?

A. Yes sir, I know two of them; the captain I didn't know who he was, he was a man from Mississippi.

Q. Did you know where they lived?

A. Yes sir.

Q. Where?

A. In Biloxi.

Q. That was what time, when?

A. In 1900.

Q. About what month?

A. About February.

Q. How long after your first trip out there?

A. Well, that is the only other trip I made, that was the second trip, that is all.

Q. I say how long after your first trip—you made two trips down there?

A. Yes sir.

Q. I say how long after your first trip was the second trip?

A. It was about ten days between.

Q. What did you say or do if anything at that time concerning the fishing of oysters by Mississippians?

A. I told them that they had no right to fish in our waters, to please go away from there or else I would arrest them.

Q. Did they do so?

A. No sir.
Q. What did you do when you got back to Saint Bernard?
A. I went right to the police jury and notified the police jury about it.
Q. What were you instructed to do?
A. Well, there was nothing done; as they were going to take some action on it there was nothing done.

310 Recross-examination.

By Mr. TAYLOR:

Q. Now, you say that when you were oyster commissioner you had your employees fishing there for oysters at Point Fortuna and you were taking the oysters and selling them to Lopez?
A. Yes sir.
Q. You did not warn off the men that you had there taking oysters and selling them in Mississippi?
A. No sir.
Q. But you did stop other people that were not working for you?
A. No sir.
Q. You warned them off?
A. Yes sir.
Q. You told other people they had no business there, no right there?
A. I warned other people from Mississippi, I told them they had no right there.
Q. That is, people who were not working for you. They were not working for you?
A. No sir.
Q. But the people who were working for you and taking the oysters to Mississippi you did not say anything to them about stopping fishing oysters?
A. No sir.

Gov. W. W. HEARD, witness sworn and examined on behalf of the State of Louisiana testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are governor of the State of Louisiana?
A. Yes sir.
Q. When were you elected governor?
A. In April, 1900.
Q. You were then the chief executive of this State during the session of the legislature that began in May 1900?
A. Yes sir, I was inaugurated about the middle of May 1900.
Q. Are you aware of the passage by the legislature of 1900 of a

joint resolution known and published as act 159 of 1900 on the subject of the State's oyster industry?

A. Yes sir; I don't remember it by its number, its title, but I remember the oyster act.

Q. That was to provide for a—was that to provide for an investigation commission?

A. Which one do you refer to?

Q. I refer to the one — 1900 and not the oyster law of 1902?

A. I would like to see it. What is the title of the act?

Q. It is a joint resolution by the house and senate.

A. What is your question?

Q. I asked you if you were aware of the passage of that act?

A. Yes sir.

Q. Do you know whether the speaker of the house and the lieut. governor appointed the commission from the respective houses set forth in that joint resolution?

A. I think the journal so states.

Q. Did you attend a conference held in the city of New Orleans on January 19th 1901?

A. Yes sir.

Q. Were the members of that original legislative commission present at that meeting, so far as you recollect?

A. I think they were—let me see, Mr. Cage, Mr. Estopinal, Mr. Lewis, and Mr. Dymond, that is the commission.

Q. You are referring to the boundary commission?

A. I am referring now to the commission appointed.

Q. Was Mr. Hugh Cage there?

A. I think so, yes.

Q. Was Mr. A. W. Bonvelan representative from Houma there?

311 A. I cannot remember every gentleman; I believe that all the commission was there.

Q. Was Mr. Simon Leopold there, so far as you recollect?

A. I think so; the proceedings ought to show definitely who was present.

Q. Were there minutes made to those proceedings?

A. Yes, sir, and copies forwarded to Governor Longino.

Q. Who was he?

A. He was at that time governor of Mississippi.

Q. Do you remember what action was taken by that meeting in the shape of any resolution?

A. That meeting adopted some resolutions and forwarded them to me and it was——

Q. Were you requested to take any action as a result of that meeting?

A. The resolution ought to show, Mr. Dymond.

Q. Well, did you take any action, Governor, as a result of that meeting?

A. Yes, sir.

Q. What did you do?

A. My letter book will show. I think it was in the latter part of January I addressed a communication to Governor Longino informing him of this meeting; that I had appointed a commission on the boundary question and requested that he appoint a similar commission from his State.

Q. What was your purpose, Governor, in appointing this commission on the part of the State of Louisiana and in requesting Governor Longino to appoint a similar commission on the part of the State of Mississippi?

A. To see if there could not be an amicable adjustment of this boundary question between the two States.

Q. Did you understand that there was a dispute as to the boundary at that time?

A. Oh, yes.

Q. Did you understand that there were Mississippians fishing in what Louisiana contended were Louisiana waters?

A. I was so informed.

Q. Have you ever had occasion to visit in the neighborhood of the locality in question, or make a trip down there?

A. I was on a fishing trip, I think in 1901 or 1902.

Q. To what point did you go?

A. I was out on the sound, on the keys, around Ship island, Cat island, Chandeleur islands, Isle au Pitre, around in that neighborhood.

Q. Did you go through the channel separating Isle au Pitre and Cat island?

A. This controversy was up at time and I remember distinctly asking the owner of the schooner which we were in, Mr. McDonald, did he know where this disputed boundary line was, or, in other words, could he point out what he understood to be the boundary line, and he pointed out to me at a point between Cat island and Isle au Pitre, as the channel, and that, as he understood, was the line.

Q. Were you then close enough to see Isle au Pitre?

A. I was right there, yes sir, we were in the channel. I remember we got caught there in a calm one night——

By Mr. TAYLOR:

Q. Did you say that trip was in 1901 or 1902?

A. I think it was in 1901, I am not positive about the time, I generally go over——

Q. It was not earlier than 1901?

A. No, sir, I think not.

By Mr. DYMOND:

Q. Who was this Mr. McDonald you talked with?

A. He is a resident of Pass Christian, Hancock county, Mississippi, and was the owner of this schooner that we had rented from

him, and I believe that he is the present mayor of that town or was a short while ago.

312 Q. As the chief executive of the State of Louisiana, what prompted you to take this action and what interest did the State have in getting this matter settled?

A. I felt it my duty to see that our laws were obeyed and it was my desire to have this question adjusted on amicable lines, and it failing—these two commissions failing to get such result, why, I thought the court was the proper place.

By Judge GUION:

Q. What laws do you refer to, that you desired to see obeyed?

A. The oyster laws.

By Mr. DYMOND:

Q. Governor, will you please look at this document marked Exhibit A, being a certified copy of an original document filed in the Supreme Court at Washington, in this suit, and state if you recognize it to be the minutes of the meeting held in New Orleans January 19th, 1901?

A. Yes sir.

Q. Will you please look at the document marked Exhibit B, being a copy of the original document filed in the Supreme Court at Washington, in this suit, and state if you recognize it to be a copy of your letter addressed to Governor Longino of Mississippi about which you have just testified?

(Witness refers to his letter book.)

A. Yes, sir, and I may say in that connection, that it is identical with my letter press copy which I now have before me.

Q. Will you please look at this document marked Exhibit C, being a certified copy of the original document on file in the Supreme Court at Washington in this cause and state whether you recognize it to be a copy of the letter received by you from Governor Longino of Mississippi in reply to your letter of January 26th?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer the original Exhibits A, B, and C filed in the Supreme Court at Washington in this cause and tender to counsel for the State of Mississippi certified copies of the originals on file in this suit in Washington in connection with the bill of complaint.

Q. Governor Heard, did you keep in touch with the results of the conference of these two commissions?

A. You mean the first commission?

Q. Yes. I mean the boundary commission that you appointed?

A. Yes sir.

Q. Did anything develop of a character tending to an amicable settlement of this dispute without suit?

A. No sir. The two commissions failed to agree and suggested that a—that is my recollection, I think I read the proceedings—suggested a friendly suit.

Q. Did you authorize the attorney general of this State to institute the necessary proceedings in the Supreme Court of the United States to determine this boundary dispute?

A. Yes sir.

Q. Governor, in connection with this boundary dispute did the State have any financial interest involved and if so has it now?

A. Yes sir, it is a question of revenue to the State.

Q. Does the State derive a revenue from the oysters gathered from its waters?

A. Yes sir, certainly.

By Judge GUION:

313 Q. In addition to the value that you have just spoken of that the water area may have by reason of the revenue that the State might derive from the oyster industry carried on and operated under her laws, could you be able to state whether or not there is any value attached to the marsh lands around the water area in the disputed territory; does the State fix any value——

A. The State has fixed a value on all of its lands, depending on the character of the land if sea marsh land it has fixed one value, if swamp land another value, if high land another value.

Q. What is sea marsh land put on the market, at what price, since 1902, per acre?

A. 25 cents per acre.

Q. Formerly what was it?

A. Ten cents, until 1902.

Q. Do you know how many acres of land there are, about, in that country down there, belonging to the State?

A. No sir.

Q. You spoke just now, that as chief executive of the State you felt obligated somewhat to have this suit brought by the State in order to settle the boundary line between Louisiana and Mississippi because of the fact that you, as the chief executive, were bound to uphold the laws of the State——

A. To see that the laws were executed.

Q. And you in one of your answers a moment ago, you spoke of oyster laws; do you mean the oyster laws that give a revenue to the State of Louisiana?

A. Yes sir; that I was informed they were being violated by non residents and we were losing a revenue because of that infringement of our law.

Q. Were you informed where these non residents lived, in what State?

A. I was told they were Mississippians.

By Mr. DYMOND:

Q. Was that what prompted you to address your communicatio to Governor Longino as the governor of Mississippi?

A. Not altogether. I wanted this question adjusted. I wanted the citizens of the two States to avoid any trouble if it was possible and to know the rights of the two respective States.

Q. You did not address any communication to the governor of Alabama?

A. No sir.

By Judge GUION:

Q. Had you any reason to believe, Governor, that the infringement of the laws of this State in the protection of the oyster industry against citizens of other States, might lead to violence or blood shed or conflict of any kind?

A. Yes sir, I was informed that the Mississippians, or some of them, that were fishing oysters there, disputed our claim, or rather disputed the boundary, and it was likely to bring about friction and of course I desired that that be avoided if possible. At the same time I felt we had to maintain what we believed to be our rights, and I conceded to our friends the Mississippians, the same privilege.

Q. Did the State take any action through any instrumentality of the State government looking to the protection of that oyster territory, further than protest?

A. I think not.

Q. Has the oyster commission ever done anything?

A. In what respect?

Q. Has there ever been any patrolling of the oyster territory?

A. Yes sir. I did not understand your question. The legislature of 1902 created an oyster commission and that commission has, I understand, patrolled a certain line agreed upon by the two commissions of the two States with a view of keeping non residents out of certain waters.

Q. What do you mean, Governor, by agreement between the two States?

A. I mean the two commissions failed to agree on a
314 boundary and specified certain lines to be observed by the two States and certain territory to be regarded as neutral.

Q. Until when?

A. Until this thing could be finally adjusted.

Q. Until a settlement and decision by the Supreme Court of the United States?

A. Yes sir.

Q. Do I understand you to say that that was done by the two commissions appointed by Governor Longino and yourself, or by the two oyster commissions of the two States?

A. This agreement as to these lines, as I understand, was by the

two oyster commissions; but, the prior commissions failed to agree and suggested a friendly suit to determine the question.

Q. Then do I understand that the commission appointed by you, consisting, I believe, of five persons, did it not?

A. I believe so.

Q. And the commission likewise appointed by Governor Longino, after having failed to agree on an amicable adjustment of the boundary dispute between them, and having suggested this amicable suit, nothing was done except an agreement about a neutral territory. Was there anything done at that time?

A. I don't remember what the two oyster commissions did, further than to enter into this agreement and to carry it out.

Q. Then that was the oyster commissions then?

A. Yes sir.

Q. That entered into this agreement about a neutral zone?

A. Yes sir, of course.

Q. When was that, Governor, do you remember?

A. That must have been in the fall of 1902.

Q. Was it after, or before, the failure of the two commissions appointed by yourself and Governor Longino to agree on a boundary?

A. It was afterwards. The boundary commission, if I may designate it as such, was appointed in 1901 and the oyster commission was appointed in 1902.

Q. Then after the commissions that you and Governor Longino appointed with reference to the boundary, had failed to agree, the legislature of 1902, I understand, created the oyster commission?

A. Yes sir.

Q. And the two commissions of Mississippi and Louisiana met, did they?

A. Met, yes sir, and entered into this agreement with reference to certain lines.

Q. Do you know what that agreement was?

A. Only in a general way.

Q. Will you please examine that document which, for the purpose of identification, is now marked Document No. 4 and state whether you are able to testify, or not, that this is a correct transcript or correct minute of what transpired, between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi concerning which you have just been giving evidence?

A. This appears to be a copy of the proceedings that the commission forwarded to me after the two commissions had entered into this agreement.

Mr. DYMOND: In connection with the testimony of Gov. Heard, the State of Louisiana now offers a certified copy of the resolution adopted by the joint conference of the Louisiana and Mississippi oyster commissions on September 9th, 1902.

Q. Have you any personal knowledge of any subsequent meeting

between the two oyster commissions of Mississippi and Louisiana concerning the matter that is provided for in this agreement?

A. Yes sir. Sometime in the latter part of 1902, Governor Longino addressed me a communication requesting a joint meeting of the two commissions for the purpose, as he claimed, of modifying the agreement which had heretofore been entered into.

Q. You mean the two oyster commissions?

A. Yes sir, I mean the oyster commissions. I acknowl-
315 edged receipt of that request as shown by my letter book, on November 21st, 1902, reading as follows:

"NOVEMBER 21ST, 1902.

His excellency Gov. A. H. Longino, Jackson, Miss.

MY DEAR GOVERNOR: I beg to acknowledge the receipt of your communication of the 19th inst. referring to the differences as to the limits between Mississippi and Louisiana affecting the oyster industry of the two States and I have carefully noted its contents. I herewith enclose copies of the agreements which were entered into between the oyster commissions of the two States at a joint conference held in New Orleans on September 9th 1902 and of the ratification thereof by the board of oyster commissioners of Mississippi at a meeting held by them at Gulf Port on September 12th 1902. I have also enclosed an extract from a letter on this subject matter of date November 12th 1902 which was addressed to me by Hon. John Dymond Jr. attorney for the Oyster Commission of Louisiana. These enclosures contain information that I would be pleased to have you note. Then if your view as expressed in your communication of the 19th inst. undergo any modification since, you will please so advise me and I will take up the matter with the oyster commission of this State. Thanking you for your greatly appreciated kind wishes concerning my recent spell of ill health, which, I am glad to inform you has well nigh passed off,

With expressions of my highest esteem

I remain very truly yours,

W. W. HEARD, Governor."

Q. Was that letter sent by you, Governor, to Governor A. H. Longino?

A. Yes sir.

Q. Have you any idea where the letter received from Governor Longino, which you answered, now is?

A. My impression is that I sent it to you, that I forwarded the letter to Mr. Dymond.

Mr. Dymond of counsel for the State of Louisiana states that he corroborates the impression of the witness and that he will make a search for the letter and endeavor to produce it at a later date.

Q. Were there any subsequent actions taken by you in connection with this request of Governor Longino?

A. Yes sir.

Q. What was done; did you hear from Governor Longino——

A. After hearing from Mr. Dymond as to the most suitable and convenient date, I wrote Governor Longino on December 5th 1902, as shown by my letter book which is now before me, reading as follows:

"DECEMBER 5TH, 1902.

His excellency Governor A. H. Longino, Jackson, Miss.

MY DEAR GOVERNOR: I have the honor to acknowledge receipt of your letter of the 25th ult. requesting a joint conference of the oyster commissions of Louisiana and Mississippi with a view of arriving at a more satisfactory adjustment of the contention over the oyster fisheries in the disputed coast territory. Immediately upon receipt of your communication I addressed a communication to Hon. John Dymond Jr. attorney for the oyster commission of this State to ascertain the date of the regular meeting of our commission and such suggestions as he might desire to make relative to a joint conference. He has just informed me that our commission meets on the third Wednesday in each month and it would, therefore, meet in regular session in New Orleans on the 17th of the present month, consequently I would suggest that the contemplated joint conference be held in the city of New Orleans on Wednesday the 17th
316 inst. at 12 o'clock, at No. 339 Carondelet street. If this date is agreeable please notify me, also your own commission and I will likewise notify our own. With best regards I remain very truly yours,

W. W. HEARD, Governor."

In reply to the letter just read, Governor Longino wrote to me suggesting the 16th inst. instead of the 17th of December as he had an engagement for the 17th.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offers in evidence, the original letter of Governor Longino under date of December 8th, 1902, for identification, marked Document No. 5, copies of which are to be furnished to counsel for the State of Mississippi.

Q. Proceed Governor?

A. This joint meeting was held in this city on the day indicated in Governor Longino's letter. My recollection is that the oyster commissions of both States were present and the attorney general, Mr. McClurg, of Mississippi, and Governor Longino, Attorney General Guion, My. Dymond and myself together with a number of citizens were in session for several hours and the question of agreement heretofore made was discussed thoroughly.

By Judge GUION:

Q. When you speak of agreement, do you mean the agreement——
A. Fixing certain——
Mr. DYMOND: Of September 9th 1902?
A. Yes sir; I mean the agreement dated September 9th 1902 and marked Document Number 4

By Mr. DYMOND:

Q. What was the result?
—. ——.

By Judge GUION:

Q. We would like you to state exactly—first, what was done, before we reach the result, what was suggested by either one side or the other and what was accomplished?
A. The proceedings of the joint conference ought to show what was done, but my recollection is that nothing was accomplished. That the two commissions, after hearing the discussion from both sides, maintained the agreement of September 9th 1902.
Q. What was asked at that meeting and by whom?
A. Governor Longino wanted the agreement so modified, as I recollect it, that certain Mississippians could fish in waters prohibited by the lines indicated in this agreement.
Q. Was anything said at that meeting by way of argument in favor of that proposition by any one?
A. By Governor Longino and the attorney general.
Q. Of what State?
A. Of Mississippi, and I think at that same meeting there was a protest made by Mr. Gilmore who claimed to be the owner of Isle à Pitre, protesting against his land, situated on that little island, being included in this neutral territory.
Q. Verbal protest?
A. Yes sir, because, as he claimed, he had patents from the State which had been approved by the Land Department at Washington.
Q. Was that made at that meeting in open session?
A. Yes sir.
Q. By what Mr. Gilmore?
A. I don't know his initials; it is the attorney here.
Q. Do you mean Mr. Samuel Gilmore?
A. No sir.
Q. His brother?
317 A. Yes sir, what is his name?
Q. Do you remember what Governor Longino desired that the two oyster commissions would consent to; was there any modification of the agreement of the 9th of September 1902, asked?
A. Governor Longino desired a modification, but, as I have stated, the two commissions, as I understand it, declined to make any modification.

Q. What was the modification that Governor Longino desired?

A. I do not remember the specific change. We had a map before us and he indicated on that map where he claimed that they had a right to fish oysters and we, or rather Mr. Dymond, I believe it was differed with him as to his rights as shown by that map.

Q. Do you remember whether the modification of the agreement of the 9th of September 1902, which Governor Longino desired, was in the direction of restricting the limits or enlarging the limits within which the Mississippi people might fish oysters?

A. As I understood it, he wanted to enlarge the limits and permit the Mississippians to fish in the waters that were prohibited by this agreement.

Q. Do you remember whether those waters were in the open water area, or whether they were below the coast line that Louisiana claims to be her coast in the parish of Saint Bernard?

A. I don't remember that distinctly, Judge. I remember it being urged by some one that the reason the two commissions had agreed upon this particular line was that it was easier patrolled than if they were to yield to the contention of Governor Longino. That their two points of line came near together and they could patrol that coast with much more ease than if they granted the contention which he was demanding.

Q. That meeting, as I understand, was a meeting prior to the meeting of the two commissions at which Governor Longino made that suggestion of modification?

A. How is that? I don't understand you.

Q. Read the question. (Question read.) In other words, what I want to know is this, Was there a meeting at which the two commissions were present, yourself and Governor Longino, prior to the the meeting of the two oyster commissions on the subject of the acceptance or rejection of this proposition?

A. It was a joint conference, both commissions being present, and it was discussed in open session afterwards.

Q. What became of that conference?

A. I think, on the same day, afterwards, the visitors if I may so use the term, withdrew and the two commissions took up the question and passed upon it. That is my recollection of it.

By Mr. ZACHARIE:

Q. In regard to Mr. Gilmore's protest, did Mr. Gilmore claim that he owned this Isle au Pitre by an entry from the United States Government or from the State land office of Louisiana?

A. He claimed to own it by purchase.

Q. From whom?

Mr. TAYLOR: I desire to note an exception to that question as asking for a statement by the Governor in reference to the contents of documents which can be proved by documentary evidence, as to the nature of a man's title.

A. Mr. Gilmore, as I recollect it, protested of Isle au Pitre being included in the neutral territory, upon the ground that he was the owner by purchase of these lands, and that they had been purchased from the State of Louisiana and had been approved to the State as swamp lands by the Land Department at Washington under the swamp land grants of 1849 and 1850. That is what I said before, or intended to say.

By Mr. DYMOND:

318 Q. When you were advised by Governor Longino of Mississippi, of the original appointment by him of his amicable boundary commission, did you reply to that communication of Governor Longino?

A. Yes sir.

Q. Will you please state whether you made a letter press copy of your reply?

A. I did, and it reads as follows:

"FEBRUARY 12TH, 1901.

His excellency Governor A. H. Longino, Jackson, Miss.

DEAR GOVERNOR: I have the honor to acknowledge receipt of your communication of the 9th inst. advising me that you had appointed five commissioners from your State to confer with the commissioners from this State to determine the oyster boundary lines between Mississippi and Louisiana. I shall transmit to day, to the Louisiana commissioners, the names of those whom you are pleased to appoint. I would be further obliged to you if you would be so kind as to direct your secretary to return to this office the copy of the proceedings of the conference held at New Orleans on the 19th ult. which were enclosed with my last communication to you.

Very truly yours, W. W. HEARD, Governor."

Cross-examination.

By Mr. TAYLOR:

Q. I understand you to say that in discharging your duty as chief executive of Louisiana in enforcing the oyster laws, that your purpose was to protect this territory from the intrusion of non residents of the State of Louisiana. It was not against the citizens of any one particular State, was it, more than another?

A. My information was this intrusion, if you wish to use that term, was only by the people from Mississippi.

Q. Didn't you hear the testimony this morning of one of your witnesses who said there were as many as 300 boats, a fleet, at one time, composed of people from Alabama and Mississippi?

A. That was Governor Estopinal's testimony. That was some two or three years previous to the time I am now speaking of; I think he referred to 1898.

Q. Don't you know the fact, that that was not confined to the citi-

zens of Mississippi, that citizens of Alabama as Governor Estopinal testified, that they were among those who had boats there fishing in these disputed waters?

A. No sir, I do not know that. As I have just stated my information was——

Q. That Mississippians were there——

A. That it was Mississippians that were infringing upon our oyster laws.

Q. When you were enforcing the laws of Louisiana would you have exempted people coming from Alabama fishing in those waters and enforced the laws against the State of Mississippi?

A. No sir.

Q. It was not your purpose to make any discrimination?

A. No sir.

Q. Against the citizens of one State in favor of another?

A. I never heard of Alabama or any other citizens claiming the right to fish there because that territory belonged to their State, and it was only the Mississippians who claimed they had a right to be there. They claimed the territory and hence the procedure could be only against Mississippi.

Q. The procedure then would not have permitted Alabamians to go and fish there while at the same time prohibiting Mississippians from fishing there?

A. No sir, all non residents, all were to be excluded.

Q. It was against all non residents?

A. Necessarily so.

319 Q. Now, Governor, try and refresh your memory on this point. It was in the summer, I understand, of 1901, that there was a failure to make any amicable agreement; was it not the subsequent summer of 1902 that you took this trip to which you refer. See if you can refresh your memory; was it not after you had failed——

A. I have been going over there every summer and I am not able to say——

Q. Whether it was the summer——

A. Whether it was the summer of 1901 or 1902. I generally——

Q. But it was certainly in the summer. Was it as late as July whatever year it was?

A. I think it was the last two weeks of July.

Q. Of one year or the other?

A. Yes sir. I do not like to stay over there in August on account of the gales.

Q. Was Robinson the name of the captain of the schooner of whom you made inquiry as——

A. McDonald.

Q. The fact that you inquired of him showed that you had no personal knowledge yourself?

A. Yes sir. It was a question that was being discussed.

Q. You were inquiring for information——

A. Merely for information.
A. And you had no knowledge personally——
A. No sir.
Q. — of what these limits and boundaries were?
A. And he pointed out to me what he claimed, what his understanding was of the lines, and the reason of that, we were there quite a while, we were overtaken by a calm and night had also overtaken us and we did not want to anchor at that particular point and he rowed the schooner across the channel.
Q. You have no personal knowledge of what he told you was true or untrue, sound or unsound?
A. No sir.

SIDNEY F. LEWIS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are a resident of the city of New Orleans?
A. Yes sir, I was born in the city of New Orleans.
Q. How long have you lived here?
A. Fifty years.
Q. What is your occupation?
A. I am a civil engineer. I graduated at the University of Virginia in the degree of civil engineering in 1875.
Q. What is your present employment?
A. I am a member of the board of State engineers since April 15th 1880.
Q. Are you the Sidney F. Lewis who was appointed by Governor W. W. Heard a member of the amicable boundary commission to confer with a similar commission to be appointed from Mississippi?
A. Yes sir, I am.
Q. Did you attend the conference that occurred in the city of New Orleans on March 26th 1901?
A. I did.
Q. Will you please look at this document marked Exhibit D, the original of which is annexed to the bill of complaint now on file in the United States Supreme Court, at Washington, D. C., in this suit, and state whether you recognize it to be the minutes of the meeting of the joint boundary commissions?
A. Yes sir, I do.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, offer and produce for the purpose of filing in evidence, the original of said minutes now on file
320 in this suit in Washington D. C. marked Exhibit "D," a copy of which has been tendered counsel for the State of Mississippi.

Q. Col. Lewis, in connection with the motion made by Mr. Bowers of Mississippi set forth in said minutes, was there any map prepared by the Louisiana commission setting forth their contention as to boundary?

A. Yes sir.

Q. Who had charge of the making of that map?

A. I presume I did and the members, myself and the members of the Louisiana commission.

Q. Who had the actual *confection* of the map itself in hand?

A. I did.

Q. Did you make up the map; did you make the map requested?

A. I made it with the assistance of the draftsman of the board of State engineers.

Q. What basis did you use for this map?

A. The basis? You mean what maps I used?

Q. Yes.

A. I used the Coast Survey charts of the Louisiana and Mississippi coast.

Q. What Coast Survey charts; do you know them by number?

A. No, I don't know them by number.

Q. Well, by what department, of what Government were those Coast Survey charts made?

A. By the United States Government.

Q. Will you please state what charts, by number, were used, in making up this map?

A. Coast chart 191, coast chart No. 190, coast chart No. 189, scale 1 to 80,000, that is the same scale for all the charts.

Q. Will you please look at the document which is before you and which is marked Exhibit E and purports to be a certified copy of the original Exhibit E filed in this suit and now in the custody of the clerk of the Supreme Court of the United States in Washington, D. C., and state whether you recognize it to be a true and correct copy of the original map as prepared by yourself?

A. Yes sir, I do.

Q. How did the Louisiana commission come to the conclusion that that was the line that it should claim as being the proper boundary between the two States?

A. Well, my interpretation of the Louisiana purchase in 1803 which went on to describe the boundary of Louisiana, when it got to this part of it—have you got the language of that purchase?—I mean to say it stated to the gulf of Mexico.

Q. Do you refer to the act creating the State of Louisiana?

A. No; I am speaking of the Louisiana purchase in 1803; that is prior to the act creating the State of Louisiana. It went on to say—have you got it here? You ought to have it? The Louisiana purchase? It went on to say that the eastern boundary of Louisiana followed the Mississippi river into the River Iberville—I don't know the exact wording, probably I can get it and show what I mean. Well, as far as I can recollect it went on to say that the eastern line,

that is, the Louisiana purchase, came down the Mississippi river then went into the River Iberville, and then in Lake Maurepas and down through Lake Pontchartrain out into the gulf of Mexico.

Q. Through what, leading from Lake Pontchartrain?

A. It didn't say through what; it said to the gulf of Mexico. Now, my interpretation, to the gulf of Mexico, is by the deep water channel, and my reason for that is this: the gulf of Mexico does not mean Lake Borgne——

Mr. TAYLOR: Well, Mr. Commissioner, I must note here an objection now to the Major putting down an interpretation of the terms of the treaty of 1803 as that is a question of pure law.

321 A. —to the gulf of Mexico means by the deep water channel.

Q. Does the line on this map Exhibit E follow the deep water channel?

A. Yes sir.

Q. Do you refer to the line in red ink?

A. Yes sir, here it is, this is the end of it right here, it is here on the map, it is written here boundary line of Louisiana, purchase 1803, and then here it is also repeated, "boundary line of Louisiana purchase 1803" east of the Chandeleur islands.

Q. Did you also set forth the line bounding the State of Mississippi as it enters the gulf of Mexico at its eastern extremity?

A. Yes sir, six leagues from the general coast line.

Q. Is that indicated on the map and named as the southern boundary line of the State of Mississippi?

A. It is the southern boundary line of the State of Mississippi.

Q. Does it take up and join the Louisiana line just north of Chandeleur islands?

A. It does right at this junction, right here.

Q. Slightly northwest?

A. Yes sir, slightly northwest of Chandeleur islands.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana offer the original Exhibit E now in the custody of the clerk of the Supreme Court of the United States having been filed in this case and tenders to counsel for the State of Mississippi a certified copy thereof, the original of which is described in the bill of complaint as Exhibit E.

Q. Now, what was done with this map, after it was made up by you?

A. It was presented to the board of commissions, that is, to the two bodies of commission, that is, Mississippi and Louisiana commissions and it was discussed.

By Judge GUION:

Q. For what purpose was it submitted?

A. That was the contention of the Louisiana commission and sub-

mitted as their contention. The Mississippi commission had no contention, they had no maps at that time.

Q. That contention was for the purpose of bringing about what?

A. Bringing about a discussion on the merits of the case.

Q. Ultimately, for any purpose at all?

A. Well, I don't quite understand.

Q. What had the two commissions in view, or what had the Louisiana commission in view in meeting the Mississippi commission?

A. To decide upon a boundary line which would be satisfactory to both parties, I presume.

Q. Did this map play any part, so far as the Louisiana commission was concerned in that contention?

A. It did, it was their contention. It is signed by the parties, members of the boundary commission, it says so on its legend there.

By Mr. DYMOND:

Q. The resolution at that joint conference proposed by Mr. E. J. Bowers, as shown by Exhibit D, provided that the Louisiana Boundary Commission was requested to express their ideas as to the boundary line of the area which had been the subject of discussion the line to be delineated in red ink which map should be presented to the Mississippi commission subsequently and that they in turn should endorse their views thereon. Was this map as prepared by you and approved by the commission of Louisiana presented to the Mississippi commission for the purpose of having the Mississippi commission endorse its views thereon?

A. Yes sir, it was.

Q. Do you remember what, or do you know what the result of the consideration of the matter by the Mississippi commission was?

322 A. We had two meetings, if I remember,—let me find out. I only can say here what is in the proceedings of the meeting. It is expressed here "This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time." Now, what occurred subsequently to that I don't know. I don't believe they have had any meeting since then.

Q. Was there any meeting at which the report of the Mississippi commission was submitted, so far as you know, the reply of the Mississippi commission?

A. Of both commissions?

Q. No sir; I am speaking of the Louisiana commission?

A. I am not positive, I believe there was but I don't remember.

Q. Do you remember the Mississippi report was submitted at that meeting?

A. Have you got the proceedings of that meeting here. I can't

say positively whether there was or not unless I can read the proceedings.

Q. Do you remember whether you ever saw the Mississippi commission's report?

A. No sir, I do not.

Q. Do you know whether it made a report or not?

A. I don't know that.

Q. Will you please look at this document marked Exhibit "F" being a certified copy of the original Exhibit F made part of the bill of complaint in this suit?

A. I don't remember that the Louisiana commission were ever called together, they may have been called together, but I don't remember of being present when this letter was received. All I do remember is, there was a conversation between Mr. Dymond and myself and he said they had rejected that. Between these documents there is considerable lapse of time, one was in February 8th 1901 and the other was July 20 1901.

Q. What do you refer to as February 8th?

A. That was—wait, excuse me, what date is the minutes of the meeting?

Q. March 26th 1901.

A. March 26 1901 instead of February 8th, and this answer to this contention by the Mississippi Boundary Commission is dated July 20th 1901.

Q. Mr. Lewis, are you at all familiar with the locality in dispute?

A. In a general way I am.

Q. Have you ever been there?

A. I have been on a cruise only part of the way. I have not been—I have been all through this part.

Q. What part do you refer to?

A. I have been from the Rigolets to Isle au Pitre and all around Chandeleur islands and Cat island——

Q. Did you ever go——

A. Down to the mouths of the Mississippi river through South pass.

Q. Did you ever go from Petite pass at the head of Malhereux point as far east as Isle au Pitre?

A. I have never been near, skirting the coast; I have been out sailing, out as far as Isle au Pitre, at Cat island, Pass Marian whatever it is called.

Q. Have you ever been down in the marshes?

A. No; not down in the marshes. I have been at Breton island—yes, I will take that back, I went around Cubic's gap, I brought a schooner around, that was a very short cut around, around Cubic's gap to the Mississippi river through the Louisiana marshes, that is way down near the head of the passes, that was in 1878.

Q. What line did you follow when you drew the line from the mouth of Pearl river to the point between Isle au Pitre at its eastern end and Cat island at its western end?

A. The line of the channel.
Q. Is that the channel line?
A. Yes sir, on the chart.
Q. How is that shown on the chart?
A. It is shown here by a red dotted line.

Q. How would you know that was the channel prior to
323 projecting the red dotted line thereon?

A. By the depths of water there indicated on the chart; these are charts for navigation purposes and the channel was more or less bouyed.
Q. Do they show the depth of water?
A. Yes sir.
Q. Is there any indication on the chart of the position of the buoys?
A. There may be, yes, here it is, the legend of the chart explains all that, red buoy to be left in entering on starboard hand, black buoy to be left in entering on port hand, the legend shows that. I can't see very well, I suppose you will have to take a glass to look through to see where the buoys are.
Q. Did you pick out the buoys when you drew the line?
A. Yes sir.
Q. Is that the deepest channel between those two points?
A. Yes sir.
Q. Have you ever passed along there and noticed the buoys as you sailed along?
A. I have, yes sir.
Q. What sort of buoys are they?
A. They were anchored, torpedo shaped buoys, that is what they are, red and black, some places black and other places red.
Q. Were they channel buoys?
A. Yes sir.

By Judge GUION:

Q. Placed there by whom?
A. By the United States Government.
Q. Is the line along which you saw those buoys the line that is designated on this map?
A. Practically it is, yes sir.
Q. What line do you refer to, what color?
A. The dotted red line on this map.
Q. Then, do I understand you to say that this map, Exhibit E, a copy of which is before you now, was tendered to this joint commission of gentlemen appointed by Louisiana and Mississippi at the time that you had a conference in respect to the establishing of a boundary line if possible between the two States?
A. Yes sir.
Q. Whose contention does this map Exhibit E, represent?
A. It represents the contention of the Louisiana commission,

boundary commission, signed by every member of that commission.

Q. Do you remember whether anything was said or done by the Mississippi commission at the time it was presented to them?

A. Simply what I said awhile ago, that Mr. Bowers said it was a novel idea. He had not considered it in that way. I believe it is all here in the minutes. I can't remember.

Q. Then I understand you, you had no further conference——

A. I don't remember of any further conference about it after that. I do remember, as I said before about Mr. Dymond. I asked him how the boundary line was getting along, and he told me he had received this letter I believe, that they did not, the Mississippi people did not agree on that.

Q. Did the Mississippi commission advance any theory at that time as to the boundary line of Mississippi?

A. No sir. They were not prepared, it seemed to me, to offer any theory.

Cross-examination.

By Mr. TAYLOR:

Q. As I understand you, when you took this chart as a basis and projected on it, this red line, indicating the claim of Louisiana, you meant that to be an indication of the boundary line of Louisiana as fixed by the treaty, terms of the treaty of 1803, as you understood it to mean?

A. Well, not only the treaty of 1803 but also subsequent—because if you look at the map you will see that there are two boundary lines here, one under the Louisiana purchase of 1803 which
324 runs from Lake Pontchartrain to the gulf of Mexico, that line there, it continues here and goes east of the Chandeleur islands and then subsequently to it, I don't know what act it was, 1812, this boundary line as far as the State of Louisiana was concerned was changed, this part of it, it went on to say, it went to the 31st parallel and then went east to Pearl river and from Pearl river to the gulf of Mexico, this little portion of it here, until it reaches the original boundary of the Louisiana purchase.

Q. Is there anything in that treaty of 1803 or those subsequent acts to which you refer, anything which expresses the idea that the deep water channel here is the boundary.

A. Yes sir. I think to the gulf of Mexico means through the deep water channel

Q. Are there any such words used in either treaty or acts?

A. No sir. It says to the gulf of Mexico and——

Q. And it was just your conclusion that it meant through a deep water channel?

A. No sir, not exactly, my conclusions were from this point of view that I did not consider that any shallow bodies of water Lake Pontchartrain and Mississippi sound, the gulf of Mexico.

Q. That was your construction?

A. Yes sir, from an engineering standpoint.

Q. But no express words, either in the treaty or subsequent act, there were no express terms on which you could base that construction?

A. No sir.

Q. And when that line indicated by you upon that theory was submitted as I understand, the Mississippi commission, speaking through Mr. Bowers, seemed to think it was a novel theory?

A. Yes sir.

Q. There was no indication on their part of accepting your theory?

A. No sir they merely said that they would have to consider it. It states here in the proceeding, novel.

Q. Didn't they, subsequently, in their report, didn't they make a formal or written declination of any acceptance of your theory?

A. As I stated previously, I only know from talking with Mr. Dymond afterwards.

Q. You don't remember what the contents of that written report were?

A. Except what I read here. But that is a fact. I say that because I don't believe that the members of the Louisiana Boundary Commission were called together again to consider this, I don't remember, it is possible they had a meeting, if they did their proceedings ought to show it, I can't recall that.

ALBERT ESTOPINAL, JR., re-called on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this document marked Exhibit F, being a certified copy of the original Exhibit F on file in this case in the office of the clerk of the Supreme Court of the United States in Washington, D. C. and state whether you recognize it to be a copy of the reply of the Mississippi Boundary Commission?

A. I do recognize it as such.

Q. Was it originally received by you?

A. Yes sir.

Q. After you received that, did you consider that there was any further possibility of an amicable settlement of this matter outside of the court?

A. I did not. The communication itself indicates there
325 could not be, because in it was suggested—it was evident that there could be no amicable settlement of the differences and that the only resort would be to the court.

No cross examination.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer the original Exhibit F, on file in the office of the clerk of the Supreme Court of the United States in Washington, D. C., and tenders to the counsel of the State of Mississippi a certified copy thereof.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence a certified copy of the report of A. H. Longino, governor of Mississippi, to the legislature of Mississippi on the subject of the appointment by him of his amicable boundary commission The same to be marked Document No. 6 for identification, a copy of which is not required by the State of Mississippi as it is part of their official records.

EDGAR PILIE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your occupation?
A. I am a surveyor.
Q. Where do you live?
A. In New Orleans.
Q. How long have you been a surveyor?
A. I have been a surveyor since 1867.
Q. How old a man are you?
A. I am 59 years of age.
Q. Have you ever held any official position as a surveyor?
A. I have been deputy city surveyor, that is all.
Q. Have you been practicing your profession since 1867?
A. Yes sir, continuously since 1867.
Q. Are you also a draftsman?
A. Yes sir, that is a part of my profession.
Q. Did you prepare, at the request of the State of Louisiana, a map of the State of Louisiana, a map of the State of Mississippi and a map showing Mississippi and Louisiana combined?
A. Yes sir.
Q. Will you please look at these maps which are for identification to be marked Diagrams No. 1, 3 & 5, and state whether they are the maps so prepared by you?
A. They are.
Q. From what data were those maps prepared?
A. From maps furnished by you, Mr. Dymond, furnished me by you of the State of Louisiana and of the State of Mississippi.
Q. Were those recognized maps of those two States?
A. I don't remember whether there was any approval of those maps but I think they were the regular maps of those States.
Q. Are those maps made according to a definite scale, these maps that you have before you, the diagram——

A. Yes sir at the scale of 36 miles to an inch.

Q. Was that all calculated in accordance with the scale of the other maps which you have before you?

326 A. Yes sir, reduced proportionately.

Q. Have you, in your office, any maps of Louisiana or Mississippi?

A. I think that I have one other map, yes sir, a map of the State of Mississippi.

Q. Have you a copy of a map of Louisiana?

A. I don't think that I have. I think I returned it to you.

Q. What maps were these, do you recall, that you made these drawings from?

A. No I don't remember, I don't recall what maps they were, who by.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence the said diagrams No. 1, 3 and 5, with the understanding that counsel for the State of Mississippi will be given a tracing copy of each of said diagrams.

No cross examination.

Mr. DYMOND: Counsel for the State of Louisiana offer and make note of act 65 of the legislature of the State of Louisiana for the year 1884, authorizing the attorney general of the State of Louisiana to institute such suit on behalf of the State as he may find necessary, a copy of said act to be furnished to the counsel for the State of Mississippi.

WILLIAM BEER, a witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Mr. Beer, do you live in the city of New Orleans?

A. Yes, sir.

Q. How long have you been living here?

A. Since 1891, 13 years.

Q. What is your occupation, profession?

A. Librarian.

Q. What position do you hold as librarian in this community?

A. I am librarian of the Howard Memorial library and of the New Orleans public library.

Q. What are the number of volumes in the Howard Memorial library?

A. About 55,000.

Q. What are the number of volumes in the New Orleans public library?

A. About 60,000.

Q. Did you ever hold any position as librarian prior to your holding these positions?

A. For a short time in Topeka, Kansas.

Q. Did you ever hold any before that?

A. No sir.

Q. Do libraries and do these libraries contain maps?

A. The Howard Memorial library has a very large collection of maps; the collection however, principally in the library is my personal property.

Q. Are those maps of Louisiana?

A. They are principally maps of Louisiana.

Q. Have you, in your capacity as librarian, had occasion to study and look into the question of the existence of maps of Louisiana?

327 A. I have specially devoted many years of study to the collection of maps of Louisiana.

Q. What do you consider your collection to be, a good collection of Louisiana maps?

A. It is probably unequaled.

Q. Anywhere else?

A. In number and quality.

Q. Which is the oldest of these maps that you have in this collection of maps of Louisiana?

A. There it is, the map of 1754.

Q. By whom?

A. It is made by Bellin. The title is Carte Reduite, des Costes de la Louisiana et de la Floride. Bellin was one of the most celebrated map makers of that period. This map, I should say, was made for the French government, and is therefore surrounded by conditions of correctness much more than——

Mr. TAYLOR:

Q. You are making statements here and I would like to know whether you know these things of your own knowledge or whether you simply know them historically. Have you any personal knowledge of——

A. I know that the map says, drawn up by order of Duc de Choiseul.

Q. You have no personal knowledge as to those facts?

A. I have no personal knowledge as to what took place in 1754.

Q. All that you know is that there is such a legend on that map?

A. Yes sir, but that has accompanied it since its publication.

By Mr. DYMOND:

Q. Is this map a part of the collection of the Howard Memorial library?

A. Yes sir.

Q. Do I understand you to say that this map which you now have

before you in the original and which is part of the collection of the Howard Memorial library was published——

By Mr. TAYLOR:

Q. This is your personal property, it does not belong to the Howard Memorial library?

A. It is my personal property but it is kept in the Howard Memorial library.

By Mr. DYMOND:

—was published in 1754.

A. 1764.

Q. Does it bear on its face the date of its publication?

A. Yes sir.

Q. Does it bear on its face the legend indicating by whom and under what circumstances it was compiled and published?

A. Yes sir.

Q. Does it indicate under what authority the map was published?

A. It states that it was distinctly published for the use of the French government.

Mr. DYMOND: Counsel for the State of Louisiana now tenders the original map to counsel for the State of Mississippi for inspection, and offer in lieu of the original for numbering only a photographic copy of the original, together with a photographic copy of that portion of the map covering the area in dispute in the instant case, which said maps are for identification to be marked 8 and 8–a.

Mr. TAYLOR: We desire to note an exception that unless
328 the original itself is made a part of the record in this case that no photographic copy can be offered as evidence.

Q. Will you please examine these two photo prints marked 8 and 8–a and state whether they faithfully represent, as photographic prints the original map which now lies before you?

A. I have carefully examined them and find them to be true photographic copies.

Q. What is the next oldest map in this collection that you have here?

A. 1766.

Q. Will you please dictate to the stenographer the legend which appears on that map?

A. The particular part of this map which bears on the case has for legend De Uitloop van de Rivier Mississippi. This is a map made in Holland and is part of a book of which the title is Hedendaagsche Historie of Tegenwoordige Staat Van Amerika at Amsterdam by Isaac Tirion, 1766.

Q. Is it one of the maps of the collection in the Howard Memorial library of which you have charge?

A. It is.

By Mr. TAYLOR:

Q. This is your personal property?
A. These are all my personal property.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection the said original map just testified to by the witness.

By Mr. DYMOND:

Q. Will you please look at these photographic prints marked 9 and 9–a and state whether they are faithful and correct photo prints of the map which you have before you and concerning which you have just testified about?
A. I have examined them and find them correct photo prints.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi copies of said photo prints marked 9 and 9–a.

Q. What is the next oldest map in this collection?
A. 1775.
Q. Will you please say when and by whom the map that you now have before you was published?
A. It was published by Thomas Jeffreys, who, in 1775, issued an American atlas of which this is one of the maps. I have the knowledge of the evidence of the writings of the period which quote that man's writings with which I am familiar.

Mr. TAYLOR:

Q. You have no knowledge except what you have derived from writings that are on the map or from books?
A. No sir.
Q. If you make that clear it will save a great deal of trouble.

By Mr. DYMOND:

Q. Will you please state whether this collection of maps has been submitted to you for the purpose of studying and acquainting yourself with the history and identity of these maps?
A. Since the selection of these maps for this purpose I have given perhaps, greater attention to them than previously, but I have been familiar with the history of these maps as part of the history of the maps of Louisiana always.
Q. How have you made yourself familiar with the history of these maps?
329 A. By constant study and adding to the collection and by fortunate travel in all the great collections of the world in which collections I have seen copies of these maps.
Q. Do you consider yourself competent to speak as an expert in regard to the particular maps which have been and are to be presented before you so far as their history etc. is concerned?
A. Most decidedly I do consider myself.

By Mr. TAYLOR:

Q. Who was Thomas Jeffreys?

A. Thomas Jeffreys was the official geographer to the King of England.

By Mr. DYMOND:

Q. Will you please look at these photo prints to be numbered 10 and 10–a and state whether they are true and faithful photo prints of the map which you have before you, concerning which you have now testified?

A. I have examined them and find them to be true copies of the maps. Shall I add, that this examination is not an examination made at this moment, as I have compared these in order to discuss it, at leisure.

By Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection the original map concerning which the witness is now testifying and also tenders copies of the photo prints No. 10 and 10–a.

AGREEMENT.—It is agreed that the exception of counsel for the State of Mississippi made as to the first one of these maps offered is repeated to each and every one in turn where these photographic prints are offered.

Q. What is the next oldest map in this collection?

A. A map of the same date, taken from the same atlas of 1775. It is course of the Mississippi river from the Balise to Fort Chartres; taken on an expedition to the Illinois in the latter end of the year 1765, by Lieut. Ross of the 34th regiment, improved from the surveys of that river made by the French. London, printed for Rob't Sayer, No. 53 in Fleet street, published as the act directs 1, June 1775.

Q. You now have that map before you?

A. Yes sir.

Q. Is that one of the maps in the collection of the Howard Memorial library?

A. Yes sir.

Q. Will you please look at these photo prints to be marked 11 and 11–a and state whether they are true and faithful photo prints of the map which you have before you and concerning which you are now testifying?

A. I have examined them and find them to be correct photographic prints of the map.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to counsel for the State of Mississippi for inspection, said original maps and furnishes said counsel with photographic copies of same, marked map- 11 and 11–a.

At this stage of the proceedings the hearing was adjourned by the commissioner until 11 o'clock a. m., April 6th, 1904.

Resumption of Proceedings.

NEW ORLEANS, LA., April 6th, 1904—11 o'clock a. m.

Pursuant to adjournment, proceedings were this day resumed.

330 Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, attorney general of the State of Louisiana.
Mess. F. C. Zacharie, John Dymond, Jr., and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. William Williams, attorney general of the State of Mississippi.
Hon. Hannis Taylor, associate counsel for the State of Mississippi.

Direct examination — WILLIAM BEER resumed.

By Mr. DYMOND:

Q. Will you please look at this map which is now presented to you and state the date at which that map was published?

A. That was published in the year 1764.

Q. What does that map purport to be?

A. It represents the course of the River Mississippi from the sea to Bayagoulas.

Q. Has it any reference to any other map that we have offered or had you testified about in this case?

A. It is an English copy of the Dutch map made by Isaac Tirion in 1766.

Q. What number have we given that map in your testimony?

A. 9.

Q. What is the history of this particular map, so far as you are aware of?

A. It was first published in a periodical called the London Magazine and was received in England as a true representation of the country shown by the title.

By Mr. TAYLOR:

Q. I wish, as you go along, when narrating historical facts of which you could have no personal knowledge you would give us some basis on which you make those statements and that will save me the trouble of cross examining you on those points.

A. Historians are in the habit of collecting from publications of much more remote dates. The source of the authority in this is that the London Magazine was a magazine of wide circulation at that time and is accepted——

Q. Give us some evidence of that, how you know that the London

Magazine had a wide circulation? Give us some data on which you base your statements?

A. The basis is a study of 12 years of the history of everything connected with Louisiana.

Q. How do you know that this was published in the London Magazine?

A. The fact that this was published in the London Magazine is manifested by the map itself.

Q. You take that as conclusive evidence that it was published in the London Magazine?

A. A copy of the London Magazine can be obtained when you are in Washington from the librarian there. You can obtain it by subpœna.

Q. I don't want to go to that trouble to verify your statements. I have no technical right to interrupt you but I suggest these things in order to save time in cross examining you on these points in reference to things of which you could have no personal knowledge.

331 A. If a historian were collecting maps, for a book, for instance, if yourself were collecting maps you would put at the bottom of the map, from the London Magazine.

Q. How do you know it is from the London Magazine?

A. Because it is printed on the map, from the London Magazine.

Q. If you will indicate it is from the London Magazine because it is printed on the map——

A. I may say I have seen it. I am under oath. I state I have seen this map in a periodical known as the London Magazine. The facts I am giving you I am quoting from the articles before me.

By Mr. DYMOND:

Q. Will you please look at this photo print which is now for the purpose of identification to be marked Map No. 12 and state whether that is a true and faithful photo print of the map concerning which you have just been testifying and which is before you?

A. From a careful examination, both prior to this and at this time I state this is a true photographic copy.

Mr. DYMOND: Counsel for the State of Louisiana thereupon offer to counsel for the State of Mississippi, the original map concerning which the witness has just been testifying, for inspection, and produced for the purpose of numbering the said photo print of said map to be numbered map No. 12 and tendered to counsel for the State of Mississippi a photo print of said original map.

Q. What is the next map in point of age that you have before you?

A. A map of 1830.

Q. By whom was that map made up and at what time and for what purpose and state your means of knowing.

A. The information on the map itself conveys this, that it is a

part of an illustration of a work entitled Travaux Civils des Etats-Unis. It is entitled Carte Generale de la Floride et du Delta du Mississippi, presentant le trace du Canal projecte de l'Ocean Atlantique on Golfe du Mexique a travers l'Isthme des Florides, ainsi que l'ensemble des ameliorations projectees on en cours d'execution qui ont ete recommandees par la Commission des ameliorations pour completer le systeme de navigation interieurs parellele a la cote. I should say as to the date of publication of a map its appearance to the public, maps are not always printed at the exact dates that they are made.

Q. By whom was this map, concerning which you are now testifying, made?

A. It was drawn by Major Pussin.

Q. Do you know who Major Pussin was?

A. He was a distinguished French engineer officer who came to America in 1830 to report to the French government upon internal improvements.

Q. Where did you derive that information?

A. From the report itself which I have seen; I have seen the report itself.

Q. Is this map one of the collection in the Howard Memorial library?

A. It is.

Q. Is the map concerning which you have just previously testified as being originally published by the London Magazine, also one of the collection in the Howard Memorial library?

A. It is.

Q. Will you please look at these photo prints which I hand you and state whether they are true and faithful photo prints of the map concerning which you are now testifying and whether you have examined the same and if so what examination you have made?

A. I have examined them at leisure and do examine them now and state them to be true and faithful photographic copies.

Q. And these photo prints which I now hand you, will you please examine them and state whether they are faithful and true
332 photo prints of that part of the map about which you testify which involves the area in dispute in this present litigation?

A. They are faithful copies of that area, of that portion of the map covering that area.

Mr. DYMOND: Counsel for the State of Louisiana for the purpose of numbering the said maps, now request the commissioner to number the same as 13 and 13–*a* and tenders to counsel for the State of Mississippi for inspection the original of said map and tenders to counsel of the State of Mississippi photo prints 13 and 13–*a*.

Q. What is the next map in point of age, that you have?

A. 1854.

Q. Will you please look at the map now before you and state what it is?

A. It is a map made by the United States Coast Survey and called Sketch H, showing progress between 1846 and 1854. The date of the map itself is 1854. It takes in from Tiger point in Louisiana to Bayou John in Alabama.

Q. Under what circumstances was this map issued?

A. It was issued as a part of the report of the United — Coast Survey of the year 1854.

Q. Will you please look at these photo prints which are now handed you and state whether they are true and faithful photo prints of the whole of the map now before you and concerning which you are now testifying?

A. I have examined them and do find them to be true and faithful copies of the map.

Q. Will you please now examine these photo prints and state whether they are true and faithful copies of that portion of this map which refers to the area which is in dispute in this litigation?

A. They are correct photo copies of it.

Q. You have examined them carefully heretofore and now to ascertain that fact?

A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now tenders to the counsel of the State of Mississippi the said original map and for the purpose of numbering, requests the commissioner to number the said photo prints of said map 14 and 14–*a* and tenders to the counsel for the State of Mississippi copies of said photo prints.

Q. Will you please look at the map which is now before you and state what it is, where it came from and when it was published?

A. This is a map of Arkansas, Louisiana and Mississippi. It is issued in H. Lange's Atlas of North America published in Brunswick, Germany in 1854.

Q. Have you ever seen the original atlas of which this map forms a part?

A. I have.

Q. Do you therefore know this to be the same as——

A. I recognize this as being the same map as issued in the complete atlas which I saw.

Q. Where did you get it from?

A. I make so many purchases that it would be impossible—I never kept a record of where I got these from. It was probably in Europe.

Q. Will you please look at these photo prints which you now have before you and state whether they are true and faithful photo prints of the map now before you and concerning which you have just testified and whether you have compared the coloring on the photo prints with the original and how that compares with the original.

A. I have compared separately the photography and the coloring. The coloring requiring a more careful examination, I find it to be correct in every particular.

333 Mr. DYMOND: Counsel for the State of Louisiana tenders to counsel for the State of Mississippi the said original map for examination and tenders to the commissioner for the purpose of numbering and identification the photo print concerning which the witness has testified, to be numbered map No. 15, and tenders to counsel for the State of Mississippi a photo print of said map.

Q. Will you please look at the map which you now have before you and state what it is?

A. It is a map of Louisiana representing the several land districts prepared to accompany the surveyor general's report for the year 1859.

Q. Of what surveyor general?

A. Of W. J. McCulloch.

Q. Where did this map come from?

A. It is a portion of the Senate Executive Document No. 2 of the first session of the 36th Congress.

Q. Who was W. J. McCulloch?

A. He was surveyor general of Louisiana. The Senate Executive Document of that late contains—this is No. 8—contains a report from many States and this is the map attached to the report of the surveyor general of Louisiana in that general report.

Q. Have you seen that general report?

A. Yes sir.

Q. Do you recognize this to be the map that accompanied that general report?

A. This is similar to the map in the copy of the report which I have seen.

Mr. DYMOND: Counsel for the State of Louisiana tenders to counsel for the State of Mississippi, the said original map for inspection; and for the purpose of numbering and identification, requests the commissioner to number the said map as map No. 16, and tenders to counsel for the State of Mississippi one of the photo prints of said map.

By Judge GUION:

Q. These maps that you have just examined and concerning which you have just testified, are, I understand, private maps belonging to yourself?

A. Yes sir; they are my private property. I should like to add a statement to that. As the librarian of the Howard Memorial library I would be unable to allow to issue from the Howard Memorial library anything belonging to it. One of the rules of the library is that nothing can go out; therefore for my own purpose I have

held, as my private property, purchased at my own expense, various things of interest to Louisiana, for the past years. Had these maps been a part of the records of the Howard Memorial library they could not have been used for this purpose.

Q. Do I understand that if these originals were to form a part of the records of this case and be left on file in the office of the clerk of the Supreme Court of the United States you would be willing to surrender them?

A. I am not willing to surrender them; they are part of my collection.

Q. Would you be willing to sell us these particular maps?

A. I would not be willing; I would be willing to assist the State to obtain duplicates of them.

Q. I am speaking of the originals, these——

A. You mean to sell these?

Q. Yes?

A. If I could replace them.

Q. But if you could not replace them?

A. I would not be willing.

Q. Do you know whether you can replace them?

334 A. Some of them possibly; others with great difficulty; of some I have only seen one copy; most of them can be found in the Library of Congress; a few of them not.

By Mr. ZACHARIE:

Q. What was your occupation prior to your being employed as librarian of the Topeka library?

A. I was mining engineer.

Q. For how many years?

A. Five or six years.

Q. What knowledge have you, or experience, in regard to the study and identification of maps and photographic prints of maps?

A. It was my work as a mining engineer to make and compare maps.

Q. And you have kept that up since?

A. Only by comparison.

Q. The testimony which you have given in regard to dates and authors and identity of maps; what has that been derived from?

A. In all but two cases, from the information on the map itself. In the two cases which do not bear that I wish to have the opportunity of securing the title pages of the works of which they form a part in order to confirm exactly the dates named by me.

Q. Can you furnish that?

A. I can obtain them.

Q. Prior to your examination in regard to these maps and the photo prints of them, what opportunity, time and care have you devoted to the comparison between the maps and the photo copies?

A. I have had both originals and the photo copies in my posses-

sion for some time, some two weeks, and I have carefully examin them at my leisure.

Q. About how much time have you devoted to these examin tions and comparisons, about?

A. It was very much about, probably eight hours.

Q. Has your examination of them been perfunctory or critical the minor details evidenced on these maps?

A. It has been specially critical of the minor details and of th territory in dispute.

Q. Are you willing, Mr. Beer, to allow us to offer these original in evidence in the Supreme Court of the United States provided that you would be allowed to withdraw them after the decision o the case, and substitute photographic copies?

A. Certainly I would do so; that is to say, the present purpose concerning these originals is to send them to the Saint Louis Expo sition; that exposition I believe will close in November; prior to that it would not be fair to the exposition to remove them.

Q. Would you be willing to sell these particular maps and thereby detract from the perfection of your collection?

A. Of so many as I can obtain other copies I would be willing to sell these or those as the case may be.

Q. How many maps altogether will be in this collection which you propose to exhibit at the St. Louis Exposition?

A. Nearly 200.

Q. And the maps here, I believe, amount to ten?

A. Yes sir.

Q. The taking away of these maps permanently from you, what effect if any would it have on your collection of 200 maps?

A. The collection is not complete, therefore the taking away of these would make it a little more incomplete than it is at present. Personally, I should object to it; but the damage to the collection would not be very, very great.

Cross-examination.

By Mr. TAYLOR:

Q. Are you what is known to the historians and geographers as a cartographer; are you a professional map maker?

A. When I was a mining engineer I was a professional map maker.

335 Q. Professional map maker in the sense we are dealing with maps here; have you ever made maps of countries and States?

A. I have made maps of rivers and estuaries, but not of States and countries.

Q. Have you ever made a map of a coast?

A. Yes sir.

Q. Or of a State as an original publication; have you ever done

any work which would by any proper means class you as what is known as a cartographer?

A. A cartographer, in my knowledge of the term, is a man who receives from surveyors certain indications of localities. He then plots them out on paper and connects them. The cartographer simply hands to the public something he believes to be a correct translation of a surveyor's notes. I have been such a surveyor and made maps from my notes.

Q. Have you ever been a publisher of maps?

A. I never made a map that was published.

Q. Does not the value of a map for the purpose of the geographer and the historian, depend on the reputation of the author of that map as a cartographer just as the value of a legal opinion from a lawyer depends upon his professional reputation?

A. Its value to the world, generally, depends on that. Its true value does not depend on that.

Q. Is it not the universal opinion of historians that it does and do not the map makers of the world, are they not rated and classed according to their reputation just as jurists are classed or any other professional men. Does not each map have its value according to the reputation of the map maker upon its legend?

A. Historians are accustomed to attach value to maps that have the greatest popularity, that have the widest publicity that has been obtained by certain atlases and not by the independent maps. Historians generally quote those documents. The best known atlases were those of Bellin. He never appeared in Louisiana. Bleauw who was a professional cartographer whose maps as relating to the gulf of Mexico are merely notes, records of what was published in France from actual surveys.

Q. Give us the name of the great English cartographer?

A. Jeffreys was the great English cartographer of the period of 1755 from whose map we quoted from; he made many maps, those of which are valuable are the ones made and taken from notes of actual surveyors such as the one of Lieut. Rofs, which was map No. 11.

Q. You have not named the great English cartographer yet, who published maps for many years, that firm in London, I can't think of the name, that great English cartographer that overshadows everybody else; that had all his maps in all the Alaskan Boundary cases? I never heard of the name of Jeffreys before.

Q. That is because you have never studied the Louisiana cartographers.

Q. I have studied the history of cartographers generally. I never heard of Jeffreys. What is the name of that great English firm over in London, don't you know, I can't think of it just now.

A. Oh, Stanford.

Q. No that is not it. It is a household word and you and I ought to remember it; he published more maps——

A. The distinction is very great between——

Q. I know the difference between a cartographer and a publisher.

A. The man who runs the lines is the man responsible for the correctness of the map.

Q. It is the name of the cartographer who has made and published the map that gives character to it, and puts his name to it, is it not?

A. It only makes it sell to the ignorant public.

Q. But the map gets its character from the cartographer?

A. The map gets its character from the surveyor.

Q. Now, what is the name of that great English cartographer that has made so many maps, I can't think of his name?

A. You mean Arrow Smith? He is the man that happened to make a map of the Alaskan district

Q. He made maps of all kinds of things.

336 A. He was a publisher just as——

Q. He made maps for 50 years?

A. But they had no value.

Q. The greatest test was, that they were maps adopted by the counsel in the Alaskan Boundary case.

A. They were the maps that had to be used because Arrow Smith was the only English publisher of atlases of that period; but his map of Louisiana is of no particular value.

Q. Is it not a fact that with historians the primary thing in topography and value of a map is the reputation of the cartographer by whom it is put before the world?

A. Unfortunately, yes.

Q. You admit the fact that that is true?

A. I admit that historians are in the habit of quoting those maps that have the widest publicity, not necessarily the most correct.

Q. That is not my question. I did not ask you about the widest publicity; but, isn't it with historians that the value of the map depends upon the character of the cartographer by whom it is put out before the world, just as the value of a legal opinion of a lawyer at this bar depends on the reputation of that lawyer in this community?

A. If that lawyer had a reputation for consulting correct authorities his opinion would have value. Many publishers have not used correct material.

Q. Does not the public judge whether he uses correct material or not?

A. The public and historians take those books which have the widest circulation and publication.

Q. Now, you say that the ten maps which you have offered here; they are your personal property?

A. Yes sir, I have not desired to say that. It was for other purposes——

Q. I want to ask you about them categorically and get you to explain to us where you got each one of them, who its author was and

the publisher of it and the date of its publication? Start with them according to their number?

A. I will take them in their order of date. 1754, map No. 8. That is the first one.

Q. Will you please tell us where you acquired that map, where you got it from?

A. I got it by purchase from a dealer in Paris.

Q. In what year?

A. I have been acquiring this collection for 12 years.

Q. Yes, I know, but let us keep right to the point; who is the man and what was the date?

A. I am unable to say about any of them what year I acquired them.

Q. Can you tell us the name of the person from which you acquired them?

A. No sir.

Q. You can't tell the name of the person from whom you acquired them?

A. No sir. When I buy a book by an author, if I bought a book from you for instance——

Q. Yes, I know all that, but let us keep right down to the facts. Is that map attributed to a personal author?

A. Yes sir, to Bellin map No. 8.

Q. You have already testified, I believe, as to Bellin's character as a cartographer?

A. Yes sir. That——

Q. That is all I want to ask you about that one. Let us get to the next. Let us take up the next one.

A. The next one is map No. 9.

Q. Where did you acquire that, from whom and in what year?

A. It is impossible to remember the date of the acquisition of 200 maps.

Q. That is all mere argument. I asked you——

A. Then I do not remember about any of them.

Q. You don't remember as to the time which you acquired any of these maps or any of the persons from which you acquired any of them?

A. I do not. There are a dozen or 20 people who are my suppliers.

Q. Is that map attributed to a personal author?

A. This is published by Isaac Tirion of Amsterdam.

337 *A.* You mean it purports to be published by——

A. There is nothing on this map that shows that; but I have in my possession the book containing a similar map to this original.

Q. There is nothing on the face of that map that shows its origin?

A. I have a book of which this forms an illustration.

Q. That wouldn't inject anything into the face of the map. You say the face of the map does not show anything as to its author?

A. No sir; but if a copy of the book could be obtained——
Q. I am asking you as to facts that you know.
A. If your maps are all subject to the same examination you will have a hard time.
Q. We are going to have a little more authentic maps than these?
A. I doubt it.
Q. What does the next one purport to be?
A. Referring to map, No. 10. That——
Q. Does that purport, on its face, to come from a personal author?
A. That purports to be issued by Thomas Jeffreys a far more celebrated cartographer than Mr. Arrow Smith.
Q. Well, it purports to be issued by Jeffreys, in what year?
A. In the year—I can't see it there—1775.
Q. You don't know when or where or from whom you got that map?
A. No sir; but ' stated distinctly that copies of all of these maps can be obtained and referred to in the Library of Congress.
Q. That is mere matter of argument. They may or may not. I just want to get at the facts within your knowledge.
A. Well, they are the facts respecting these.
Q. Take the next one? (Referring to map No. 11.) Does that purport to come from a personal author?
A. This purports also to be issued by Jeffreys.
Q. In what year?
A. In the year 1775. Maps 10 and 11 are portions of the American Atlas by Jeffreys published in London at that date.
Q. Take the next one? (Witness refers to map No. 12.)
A. That is a London magazine one.
Q. Does that purport to come from a personal author?
A. No sir. As historians and cartographers, we know pretty well——
Q. Let us get right down to my question?
A. It bears nothing on its face whatever.
Q. Then you don't know when or where you got that?
A. No sir.
Q. What is the next one?
A. (Witness refers to map 13.) This is a map made by Major Pussin.
Q. That is, it purports to be made by Major Pussin?
A. Yes sir, on the face of it; it states absolutely that it is drawn by him.
Q. That is, it purports by its legend to be?
A. Yes sir.
Q. You don't know when and where you got that?
A. No sir.
Q. Take the next one?
A. (Referring to map 14.) This is a map that was a part of the report of the Coast Survey of the United States of the year 1854.

Q. That is enough about that. It purports to come from the Coast Survey of that year.

A. It came from an old book——

Q. What is the next one?

A. The next map (referring to No. 15) is from Lange's Atlas.

Q. That purports to come from a personal author?

A. No sir; this purports to be published by H. Lange as a portion of his atlas; probably the maps were all drawn by different people, they may have been.

Q. So that map does not purport to come from a personal author?

A. No sir, from nobody in particular.

Q. Take the next one?

A. The next one is No. 16. It is a part of the report of the surveyor general of Louisiana for the year 1859. But the general title of the volume in which it appears is a report of the Land Department of the United States. This map is a part of the report of the surveyor general to the Land Department of the *of the* United
338 States.

Q. What year?

A. 1859.

Q. That purports as you expressed?——

A. To be made under the charge or under the management of W. J. McCulloch, probably not by him——

Q. You have been interrogated as to ten maps, the most ancient of which in point of date is what?

Q. 1754.

A. And the most recent?

A. 1859.

Q. Is it not a fact that when we look at these ten maps of different dates as an extended tableau, that they are so many different pictures of this general region in controversy, made at different times by different people?

A. Yes sir.

Q. Is it not a fact that there are no two of them alike?

A. They are made at different dates.

Q. That one picture is different from every other picture?

A. Every photograph of myself is——

Q. Let us don't get into argument. Is it not a fact that every one of these pictures of this territory is different from every other picture?

A. Yes sir.

Q. Is it not not a fact that there is a very wide divergence between them. Let us take, for instance, the earliest picture or the earliest one of these maps, take that picture there and then take the most recent picture, is it not a fact that there is a very wide divergence in the pictures of this territory?

A. They are on different scales.

Q. I do not ask you for the reason for the difference. That is mere argument, I ask you if it is not——

A. There is a difference between one map and another, yes sir, a very great difference.

Q. That is not my question. I am asking you about these particular maps. Isn't there a difference between these particular maps, taking them from the first to the last, isn't there a wide divergence in them; take the earliest and the oldest maps purporting to be pictures of this territory down there, don't they diverge widely from each other?

A. Yes sir.

Q. Is it not a fact that in the progressive making of maps of a newly discovered country, considerugg the meagre information that exists at the start, is it not true that the first sketches are most always very crude and imperfect, as a rule in the map making of new countries, take for instance the first maps made of the discovery of this western hemisphere, when we take them, the crude things, are they not cartoons of what the facts were?

A. Not when they are made from the notes of surveyors; when they are made by publishers of ordinary cartographers' works, yes.

Q. But, is it not a fact that at that time there was no data from which any publisher could make a map. Take, for instance, the map, the first picture of this hemisphere?

A. But the map of Louisiana, it fortunately differs.

Q. Don't let us get off into argument, stick right to the question. I say is it not a fact that in reference to the earliest map, let us take for instance the famous map which I have seen in the Spanish admiralty at Madrid, the map made by Columbus's navigator of which the originals I have had in my hand, by which he undertook to show this continent, this country that Columbus had discovered; is it not a fact that when we take it as a picture of what this continent is today, it is a cartoon of the actual facts?

A. Those were only cartographers that made those things.

Q. I am asking you the fact, is it not true that when you take those early maps, those pictures, before any data——

A. It is a fact that the map of Juan de la Cosa to which
339 you refer it is a fact that the point of Florida was ascertained geographically, that the remainder of the gulf of Mexico is drawn entirely from imagination, that is a fact, but they were points that were ascertained geographically.

Q. The question I want is, that as a general rule, the maps that were drawn in the early days of this country just about the time of its discovery or shortly after when the data was wanting, they were just vague sketches?

A. The earliest map we have in hand is 1754, that does not apply to that.

Q. I am not asking you about that. If you will reply to the questions as I ask them and not get into argument it will save a great deal of time and trouble.

A. I thought we were limiting the testimony to this date.

Q. I am getting to that. The primary object of these questions to you, is this, Is it not a fact that as the knowledge of cartographers has widened, that each decade has contributed more, and more perfect maps and as we come closer and closer to the present date we get in these maps, pictures, that are absolutely more accurate and perfect than the earlier ones?

A. Yes sir, the world has moved.

Q. So, is it not a fact, that as a general rule, in reference to the earlier maps of this country in general and of the gulf of Mexico and of this particular territory in particular, that the earlier ones are, as tested by personal experience, widely defective, as a general rule?

A. Oh no, distinctly not. When Iberville and Bienville came to Louisiana to found the colony of Louisiana, soundings were made and geographical points were secured which were as correct, which being represented by them in maps, are as correct as any map of today.

Q. You mean that in the particulars which you have indicated they are as accurate. But, taking them as a whole, would you say a map made in the time of Iberville or Bienville as correct a picture of the coast here as the one that is made today by the Coast Survey?

A. No sir, but I should maintain that a point of land discovered to be dry land——

Q. You are going into an argument again. You are arguing the case of Louisiana. I don't want you to argue the case with me. We will argue the case before the Supreme Court. I want to get the facts from which we can argue the case. Did you pay any attention to the arguments in the Alaskan Boundary cases?

A. I have not had time to read them.

Q. You did not read the discussions then, that took place upon the value of maps in controversies of this kind?

A. I have read many other discussions on those.

Q. Have you read the discussions which took place which occur in most of the books on international law as to the worthlessness of maps in reference to a settlement of boundaries, boundary controversies, as a general rule, have you read the dissertations, such, for instance, as the book of Sir Travers Trist on International Law, of the worthlessness of maps as to settlements of boundary controversies?

A. I have observed that historians have fallen on worthless maps generally.

Q. Have you read any dissertations of international lawyers upon the worthlessness of maps?

A. Who discussed them ignorantly.

Q. You mean the international lawyers?

A. Gentlemen that have not been provided with those points which are necessary to show the true value of maps.

Q. How did you find that out?

A. By the names of the maps they mention, by the distinguished cartographers they mention.

Q. So you do not think they are a class of lawyers that know anything about——

A. They are guided by going to the libraries.

340 Q. You have seen dissertations upon the worthlessness of maps?

A. Yes sir and agree with them. There are worthless maps and good maps.

Q. There are worthless maps and good maps?

A. Yes sir.

Q. Does not the difficulty occur then, of attempting to settle boundary controversies by these early and imperfect maps which were made before the date existed upon which an accurate map could be founded?

A. Frequently, yes sir; early boundaries were decided on maps which were made by persons who constructed them purely on their imagination. I am referring to boundary discussions which took place before 1754.

Q. Mr. Beer, is it or not the fact, that you are now and have been taking what might be called a partisan interest in the preparation of this part of the case of the State of Louisiana?

A. It is not a fact.

Q. Didn't you answer, with some warmth, to me, yesterday, that the land of Louisiana could not be taken away from her, right in this office, when we began discussing it?

A. Certainly, under the terms of the treaty. I was speaking as one historian would speak to another.

Q. Didn't you speak to me with that sort of warmth as one lawyer on one side of a case would speak to a lawyer on the other side, when I was speaking to you yesterday?

A. It was a pleasure to take a rise out of you.

Q. You felt a lawyer's spirit?

A. No; I have no lawyer's spirit; I may possess a lawyer's instinct. I would like to say something and that is, that I have studied the history of Louisiana very thoroughly, I came here 13 years ago, I have devoted all the time I could spare from my duties as librarian, to the study of the history of Louisiana. It is not in any partisan way or spirit that I am making any of these statements.

Q. I did not mean anything unamiable. I do not blame you feeling that way, and I do not mean to say that it is at all unnatural; perhaps if you lived in Mississippi you would feel the same way about her.

Q. But I am not even a Louisianian.

Redirect examination.

By Mr. ZACHARIE:

Q. In a part of your cross examination you stated you were unable to state either the time or from whom you had purchased these various maps. Now, will you please explain why it is impossible for you to mention the dates of the various purchases of persons from whom you bought those maps?

A. I have made purchases extending over 20 years, covering both maps and books for myself and for institutions, which leaves me entirely cloudy as to the different dates that I procured each item.

Q. About the parties from whom you purchased these various maps, why is it impossible for you to give the names of the parties from whom you purchased these various maps?

A. I could only state generally that from certain dealers, celebrated dealers in maps, I have obtained them, but which particular maps I have obtained from them I could not particularize. Many of them came from a dealer in Paris, Dufoss, who is well known.

Q. What were your orders or the circumstances under which you purchased them. Did you have a standing order for all maps relating to Louisiana, or did you make a particular request for some particular map.

A. It would be unsafe with all booksellers to leave a standing order. I have two classes of orders; one to send me all their catalogues, and the other to send me everything relating to Louisiana.

Q. So, as I understand you, you kept no distinct notes of where you got particular maps?

341 A. None.

Q. From whom or at what dates?

A. No sir. Some have been purchased—this is taking up the time of the court but I am describing how I remember obtaining some. I went on to Amsterdam and went through the collection of Meuller, one of the most celebrated dealers in Europe and picked out those maps. It is utterly impossible for me to say which they were, at this date.

Q. I understand you to say, did you, that the 13 years that you have been making this collection of Louisiana maps, you have acquired by purchase or otherwise, some 200 maps?

A. Yes sir. A portion of them contained in atlases but the particular value of the atlas was its map of Louisiana.

Q. In regard to the testimony that you have given, in regard to the authenticity of these maps, as to by whom they were made and by whom published, etc., how have you arrived at that knowledge?

A. I attribute to an author, a book on the title page of which his name stands. I attribute to a map maker a map on which his name stands.

Q. Now, where there is no name on the map, how do you arrive

at your conclusion as to who made the map and when it was made or published?

A. By study only and by comparison with the writings of persons, the great cartographers, the great histories of cartography, the greatest of them being Justin Windsor. I should like to say that in the cartographical history of Justin Windsor is to be found the greatest amount of information upon maps of the early period of American history.

Q. Have you any doubt as to the authenticity of these maps, or if you have any such doubt in regard to the authenticity of any of these maps about which you have testified, will you please state what doubt you may have, or not?

A. If authenticity means boundary geographical correctness I should say that no map, until 1754, yes, as early as 1700, possesses absolute authenticity. The maps ordinarily published, such as the maps in atlases, while being the thing represented to the world and to history as being a conformation of a country are but reproductions of larger maps which have actually been established from the notes of surveyors and geographers. I have no doubt whatever as to the authenticity, so far as the good faith of the publishers of any of those maps.

Q. But your only doubt is as to the sufficiency of the data up to that date upon these maps are found?

A. The data has gone on increasing in amount and value up to the present.

By Mr. TAYLOR:

Q. You have stated that the data has been steadily increasing and improving, upon which these maps are made?

A. Yes sir.

—. Is it not necessarily a result that through that fact, the most recent maps are the most perfect maps?

A. The improvement has been——

Q. Just answer the question?

A. I will answer yes. The perfection has been one of detail, not of the main facts, not of the external points from which measurements have been made. The perfection of the point in question, in the disputed question, was as certain 200 years ago as today, but the joining up——

Q. Let us put that to a practical test. Let us take for instance, this Dutch map there and compare it with that map and see the general conformation of what is called the Louisiana marsh; you see there is a difference of detail, is there not, a wide and radical difference?

A. My statement is, that the point ascertained by Bienville when he made his soundings in coming from Biloxi to New Orleans the point of land is in the same place today as it was then.

Q. That has no relation to my question. Let us come and
342 see if I can get an answer to my question; let us take these two maps, this Dutch map 1764 No. 12, and map No. 15,

1854; put your eye here and look upon this conformation of this disputed territory, on this map, and then look at its conformation on the other map; does it not on the face of the map show that there is a wide divergence in the shape of the two territories on the two maps?

A. They are on different scales.

Q. Answer my question; don't evade my question?

A. There is a wide difference.

Q. Anybody in the world can see there is a wide and radical——

A. Difference between a map on a scale of ten inches to a mile and on a scale of sixty inches to a mile.

Q. Don't you know that the scale has got nothing on earth to do with the difference in the conformation, that one is one shape and the other another shape?

A. They are widely different, yes.

By Mr. ZACHARIE:

Q. In regard to these differences, in the conformation of the territory between these different maps the most ancient and the most modern, may or may not that be accounted for by a change in the configuration of the territory?

A. If all maps were made from direct observation I should say yes. Many of these maps, however, are made by copying from older maps and you may have a map of 1800 not as far advanced in perfection as another map of 1760 on account of superior material from which the cartographer has worked.

Q. Let us come right back to the question which I asked you, may or may not the difference, the wide divergence, which exists between the most ancient and the most modern map, be produced by the changes which have taken place.

A. It may be so produced.

By Mr. TAYLOR:

Q. Have you any reason to believe that any such changes have taken place in the last 100 years in reference to the conformation of this coast that would make this radical difference?

A. Every reason.

Q. Give us the reason?

A. Do you wish to go back to geological time?

Q. No, we are talking about what has happened in the last 100 years?

A. The last 100 years?

Q. What I want to know is what your knowledge is or your data on which you base the assertion that in the last 100 years there has been a radical change in the conformation of Louisiana?

A. To begin with, I didn't visit it 50 years ago and never visited it since.

Q. We won't pin you down to that. Give us the date you have got any personal knowledge, leaving you to supply it, that there

has been any marked change in the conformation in the last 100 years?

A. The formation of the delta of the Mississippi——

Q. I am talking about this piece of land down on the coast?

A. Which is a part of the delta of the Mississippi river

Q. If you call that the delta of the Mississippi——

A. Undoubtedly.

Q. If that is what you mean——

A. That is land formed by this soil brought down by the Mississippi.

Q. I am talking about this sea coast, the formation of this sea coast?

A. I am speaking of the conformation of that part of Louisiana which is Saint Bernard parish.

Q. I am talking about these islands around Saint Bernard?

A. That all goes to form the delta to the Mississippi river. That delta was formed out of soil brought down by the Mississippi river which up to the turning southward of the River Mississippi was carried eastward and that turn is shown on all the maps; it is
343 seen to turn south just below New Orleans. At that time it was the gulf of Mexico beyond it. All of that soil was carried eastward by the trend of the river and went to make up that portion of the delta. When the river turned southward it ceased to carry that material eastward and that land, then formed, was exposed to all the changes produced by the action of the storms and waves upon the soft land, by the rivulets that were formed by the rain and which cut up all that surface then newly made. Those changes have been going on ever since for the last 200 years, it has been changing perpetually becoming more and more cut up except where the land had vegetation on it and held it together.

Q. I understand, therefore, you say as a historical fact, that within the last 100 years the conformation of this sea coast, and the islands around Saint Bernard parish has been so radically changed as to account for the divergence of the maps of 100 year ago or a little later, with the maps of today?

A. If you understood, it was by injecting in what I said a great deal I did not say.

Q. That is what I want to find out.

A. I mean to say that perpetual change is going on——

Q. I am not talking about what may or may not happen. We don't have to go into any abstract speculation. I was asking you as to what changes in the conformation of this coast from your knowledge have taken place during the last 100 years?

A. From the geological knowledge I have of surface change and of the effect of tides and storms on the coast, I state that great changes have taken place in that coast during that period.

Q. Just how great, you do not undertake to say?

A. That would have to be from personal examination. I don't profess to have been on the spot.

Q. You have never been on this coast?
A. No sir.
Q. You have never seen any part of this territory?
A. No sir.

HENRY ROMANSKI, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. New Orleans.
Q. What is your business?
A. Photo engraving.
Q. Will you please examine these maps which are now presented to you and state whether or not you have ever seen them before and if so under what circumstances?

(Counsel refers to the maps concerning which the last witness, Mr. William Beer has just been testifying.)

A. The first information I had about those maps was given me by somebody or other, that those maps had to be reproduced; I never saw them before. Finally Mr. Bellocq a commercial photographer in this city here, came to us and stated that there were a number of maps ten or 15, to be photographed and that he believed we could make the negatives better than by the usual dry plate process.

Q. Did you photograph these maps and make negatives of them?
A. Yes sir, they were photographed in my place and under my direction.
Q. And did you make negatives of them?
A. Yes sir.
Q. What was done with these negatives?
A. They were turned over to Mr. Bellocq.
Q. Were those correct photographic negatives of the maps?
A. Yes sir; I believe we made a pretty good piece of photographing, as you see.
344 Q. Did you inspect them and compare them after you had made the negatives?
A. Yes sir; I looked at them casually, at the same time it was not sufficiently important to inspect them as thoroughly as would be necessary for a very important case. We simply considered it as a small order. It was made quickly and turned over without any particular inspection, as it was unimportant.
Q. Unimportant from a financial point of view?
A. Yes sir; that was a quick cheap job.
Q. Was there any inferiority about the work you did?

A. No sir. We have a reputation of doing first class work and would not deliver anything that was not exactly first class.

Q. Was the work you did in this case first class?

A. Yes sir, I guess so.

Q. Was it as well as could be done?

A. Yes sir. If it was not we would have made it over until it was good.

By Judge GUION:

Q. You are a photo-engraver?

A. Yes sir.

Q. You have some reputation here to sustain in that business?

A. Yes sir. We do about ⅔ of the business in the South. We have the largest establishment out of St. Louis and do work from Florida to Arkansas.

Q. Would you be willing to go on record then as saying you merely guessed that your reproductions are correct, the reproductions of these maps?

A. They could not help but be accurate; they are exact reproductions, because it is a mechanical process, there is no hand work about it, it — a perfect mechanical process. I state it is absolutely correct.

Q. You used the word guess just now?

A. Yes sir; that is in the quality of the work; but not on the accuracy of it.

Q. I am speaking of the accuracy of it; I don't care whether the work is pretty to the eye?

A. I mean that.

Q. I prefer accuracy to looks?

A. It is absolutely accurate.

Cross-examination.

By Mr. TAYLOR:

Q. I understand you to say, as it was a small job and the financial consideration was not great you made no very special examination of it afterwards?

A. Because it was a mechanical process.

Q. You said it was a small job and you made no particular examination?

A. The examination of a negative is got by holding it to the light and seeing if there is some imperfection.

Q. Did you go through all these on this case?

A. Yes sir.

Q. What did you mean just now, then, when you said because it was a small job you made the examination very casually?

A. Not casually; but it was got out in the regular routine.

Q. Why did you make that remark about it being a small job and examining it casually if you——

A. I wanted to convey the idea that it was done in the usual way without——

Q. There were no unusual pains taken with it?

A. There was no unusual importance attached to it as we have continually so many maps to reproduce for printing purposes.

Q. Why did you put so much emphasis on the fact of it being a small job there was no special attention paid to it?

A. I can't say I had any special purpose; I simply say it is mechanical, and of course being mechanical it is bound to be true.

Redirect examination.

345 By Judge GUION:

Q. You say you delivered those plates to Mr. Bellocq?

A. Yes, sir.

Q. For what purpose?

A. To make the paper prints.

By Mr. ZACHARIE:

Q. Then you did examine the negatives in order to see that the detailed information contained on the original was properly brought out in the negative?

A. The examination is triple. In the first place the operator who had charge of that special order is under salary and part of his duties is to satisfy our customers; in other words, to do excellent work, so in case it was not correct or if the negatives were not good, he wouldn't say anything but go over it again and make another negative until it was good, he is responsible in the first place. Suppose it was a very difficult subject, he would come to me and ask me how it could be done properly, ask my advice how to do it. The third examination is by our customer, Mr. Bellocq. If the negative was not so as to produce excellent prints, he would reject it.

Q. In all these examinations the comparison would be made between the negative and the original?

A. Yes, sir. We know absolutely that with modern appliances in photographing, photo-engraving, with excellent lenses and wet plate process, there is no possible way of making a mistake in accuracy; in other words, if we were to spend $100 to make it wrong we couldn't do it because the lenses are good and accurate reproduction must take place.

Recross-examination.

By Mr. TAYLOR:

Q. You spoke of your salaried man who did this work. Did you have anything to do with this work personally?

A. No, but I have supervision of the work.

Q. Did you go over the work and make these comparisons?

A. I make them, all the time.

Q. Did you, yourself, take these negatives and maps in your h
and make the comparisons?
A. I looked at the negatives; that is all that is necessary.
Q. It was your salaried man that you said did the work, just n
A. Under my supervision, under my orders.
Q. But you personally did not do it?
A. But I am responsible for his work.

Redirect examination.

By Judge GUION:

Q. Is he a competent man?
A. Yes, sir.
Q. What is his name?
A. Lewis Fritch.

ERNEST J. BELLOCQ, witness sworn and examined on behalf of t
State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. 1026 Conti street, near Rampart.
Q. In New Orleans.
346 A. Yes sir.
Q. What is your business?
A. Photographing, photographer.
Q. Did you make a contract with the attorney general of this
State, to reproduce by the photographing process, certain maps?
A. Yes sir.
Q. To whom did you entrust the maps for the purpose of having
them photographed?
A. Mr. Romanski, my photo-engraver.
Q. The same Mr. Romanski who has just testified?
A. Yes sir.
Q. Are these the maps that you delivered to him; will you please
look at these maps and state whether they are the maps?
A. Yes sir.
Q. Did you receive from Mr. Romanski the negatives that he
made of those maps?
A. Yes sir.
Q. Will you please look at these photo prints of maps marked
Nos. 8; 8–*a*; 9; 9–*a*; 10; 10–*a*; 11; 11–*a*; 12; 13; 13–*a*; 14; 14–*a*;
15; and 16, and examine them?
A. Yes sir.
Q. And state whether they are photo prints made from the nega-
tives received by you from Mr. Romanski?
A. Yes, sir, they are.

Q. Are they the exact photo prints of those negatives?
A. Yes sir.

By Mr. ZACHARIE:

Q. Did you examine them carefully, one by one, as you received them from Mr. Romanski?

A. After the print was made I don't have to examine them. I have got the negative and I make the print, and it is bound to be what it is.

Q. Did you examine the negatives or prints to see that they corresponded exactly with the originals?

A. The negatives and the maps?

Q. Yes?

A. No sir; I did not.

Q. You did not?

A. No sir.

Q. Did you examine the prints themselves to see that they were correct reproductions of the maps?

A. Well, if you have got the negative and print it, put a piece of paper against it, it is bound to be the same as the negative. When you print a negative you put a piece of paper right next to it and it is bound to come out the same as the negative.

Q. I am now speaking of comparison between the prints and the maps themselves?

A. If I examined them afterwards?

Q. Yes?

A. No sir.

Q. Well, I wish you would do — now?

A. All right.

At this stage of the proceedings, the commissioner adjourned the hearing, for recess to be resumed again at 2:15 p. m. at the same place and date.

2:15 P. M.

Pursuant to adjournment for recess, the hearing was resumed with Mr. Bellocq, the last witness on the stand before recess whose examination was continued.

All parties present:

By Judge GUION:

Q. Mr. Bellocq, have you, during recess which has been taken, carefully examined the maps and the photo prints and compared them one——

347 A. Yes sir.

Q. As a result of your examination, are you prepared to say whether or not the photographic re-prints are true and faithful photographic reproductions of the original maps?

A. Of course they are, faithful reproductions.

Cross-examination.

By Mr. WILLIAMS:

Q. You refer, do you, to the original maps designated by numb to you this morning?
A. The maps I compared this and that
Q. They were named off to you by numbers, were they not?
A. How *they were* named by numbers?
—. ——.
A. I just looked at the back in order to go quickly to see, to t tify today so I wouldn't lose any time, to examine it closely fr there to there.

By Mr. ZACHARIE:

Q. He asked you, if these are the maps which by number ha been submitted to you today?
A. Yes sir.

By Mr. WILLIAMS:

Q. Before the adjournment for lunch?
A. Yes sir.

By Mr. DYMOND:

Q. You refer to the maps which have been numbered from ma 8 to map 16?
A. Yes sir.

By Mr. WILLIAMS:

Q. You mean that those that have been numbered are photo graphic views of the original maps?
A. Yes sir.

LEWIS FRITCH sworn and examined on behalf of the State o Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your business?
A. Photo-engraver.
Q. Where do you live?
A. 328 Rocheblave street.
Q. In the city of New Orleans?
A. Yes sir.
Q. Are you in the employ of any one?
A. Yes sir, I am employed by Mr. Romanski.
Q. Is that the Romanski Photo-Engraving Company?
A. Yes sir.

Q. Is that the photo-engraving company that had charge of the making of the negatives of these maps?
A. Yes sir.
Q. Mr. Fritch, have you examined these maps which are now before you, the photographic reproductions of which are numbered from map 8 to map 16 inclusive?
A. I have.
Q. Did you have anything to do with the making of the
348 negatives from which these photographic prints were taken?
A. Yes sir.
Q. What did you use, as the original in making the negatives?
A. I used the maps.
Q. Are these maps the maps that you used?
A. Yes sir.
Q. Did you make the negatives of those maps?
A. Yes sir.
Q. Did you compare those negatives with the original maps that you had made the negatives from?
A. Yes sir.
Q. Were those negatives true and faithful photographic negatives of the original maps?
A. Yes sir.
Q. Do you recognize these photo prints numbered from map 8 to map 16 to be photo prints from the negatives made by you?
A. I do.
Q. Are they as correct and faithful reproductions as it is possible, by the photographing process, to make them?
A. Yes sir.

Cross-examination.

By Mr. WILLIAMS:

Q. Where did you get the original maps?
A. From Mr. Bellocq.
Q. Is he the gentleman who has just testified?
A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence the photo prints of the original maps numbered map No. 8 and map No. 8–*a*; map No. 9 and map No. 9–*a*; map No. 10 and map No. 10–*a*; map No. 11 and map No. 11–*a*; map No. 12; map No. 13 and map No. 13–*a*; map No. 14 and map No. 14–*a*; and map No. 16.

Capt. THOMAS SUMMERALL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
—. At Biloxi.
Q. In what State?
A. Mississippi.
Q. By whom are you employed?
A. I am employed by Mess. Lopez and Dukate, the firm.
Q. What is your present occupation?
A. I am captain of the steamer Julius-Elbert.
Q. In your present employment do you operate the steamboat Julius-Elbert between the factory of the Louisiana Oyster Company Limited at the Rigolets and Three Mile bayou?
A. Yes sir.
Q. Are you familiar with the country known as the Louisiana marshes?
A. Well, somewhat, yes sir.
Q. How long have you known it?
A. I have been going to what is known as the Louisiana marshes and called the Louisiana marshes ever since 1884.
Q. In what occupation were you engaged during that period of time?
A. I have been catching oysters principally.
349 Q. That would cover, then, a period of 20 years.
A. Yes sir.
Q. In that period of 20 years has there been any change in the topography of the country, I mean by that, the shape or form of it or of its lakes or bayous?
A. Well, in some places I find there has been some changes.
Q. Would you mention the places where there has been changes?
A. Yes sir.
Q. Where?
A. There has been a change at Three Mile bayou.
Q. What has been the change occurring at Three Mile bayou?
A. Well I don't know how long—it has been since the '93 storm though, I recollect the point on the west side of the bayou used to extend out, it was land all the way, now it is cut in two and forms an island on the outside; before that there was a point still further out; it is all washed away now.
Q. Is that in the parish of Saint Bernard?
A. That? I think it is but I would not say for sure.
Q. Is it called Saint Bernard parish?
A. I couldn't say whether it is or not. If Three Mile bayou is in Saint Bernard parish it is, if it is not, it is not.

Q. Are you familiar with an island called Round island just north of Petite pass, a little north of Petite pass?

A. An island? I have seen an island there. I mean there are two islands there but I don't know which one you call Round island, I suppose there is one what we call Half Moon island and the other one may be Round island, as far as I know.

Q. Is there any island in that neighborhood that existed some years ago, but today is not above water?

A. Not to my recollection.

Q. Do you know of an island in that locality that is, or was called Round island?

A. Call it by the name that is on the chart, I think I saw it on the chart.

Q. Is the island visible above water which you saw on the chart named Round island?

A. I never noticed whether that is the one above water or not.

Q. Do you know of any island having disappeared in that locality?

A. Yes sir; at Grand pass.

Q. About St. Joseph's island, has there there been any change or disappearance of it?

A. There has been some.

Q. Was it small or considerable?

A. It was a small island when I first saw it, but now it is washed away, there is only a little bit of a mud lump there now.

Q. Are you familiar with the coast line extending from Petite pass eastward to Isle au Pitre?

A. Yes sir.

Q. Has there been any change down in the marsh south of that coast line in the past 20 years?

A. I don't know.

Q. I understand you to say you don't know?

A. There is one cut off, one place that has been cut through that I know, in the past 20 years, down in the marsh in Carako bay.

Q. Could there have been any other changes there without your knowing them?

A. Yes sir, there could have been.

Q. Is the mouth of Three Mile bayou, or, is Three Mile bayou of the same width as when you originally saw it?

A. No sir, it is wider.

Q. Is it much wider?

A. Well, it is, I suppose 50 to 75 feet wider as well as I can remember, on account of this point being cut off.

Q. Has there been any change in Nine Mile bayou?

A. I don't know.

Q. Do you know what caused these changes?

A. No sir, not any more than heavy winds and tides.

Q. Did you notice any change as the result of any storm, and if so what storm?

350 A. I never noticed any change outside of the October storm in '93.

Q. Was that 1893?

A. Yes sir.

Q. Did it produce any of these changes you have been testifying about?

A. Yes sir; I think it did.

Q. Do you know whether this land in dispute in this boundary suit was overflowed during any of these storms?

A. Yes sir, I saw it overflowed.

Q. When?

A. I saw it several different times.

Q. Will you state about the date?

A. I saw it on the 3rd of October 1894. I was in the marsh at that time.

Q. You were in the marsh?

A. Yes sir, that is one particular time I saw it.

Q. '94 or '93; you have spoken of the October storm of '93?

A. '93 I mean, I was mistaken, I believe I am talking a little too fast.

Q. You correct your date?

A. Let me study over the matter and I will see about it, I don't want to make any mistake if I can help it; the first storm was on the first of October '93; it was on the 7th of November '93 we had another pretty bad blow, a few days after the October storm.

Q. It was overflowed then?

A. Yes sir.

Q. Did I understand you to say you were in the marsh then?

A. Yes sir.

Q. On that occasion?

A. Yes sir. I was not in the marsh, I was in a boat.

Q. At what point were you in this storm of November 7th?

A. I was lying in Bayou Mussle.

Q. How far was that from Three Mile bayou, about?

A. I don't know the distance.

Q. I don't ask you to state exactly?

A. Somewheres between ten and 15 miles, as well as I can judge.

Q. In which direction from Three Mile bayou?

A. Somewheres about south, south by east or south by west I don't know.

Q. Do you remember of any other storms in which this territory was inundated, if so, what time?

A. Yes sir; I don't remember the day nor the date, but at the time of the storm of Galveston, that wrecked Galveston, I was in the Louisiana marsh at that time.

Q. At what point?

A. I was lying at Martin island.

Q. Where is that island?

A. It is on the east coast of the marsh.

Q. How near to Isle au Pitre?

A. That I don't know.

Q. Can you fix some part or some point on that coast which was near enough I don't think that Mussle bayou is given on the map?

A. I don't know about on the map.

Q. How far west or south of Isle au Pitre were you, can you state?

A. I can't tell you exactly how far, I can tell you about as well as I know, it was somewhere in the neighborhood of 20 miles.

Q. Was that south?

A. I couldn't say it was direct south, it was a little southwest.

Q. What bayou was the nearest bayou to you? Was it Three Mile bayou?

A. No sir.

Q. Nine Mile bayou, Johnson's bayou?

A. Well, I guess what we call, Scow pass, that was about as near a bayou as there was to it.

Q. Were you then south of Caraho bay?

A. No sir.

Q. Were you about abreast of it?

A. No sir.

By Judge GUION:

Q. What direction were you from it?

351 A. About southeast direction.

Q. How far, about?

A. Five or six miles.

Q. Five or six miles southeast from Karako bay?

A. In a southeast direction.

By Mr. ZACHARIE:

Q. To what extent was this territory inundated so far as you could see?

A. Well, we sailed from Martin island, sailed across the marsh; we entered the mouth of what we call Otter bayou, and then we went up into what is called La Cinch for a harbor.

Q. That is what is called Bayou La Loutre?

A. Yes sir.

Q. What was the condition of that territory in regard to inundation, so far as you could observe. Were you able to navigate over the marsh?

A. Yes sir, we just sailed right across the portion of the marsh until we got to Otter bayou, to the mouth of Otter bayou and then on account of the high banks we had to follow the stream then.

Q. Was it then generally or only partially inundated?

A. It was covered all over as far as I could see.

Q. Could you form any idea from the navigation of your vessel how many feet of water there was over it?

A. I never sounded.

Q. What does your vessel draw?

A. It draws two feet of water.

Q. You passed easily over this territory without grounding, or did you ground?

A. We didn't ground, we sailed over it clear.

Q. Did you notice, after these storms, any peculiar changes in the topography of that country, that is to say, in regard to the number of bayous or the increase of water in the interior, or otherwise, if you did please state any changes if you saw any, after these various storms?

A. There are two or three different places I have seen changes since storms.

Q. To what extent; describe the changes.

A. Well, Creole gap is somewhat wider than it was.

Q. How much wider, do you think?

A. I have no idea.

Q. About. Since what storm or storms of what year has Creole gap enlarged its mouth?

A. It gradually seems to enlarge all the time.

Q. Then how many storms altogether have you witnessed in that territory?

A. I only witnessed one.

Q. I thought you said you had witnessed two?

A. Not in the marsh.

Q. Didn't you say October 3rd and November 7th?

A. I said the marsh had changed since the October storm, I did not say I was in there.

By Judge GUION:

Q. Do you know anything about the present width of Creole gap approximately, could you give us, approximately, its width, about?

A. Well, no sir, I don't know that I could.

Q. You could state about, could you not?

A. I could say about, but I could not say——

Q. We know you never measured it but——

A. I should judge, to the best of my knowledge, it is 200 yards in some places; at each mouth anyway.

Q. Do you know whether, at any time previous, it was of a less width than it is now?

A. Yes sir; I think I do. I think I can remember.

Q. Will you kindly tell us what the difference is between the time you first noticed it and now?

A. Only by looks.

Q. That is what I mean.

A. By looks it is wider than it used to be, but I could not say how much.

352 Q. Do you know how much, about?

A. No sir.

Q. Is it twice as wide?

A. Oh, no sir.

Q. Do you know anything at all about the beginning of Creole gap, when it first started?

A. Only what I heard.

Q. Would you give us the names of some parties from whom you heard this?

A. Yes sir.

Q. Give them, please?

A. Captain Steve Maloche. He lives in Biloxi at present.

Q. Any one else?

A. No sir.

Cross-examination.

By Mr. TAYLOR:

Q. Where were you born?

A. I am a Mississippi Hoosier.

Q. Have you ever lived in Saint Bernard parish?

A. No sir.

Q. As I understand, whatever you know about this district the knowledge you have gained by just sailing in your vessel?

A. Yes sir.

Q. All these changes which you have indicated they have referred to changes in this island part out here where the islands are. These changes that you have indicated are——

A. It is in the passes.

Q. Out where all these islands are?

A. It is in the passes.

Q. Do you know anything about any changes that have taken place in the last twenty years in the mainland back?

A. Only one that I can say.

Q. In the mainland?

A. What do you mean by the mainland? Main marsh?

Q. I mean the mainland as it is there? Isn't there a great group of marsh islands with water in between them. Take for instance, Isle a Pitre, and all this land in that direction isn't that all a mass of islands that you can sail around; I mean that mass of islands as distinct from the mainland?

A. The only one——

Q. Do you know of any changes in the mainland that have taken place?

A. I don't know of any changes in the mainland.

Q. You don't know of any changes in the contour of the coast in the mainland?

A. Only at Three Mile bayou.

Q. So, then, the nearest place to the mainland that you know of any change——

A. I don't know that it is the nearest place to the mainland, what we call the mainland is the north shore of Mississippi sound.

Q. There is no mainland between Three Mile bayou and the Mississippi river?

A. Well——

Q. If you keep going west you would hit some mainland where you couldn't sail with a boat?

A. Yes sir.

Q. You couldn't sail with a boat from Three Mile bayou down to the Mississippi river, something would stop you in the way of mainland?

A. Yes sir.

Q. That is what I mean by mainland.

A. There are very few places; you can go pretty well through the marsh.

Q. You say go through the marsh, you mean you could sail westward to the Mississippi river without being stopped by the mainland?

A. Not westward; in a southwest direction; it wouldn't be any particular course, no one particular course, because there are so many different courses; no man in the world could ever give it.

Q. The most westward point in which there was a change, was this Three Mile bayou, that is the most westward point you know there has been a change?

A. Yes sir.

Q. There has been a change in the last 20 years?

353 A. Yes sir.

Q. Just repeat that, what change there has been at Three Mile bayou?

A. There used to be a point that branched out on the west shore; it is now cut in two, and there is a little island outside, there is water between the little island and the main marsh.

Q. That has been formed in the last two years?

A. Yes sir.

Q. That is the most westward point you know there has been a change?

A. Yes sir.

Miss BESSIE MEADE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. GUION:

Q. Where do you live?

A. No. 2622 Canal street.

Q. Have you ever seen this map?

A. Yes sir.

Q. Of which this is a photo print, marked map No. 15?

A. Yes sir. I have seen them both.

Q. Was the photo print marked map No. 15, handed to you by any one?
A. What, this?
Q. Yes, that photo print?
A. Yes sir, it was.
Q. By whom?
A. By Mr. Ernest Bellocq.
Q. How many did he give you?
A. Thirty-five.
Q. For what purpose did he give them to you?
A. To be colored, these boundary lines to be colored, to be tinted.
Q. Who did the work?
A. I did the coloring.
Q. Examine that along with the original and state whether it is a correct coloring from the original?
A. Yes sir, that is correct.
Q. Both of those you hold in your hand?
A. Yes sir, those are correct.
Q. Have you ever done this kind of work before?
A. I have done water colors, not on maps though, all kinds of water colors.
Q. On what?
A. Photographs, scenes.
Q. Have you ever done any work here for photographers in the city?
A. I am doing all the work for the Moore studio, now, at Lee circle.
Q. You are doing all their work?
A. Yes, sir, all the coloring work.
Q. Is that a studio of any consequence here in the city?
A. It is considered a first class studio in the city.
Q. You state that those two maps, photo prints rather, that you have just had in your hand are colored correctly from the original that you now have in your hand?
A. Yes, sir, perfectly correct.

No cross examination.

Mr. DYMOND: In connection with the testimony of the witness we offer in evidence now, map No. 15, being photo print of the original map concerning which, evidence has already been offered, and tenders the same to be offered in evidence and also tenders to counsel for the State of Mississippi a duplicate of the photo print.

354 Capt. J. D. RAILEY, witness sworn and examined on be of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. I reside in Biloxi in the State of Mississippi.
Q. By whom are you at present employed?
A. Lopez, Dukate and Company.
Q. Where are you at present occupied?
A. At Three Mile bayou.
Q. Where is this Three Mile bayou?
A. Out here in the marsh, south of Cat island, to the south south, southwest of Cat island.
Q. What is your employment there?
A. Buying oysters for the Louisiana Oyster Company.
Q. Where is the Louisiana Oyster Company Limited, located?
A. It is stationed near the Rigolets.
Q. Where are the Rigolets?
A. In Louisiana, I suppose. They are west of Pearl river.
Q. How old a man are you?
A. I am 56 years old, the 20th of last September.
Q. Have you ever had any experience in the oyster business, fi ing oysters?
A. A little bit.
Q. How long?
A. Since 1869.
Q. Have you been, since 1869, fishing oysters in the Louisia marshes?
A. Yes sir; not altogether in the Louisiana marshes, I ha fished there; I commenced fishing in the Louisiana marsh in 18
Q. Had you ever been in the Louisiana marshes before that?
A. Yes sir.
Q. When was the first time that you were in the Louisia marshes?
A. The first was January 6th, 1869.
Q. Did you, at that time, have occasion to visit Three Mile bay in the Louisiana marsh?
A. I passed through it.
Q. How wide was Three Mile bayou at the time you passed throu it, on your first trip?
A. I should judge the mouth to have been 100 feet wide, as n as I can remember.
Q. How wide is Three Mile bayou today?
A. It is about three times the distance, all of three times, if more.
Q. In your fishing of oysters did you have occasion to visit a other points in the Louisiana marshes?

A. Oh, yes; I have been in a good many portions of the marsh.

Q. When were these trips made, about what year, these first trips of yours?

A. When I was first down in the Louisiana marshes, I did not go down there oyster fishing, in 1869, I went hunting for a wrecked vessel, I never went fishing for oysters in the Louisiana marshes until 1889.

Q. Did you have occasion to pass through the Louisiana marshes in hunting for this wrecked vessel?

A. Yes sir.

Q. Which direction did you go?

A. We struck the marsh at Three Mile bayou and went up to what we call Bay Bodreaux, from thence down to what we call Dutchman's pass, in through Scow pass and out through a place that we call Live Oak bay near Morgan harbor.

Q. Is that down near the mouth of Bayou Terre Bœuf or Point Fortuna?

A. No; it is just—you leave Bay Tresor to the southward and go through a pass about a mile and a half north——

Q. Bay Tresor is what figures on the map as Treasure bay?

A. Yes sir.

Q. When you next visited that section and were engaged
355 in fishing oysters, did you have occasion to pass anywhere near the same route that you took on your first trip?

A. Yes sir, I have been through there a good deal.

Q How many years elapsed between your first trip and your second trip?

A. Let us see, it was somewhere in the neighborhood of 19 or 20 years.

Q. Did you notice any changes to have occurred in that interval of time?

A. Yes sir; there were several changes that occurred during that time, that is, in the location of the ground, you know, the marsh.

Q. What were those changes?

A. Washings out caused from high water.

Q. Were they of any extent?

A. Some of them, yes.

Q. Can you mention in any locality where you noticed any perceptible change from your first visit?

A. Yes sir; for instance, at what we call Point Comfort at the mouth of Morgan harbor; that point, I suppose is 200 yards shorter in a southwest and northeast direction than what it was when I first was there.

Q. Did you notice any other change besides this one at Point Comfort?

A. Yes sir, as I started east I noticed a change at Martin island.

Q. What change did you notice there?

A. I noticed the island was cut in two near the southeast end of

it making another pass that was not there the first time I went t
that coast.

Q. Did you notice any other changes besides those you hav
mentioned?

A. I noticed several cuts along. Now, for instance, Creole gap i
changing the first time I was there.

Q. When the first time you visited Creole gap?

A. At the same time I went through Three Mile bayou.

Q. How wide was Creole gap at that time?

A. There was no gap there.

Q. What was it?

A. It was just a bend in the marsh.

Q. It had not branched through at all then?

A. No sir. There was no gap at all. Just to the southward o
that is what we call Bayou Pierre, that went through; this Creol
gap was what we called a lagoon, a bend in the marsh, but it wa
not cut through, you could not go through to the southward of th
marsh at all; but now, it is possibly from 250 to 300 yards wide, i
is a pass about that wide.

Q. And that has occurred within your knowledge?

A. Yes sir.

By Judge GUION:

Q. What is the length of that pass that has been cut through
there?

A. The distance that is cut by nature, since I first knew it, I
should judge to be about 100 to 200 yards in length.

Q. And about how wide?

A. From 250 to 300 yards wide.

Q. And when you first knew it, you say it was just a border o
the marsh?

A. Yes sir.

Q. With no passage way at all?

A. No sir.

Cross-examination.

By Mr. TAYLOR:

Q. You saw simply a pass cut out from the lagoon into the bay?

A. Yes sir.

By Mr. DYMOND:

Q. The lagoon, however, did not extend through the island?

A. No sir.

By Judge GUION:

Q. What was the width between the lagoon and the main body
of water east?

336 A. Somewhere in the neighborhood of 80 to 100 feet.
Q. That was marsh?
A. Yes sir.

By Mr. DYMOND:

Q. So far as you know has there been any erosion or washing away of the general shore line between Petite pass and Isle a Pitre?
A. Well, yes, there has been a little at Petite pass. Now, at Isle a Pitre, what originally was Isle a Pitre, a portion of it was washed away, the northeast end of Isle a Pitre, in my knowledge, a portion of it is washed away.
Q. Has there been any change in Nine Mile bayou?
A. That I can't say. I don't know anything about Nine Mile bayou, only at a distance, I was never in it in my life.
Q. Had there been any changes down on the inside of the marsh within your recollection?
A. Yes sir, there have been a few changes along the islands inside the marsh.
Q. What has been the general tendency of the change?
A. Washing it away, washing away the points by the deep water coming through the marsh land. You see the water down there in those deep places, it is narrow and makes a strong current.
Q. Have the storms had any effect on the general topography or appearance of the country down there?
A. Yes sir, considerable.
Q. What effect have the storms had?
A. By changing the shape of places, washing it away in portions.
Q. Has there been any building up in the country there?
A. There has been no building up that I know of; the only place that I know of any building up is a little place on the ridge, going up, the same part I was speaking about, along Otter bayou, caused from the drift that would accumulate there, that is a high ridge.
Q. Do I understand you to say then, that the general tendency has been one of washing away?
A. Yes sir, in there, yes sir, washing away along those deep cuts.
Q. Is the territory that you have been talking about, that which is ordinarily called the Louisiana marshes?
A. Yes sir. That is the territory I am talking about. The territory that you are having a dispute about.
Q. Do you know of an island that was called Round island that was just north of Petite pass, Petite Pass island?
A. Yes sir.
Q. Is that island observable above water, today?
A. Well, yes, with the exception of very high tide, it is; very high tide it is under water, but ordinary tide there is a short key there now.
Q. What change, if any, has occurred in that island?

A. It is very near completely washed away with the excep
a small ridge of white shells.

Q. How about St. Joseph island?

A. Half Moon island I suppose you mean?

Q. I mean where St. Jo light used to be.

A. That is washed away, there is nothing there at all, it
under water altogether and has been for years, that island has

Q. Are there any other islands that you know of that have
washed away outside of those you have spoken of?

A. No sir; I don't know any that have been washed away
gether, that have disappeared altogether; that little key, li
island, is the only one that is washed away, and you can see
ordinary water, now, at low tide, but in high tide it is compl
covered, it is nothing but a small shell key

Q. Is there a well defined coast line extending from Petite pa
Isle a Pitre, on the north shore of the Louisiana marshes ex
where it is cut by Nine Mile bayou, Three Mile bayou, Tu
bayou, Johnson bayou and these other bayous?

A. Yes sir, there is a line all the way down with the excep
it has been cut in two, away down into the bay.

Q. All the way down to where?

A. From Isle a Pitre down to Petite pass, and it contin
357 still all around to Ship Island canal.

Q. Did you have to pass through one of these passes, bay
to get down into the interior?

A. Yes sir, you can't get into it any other way.

Q. Is that shore line all above water except where these bayous
into the interior?

A. Except in high storms; ordinarily it is high above the wa

By Mr. ZACHARIE:

Q. You say you visited this territory, these Louisiana marsh
first in 1869?

A. Yes sir.

Q. How did you traverse the marsh, how did you go over it?

A. By water, by schooner.

Q. By water entirely?

A. Yes sir.

Q. Did you pass over any of this ground on foot?

A. No sir, only when I got on shore may be to run after a coon;
was too afraid of snakes.

Q. You say you next visited this territory about 1880?

A. 1889.

Q. Did you follow about the same route that you did in 1869?

A. I followed it just the same as well as I can remember, becaus
that was the only route I knew.

Q. In so far as being marsh or being cut up into little islands o
lagoons, what difference, if any, did you find between your tw
visits?

A. Well, I found considerable difference, as I told you, there were cuts made larger, there was, for instance, the cut from Drum bay into Sand pass was a very small place, the marsh was broken up a little, it is much more cut up today to what it was when I first went through there, in some places, in some others it has not changed a particle.

Q. Have you been in that neighborhood during any of these great storms?

A. Yes sir; I was there in the same storm that Mr. Summerall was telling you about.

Q. What year was that in.

A. In 1893. But it was in November that I saw it.

Q. You were out there in November?

A. I wasn't out in the October storm.

Q. Can you describe to us, briefly, what you saw in regard to the inundation or the effect of the waters upon these Louisiana marshes?

A. When the water was highest you couldn't see anything because it was too dark, it was in the night time, but the marsh was completely covered, there was nothing to be seen, it looked like one vast sea; then when the wind shifted and came out from the southeast it cut the islands away considerably.

Q. From what point of the compass did that storm first come?

A. It swung from the northeast to southeast, or from about east northeast.

Q. Could you have any idea of the depth of the water which covered these marshes?

A. Well, I could in one sense of the word; when the tide rose that night at half past ten, I measured the water where we were lying and there was 11½ feet of water there, and before morning there was four feet and one half of water, so it would be very easy to see how much rise there was.

Q. Can you tell us anything of the manner in which these waters swept over this marsh?

A. Well, it swept over the marsh with a tremendous force; in fact, it turned out with a great deal more force than it came in; it would take and dig out holes in places.

Q. Were there waves caused by——

A. Not much on the inside of the marsh, the force of the water was broken; but on the outside it swept with a clean sweep, it had a clean sweep, there was nothing in the way to break the force of the water; there was *were* places in that marsh where the grass is from three to five six feet high, so of course that broke the force of
358 the water inside the marsh.

Q. Can you form an idea of how high these waves broke over?

A. Yes sir, in some places they ran as high as eight feet.

Q. Was that the only storm you were out in?

A. Yes sir, that was the only storm I was out in that marsh.

Q. That was the November storm?

A. That was the last blow after the October storm, somewheres along between the 3rd and 7th of November.

Q. Do you remember if prior to the storm of November 7th, you noticed any of the effects of the storm of the preceding October?

A. Yes sir; that cut through Martin's island, that was done in the October storm.

Q. Did you notice any other effects upon this territory produced by the October storm?

A. The place we call Elephant pass we made a little larger too, washed out some.

Q. Captain, how high ordinarily are these marshes above the level of the sea?

A. You mean the land or the grass?

Q. The land?

A. Well, as a general thing, on an average it is not more than, well I would say, not exceeding 14 or 15 inches, some places it is three feet, and some places it is level with the water.

Q. Do you know the character of this soil?

A. It is soft sticky mud.

Q. Is it clay or fibrous material or is it made from vegetation?

A. It is not made from vegetation, the foundation of it; of course there are places, but it is a black mud, more like pipe clay only it is black and yellow.

Q. Is it a solid or spongy soil?

A. It is solid.—None of it is solid on account it is undermined with all kinds of fiddlers, what we call fiddlers and things working in the ground, crawfish, it is all cut up, none of it solid, it springs when you walk on it along the edge of the marsh there.

Q. Where this grass is, is the the soil very deep or is it a crust?

A. I don't know; I never took it up.

Q. Did you ever attempt or try to drive a pole down?

A. Yes sir, I have stuck poles down.

Q. How deep would these poles go with the weight of a man's body?

A. In some places you couldn't get them through at all and other places I don't know how far they would go, I have driven them 10 or 11 feet down in the mud myself and other places they wouldn't go so far; some places you couldn't get them down at all; you would strike shells.

Q. What name does this territory go by amongst the Mississippi fishermen? What do they call it?

A. They call it the Louisiana marshes as far as I know.

Q. Do you know or not, how long these Mississippi fishermen have been getting oysters from this territory?

A. I don't know how long they have been; all I know from 1889, that was my first work for the Biloxi company, I came to Biloxi in 1889.

Q. You fished from what point to what point?

A. I fished all the way from Isle à Pitre to the northeast end of the marsh down, you might say to American bay.

Q. Is that in the parish of Plaquemine?

A. I don't know anything more about the parish than the man in the moon.

Q. Is that south of Point La Fortuna?

A. Yes sir, it is south by west of that point.

Q. You say you can't tell when these Mississippians first came over there?

A. No sir.

Q. What is the reason, if you know, why these Mississippians came over into these marshes to fish for oysters?

A. For two reasons, one was that oysters were plentiful over there, and the other was it was a good harbor to work in; out in the bay there it is very rough and a man would have to get out of his bed in the night time to get into a harbor and in there they woudn't have to do that, that was a very safe harbor.

359 Q. Have you fishes oysters along the Mississippi coast?

A. Yes sir.

Q. Are they rare or plentiful, the oyster reefs?

A. There are a good many reefs along the Mississippi coast.

Q. Then you think the main reason, why these Mississippians came over into the Louisiana marshes, was they found safer anchorage there?

A. Yes sir; they could work there when they couldn't work outside.

Cross-examination.

By Mr. TAYLOR:

Q. Do you know Nine Mile bayou?

A. No sir.

Q. You have never been to Nine Mile bayou?

A. No sir.

Q. Do you know what the name means? What is meant by Nine Mile bayou?

A. That even I couldn't tell you, what the name of Three Mile bayou or Nine Mile bayou means.

Q. You say Nine Mile bayou is fourteen miles from the Rigolets?

A. All of it; I never measured it.

Q. But you do know Three Mile bayou?

A. Yes sir.

Q. There never was a time when Three Mile bayou was not there; that has always been Three Mile bayou ever since you knew it?

A. Ever since 1869; that was my first trip there; I passed through it then.

Q. You say it has been enlarged some, but Three Mile bayou was there?

A. Yes sir.

Q. Was Turkey bayou there when you first knew it?
A. Yes sir.
Q. You say this Creole gap, that that change there consisted in the lagoon breaking into the main water?
A. Yes sir.
Q. The lagoon was always there?
A. Yes sir.
Q. Did you ever sail through Three Mile bayou down around Little Ragoon island in that water around there?
A. Yes sir.
Q. Ever go down into False Mouth bay?
A. Yes sir.
Q. And then down into Treasure bay south of that?
A. Yes sir.
Q. And then into the water what they call Indian Mound bay?
A. Yes sir.
Q. And then up into the waters of Karako bay?
A. Yes sir.
Q. When you take those altogether, the water around Raccoon island and False Mouth bay and Turkey bayou and Indian Mound bay, isn't that a large body of water?
A. Yes sir.
Q. Dotted with islands here and there?
A. Yes sir.
Q. How many miles, can you measure it in miles, how far do you suppose it would be in miles from where you came from, Three Mile bayou down to the end of Treasure bay for instance?
Q. I should judge it to be about seven miles south by west course, south by half west, if you go a straight line.
Q. In a southerly direction?
A. Yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. Captain, about the course which Mr. Taylor has just cross examined you on, what is the depth of water going through around Raccoon island, through Treasure bay, then through False Mouth bay, down towards Indian Mound bay and then back?
360 A. There is one name in there you have got me on, and I can't answer it until you make an explanation, that False Mouth, that name I don't know anything about.
Q. What name do you know it by?
A. We call that Pirate's cove.
Q. Do you, or not, know, that in portions of the route which you have spoken of, that in some places there is not more than 18 inches of water?
A. Not going down that way, from Three Mile bayou here, down here to Bay Tresor there is never less than two feet and a half from

there to four feet, in very low tide there is two feet and a half and in high tide there is four feet and a half.

Q. What would you say if I were to say I have been over there when an 18 inch draft launch would drag in the mud?

A. It is very easy to do that, I can do that myself any time, if a man keeps out of the channel.

Recross-examination.

By Mr. TAYLOR:

Q. Suppose you were sailing down through Three Mile bayou around what you call Pirate's cove, Turkey bayou and Indian Mound bay and West Karako bay, just sailing around that body of interior waters, dotted with islands, has there been any material change in that body of water since you have known it, taking it as a whole?

A. Some few.

Q. Some few changes, but I mean taking it in a large way, as a whole?

A. Only those cuts there.

Q. With the exception of those changes, in the cuts you have mentioned, it has always been just as it is now?

A. With the exception of those cuts there.

Q. The general body has been just the same as it is now, since you first knew it?

A. Yes sir, about the same.

CHARLES SANGER, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. Bay St. Louis.

Q. Is that in the State of Mississippi?

A. Yes sir.

Q. What is your business?

A. Contractor.

Q. Of what sort?

A. Building contractor.

Q. Have you ever had occasion to visit the Louisiana marshes?

A. Yes sir.

Q. How old a man are you?

A. Fifty one.

Q. When was the first time you had occasion to visit the Louisiana marshes?

A. About ten years ago, in the interior; on the outside I have been there about twenty years.

Q. On the outside, you mean the coast?

A. Yes sir.

Q. Do you mean the coast extending from Petite pass to Isle à Pitre?

A. From Grand Pass to Isle à Pitre on the north and east side of Isle à Pitre.

Q. In the twenty years that you have been acquainted
361 with the north shore of the Louisiana marshes and the Isle à Pitre, have there been any changes occurring there to your knowledge in the general topography and shape of the country and if so what?

A. Yes sir. I noticed there is one shell bank that used to be at Isle à Pitre that has entirely washed away.

Q. Do you know whether there have been any other changes; in Creole gap for instance?

A. I don't know about that positively.

Q. How about Grand pass?

A. I don't know that either; but I know the outside coast, you can see has washed away, going by there, by walking along the shore every two or three months I could see the coast has changed.

Q. What shore are you talking about now?

A. That is the north shore.

Q. Of what?

A. Isle à Pitre, that is the shore nearest the main land of the State of Mississippi, the north shore of Mississippi sound. That is exposed to the north wind, to every north wind that comes along there, the sea drives the waves up against the bank and washes it away.

Q. Those are the waters of Mississippi sound.

A. Yes sir.

Q. Is that same influence and effect of the water shown on the shore line west of Isle à Pitre?

A. I suppose all the way along, because it is all exposed to the north winds.

Q. In the past ten years you have been acquainted with the interior of the Louisiana marshes, have there been any changes down there?

A. Yes sir.

Q. What changes, if any, have you noticed in the washing away of the shore on the inside.

A. I have got a place near what they call Turkey bayou and six years ago I planted piling in there and the piling was planted close to the shore, it was planted four feet from the shore, and you can go down there now and find it ten feet from the shore.

Q. So that in six years it has moved back six feet?

A. About six feet.

Q. Do you know of any other changes down there in the interior?

A. No sir, except at certain points; we have got certain points

where we planted stakes, in the course of three or four years we found the stakes in the water.

Q. Does that mean that somebody has moved the stakes or that the land has washed away?

A. The land washes away.

By Mr. ZACHARIE:

Q. Were you acquainted with this territory, the interior, prior to 1893?

A. No sir.

Q. Then you don't know anything about any changes or effects produced by the storm of '93?

A. No sir.

Q. Have you had occasion to examine the maps of the Land Office in regard to sections in that territory?

A. Yes sir.

Mr. TAYLOR: I object to any question assuming the existence of such records or the contents of them on the ground that the records themselves are the best evidence.

Q. Have you, from your personal observation discovered lands figured there where there are no longer land?

A. I don't understand your question.

Q. Are there any sections which you have noted figured there that are no longer land?

A. Yes sir.

Q. What is it?

362 A. There is what we call section 16, that is given on the map as containing about 20 acres, and it has entirely disappeared.

Q. Where is it?

A. At the mouth of Turkey bayou.

Q. What is there now?

A. Water.

Q. Do you know anything about section 30?

A. I couldn't tell unless I looked on the map and have it located.

Q. Will you please look at this certified copy of township——

Mr. DYMOND: Counsel for the State of Louisiana now offers and produces for the purpose of filing in evidence, a certified copy of township 11, south range 19 east, southeastern district of Louisiana east of the Mississippi river from the Department of the Interior, General Land Office, Washington, D. C., certified as correct by the acting Commissioner under date of March 8th, 1904, now for identification to be marked Document No. 7, and tenders to counsel for the State of Mississippi a copy of said township plat.

Mr. TAYLOR: Counsel for the State of Mississippi object to the introduction of such map as irrelevant, immaterial and inadmissible.

Q. Will you please examine the township plat of township 11 south range 19 east of the southeastern district of Louisiana east of the Mississippi river and state what you know about section 16 which figures on that plat?

A. As far as I can say what is marked on here as section 16 is entirely gone, it is not there any more.

Q. When did you make that discovery?

A. According to the location of the place.

Q. When?

A. Since 1888. Even what is called section 21, I think that is the right number on the map, section 21, this entire part here, what is west of this lagoon, that is gone, that is all an open lake, it is all one water now.

Q. What is all one water?

A. This lagoon here, this lagoon is all open here.

A. What has become of section 20?

A. I suppose that is gone entirely.

By Mr. TAYLOR:

Q. What do you mean by saying you suppose?

A. Because I don't think it is there, all of that land, that whole land between that lagoon and the gulf of Mexico is gone.

By Mr. DYMOND:

Q. You—that land you refer to now, is that in the southwestern quarter of section 21?

A. Yes sir, this point right here.

Q. I know, this point right here is what part of that section?

A. That is the southwest quarter of section 21, and very probably the whole section, what is left, is gone with it, because all that has disappeared, that is, it is not there.

By Mr. TAYLOR:

Q. Do you know it was ever there?

A. No sir.

Q. You never saw it there?

A. No sir.

363 By Mr. ZACHARIE:

Q. Do you know anything about that portion of section 30 on that township plat?

A. No sir, that is beyond my limit.

Q. Do you know of any other changes in the topography of this territory as figured on this plat there that has changed from what is delineated on this plat?

A. This part is washed away here.

Q. What are you speaking of now?

A. Section 15.

Q. How much of that is washed away?

A. That entire spot in between this lagoon and the gulf of Mexico.
Q. That is the lagoon that comes out of Johnson's bayou?
A. Yes sir, that is open to the Gulf, all this is washed away from here making one continuous line cutting off the lagoon there opening at the lagoon.
Q. You mean, starting from Jones bayou at the point marked N. 39 east 440, just describe how the line runs?
A. The line runs from Little Jones bayou in about a straight line to the mouth of Jones bayou.
Q. You mean some distance down there?
A. To Jones lake.
Q. What we call Turkey bayou?
A. This is all gone away from there, this is open.
Q. What have you to say about this point?
A. That point is gone, in fact, as near as I can say it is right here.
Q. How far down in that mouth of Jones bayou has the land washed away?
A. I am not positive about that, I can't tell exactly.
Q. Can you state about?
A. I suppose it has washed away from what is shown on the map there — quarter of a mile.
Q. And that continues you say until it comes down to the other mouth of Jones bayou?
A. Yes sir.
Q. Do you know of any other changes that have been produced in that topography as delineated on this plat?
A. No sir. Of course I don't know how it was in the early part of '98.
Q. Then you had better go back and correct your former date because you said '88?

By Mr. DYMOND:

Q. Did you intend to say a moment ago that you had used the word 1888, the date was 1888?
A. On what occasion?
Q. In your testimony a few minutes ago?
A. That I made this discovery about these changes?
Q. Yes?
A. That was 1898.
Q. Therefore if you made use of the date 1888, you intended to say 1898?
A. Yes sir.

Cross-examination.

By Mr. TAYLOR:

Q. This map says upon its face that it is a record of a survey made in the winter and spring of 1844 and 1845; did you know anything about this country in 1844 and 1845?
A. No sir.

Q. Do you know whether there was any land there at section 15 and 16?

A. No sir.

Q. Can you undertake to say that in 1844 and 1845 this land was not all washed away just as it is today?

364 A. No sir.

Q. You don't know anything about that?

A. No sir.

Q. You don't know that there was ever any land at these places, where you say it is washed away?

A. I couldn't say when it was there.

Q. You never saw it there?

A. No sir.

Q. Ever since you knew it, it has been just as it looks now?

A. Not quite.

Q. How much change has there been?

A. I suppose since I took notice there has been a change of eight to ten feet.

Q. So with that exception, so far as you know, the general aspect of the land here has always been just as it is now, so far as you know?

A. As far as I know personally.

Q. You can't swear there was ever any land at these places?

A. No sir.

Q. Have you ever been to Nine Mile bayou?

A. Yes sir, I passed through there once, but I am not a sailor.

Q. Have you ever been through Three Mile bayou?

A. Yes sir.

Q. Suppose you were sailing down through Three Mile bayou and around here; you can just follow this to understand my question; through Three Mile bayou—do you know where Nine Mile bayou is—for instance, you had a boat sailing——

A. I don't know anything about the interior.

Q. You have never — down to Drum bay?

A. No sir; I have only been there once but I never took any notice of it.

Q. Ever sailed through these interior waters?

A. Once.

Q. Once?

A. At Treasure bay I know we went through there in ordinary tide.

Q. Show me your course, how you travelled, where you went into it and where you went out that one time? Where did you go in, through what?

A. We went in through Nine Mile bayou, then we went through——

Q. Bay Bodreaux, then into Treasure bay, then where did you go?

A. I think somewhere up in here, that is where we stopped.

By Mr. ZACHARIE:

Q. Do you mean to say you went into the Lake of the Mound?
A. Somewheres up in here.
Q. Somewheres near Lake of the Mound?
A. Yes sir.

By Mr. TAYLOR:

Q. And stopped?
A. Yes sir.
Q. Did you go out there with your boat?
A. Yes sir.
Q. Did you come out the same route?
A. Yes sir.
Q. In that way you got a look of these interior waters, at one time?
A. Yes sir.
Q. Has there been any change in the general aspect of these interior waters?
A. I don't know anything about them, I have never been in there but once.
Q. So far as you know there has been no change in those interior waters since you have known them?
A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. Did I understand you to say that so far as you know, so far as you have been in there that you know that there has been no
365 change, or that you don't know anything about it, so far as this interior is concerned?
A. Yes sir, I know there has been a change since 1898 where I planted piling inside of the bayou and the ground is washed away to the extent of six feet from where it was.
Q. But in regard to the interior points, in connection with Treasure bay?
A. No sir, I don't know anything about that, I have never been there but once.

By Mr. ZACHARIE:

Q. How did you go on that trip, in what sort of a vessel?
A. I went in a vessel drawing two feet and a half of water.
Q. What was it, a lugger?
A. No sir, it was a schooner.
Q. Did you go way down there near Indian Mound in a schooner?
A. Yes sir.

By Mr. TAYLOR:

Q. You had no trouble in getting through?
A. Yes sir we had some trouble in getting through the mud, plowed up the mud.
Q. But you got through?
A. Yes sir.

At this stage of the proceedings, the hearing was adjourned the commissioner to be resumed on the 7th day of April at the ho of .0:30 a. m. at the same place.

Resumption of Proceedings.

NEW ORLEANS, April 7, 10:30 a. m., 1904.

Pursuant to adjournment the hearing was this day resumed the hour of 10:30 a. m. and at the same place.
Present: Frank H. Mortimer, Esq., commissioner,
" Hon. Walter Guion, att'y gen'l of Louisiana
" Mess. John Dymond, Jr., F. C. Zacharie, and Albe Estopinal, Jr., associate counsel for Louisiana.
Hon. William Williams, att'y gen. of Mississippi He Monroe McClurg, and Hon. Hannis Taylor, associa counsel.

WILLIAM DILLARD, witness sworn and examined on behalf of t State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside.
A. In Gretna, Louisiana.
Q. What is your present occupation?
A. Patrolman and engineer of the Oyster Commission of Louisian
Q. What one, of the patrol boats do you operate?
A. I work on the Majestic and the gasoline boat
Q. What is the name of that boat, that gasoline boat?
A. The Nita.
Q. Is she used in the patrol service of the Oyster Commission Louisiana.
A. Yes sir.
Q. How long have you been in the employ of the Oyster Commi sion of Louisiana.
366 A. Since October 1903, I think it was, or 1902, a year an five or six months.
Q. Where did you live prior to going into the employ of th Oyster Commission of Louisiana?
A. I lived at the Rigolets about three months prior to that an before that I was in town in New Orleans here.

Q. How near is the Rigolets to what is commonly called the Louisiana marshes?

A. As near as I can judge it is about 15 or 18 miles, that is, to Three Mile bayou, that is about east southeast from the Rigolets.

Q. How old are you?

A. I am thirty three years old.

Q. What are the Rigolets?

A. They are supposed to be the outlet of Lake Pontchartrain.

Q. With what body of water does it connect Lake Pontchartrain?

A. With Lake Borgne.

Q. How long did you live at the Rigolets?

A. About three months.

Q. Where did you live prior to that?

A. I had been in Texas for four months prior to that, but before that I lived in New Orleans.

Q. Have you had much occasion, prior to your connection with the Oyster Commission of Louisiana, to visit what is commonly called the Louisiana marshes?

A. Yes, sir; I went out in 1897 from Bay St. Louis, I made a trip to Grand Pass island to Bayou Johnson or Turkey bayou it is now known.

Q. Have you had occasion since your connection with the Oyster Commission of Louisiana, to go through what are commonly called the Louisiana marshes?

A. Yes, sir; I have been through there about every day nearly in the last 15 months except when I would be in town here around pay day.

Q. Does your duty as the engineer in charge of the gasoline patrol boat Nita, require you to go frequently through these marshes?

A. In fact we have been going there very near every day; of course some days when we would go to the Rigolets to send in a report we didn't do it, but there was hardly a day passed that we didn't go in the Louisiana marshes.

Q. What is the line that is patrolled by the Louisiana Oyster Commission through its patrol boats the schooner Majestic and the gasoline launch Nita?

A. Well, from Petite pass, we follow the coast line down as far as Grand pass, and from there around down to the southward.

Q. Is that under the neutral ground agreement made by the Mississippi and Louisiana Oyster Commissions?

A. No, sir, that is outside of the neutral ground, inside rather, the neutral ground being between there and the channel.

Q. But I mean, do you patrol that line in accordance with that agreement?

A. Yes, sir.

Q. In your visits to the Louisiana marshes, have you ever had any occasion to notice the topography of the country?

A. Yes, sir; I notice it very much because I am passing there all the time and I naturally, in running the boat I watch the shores to

see what speed we are making, and notice the changes that n
occur.

Q. Have you noticed any changes in the topography of that co
since you originally became acquainted with it some years ago

A. Well, yes, in 1897, as I said before, I went to Grand pas
the point on the northern point extended out and formed a ha
from the north wind; now there is no harbor there, at all; be
that point it is worn completely away and then in 1898 I ma
trip from Pearlington, Mississippi, and saw at that time wh
known on the charts as Round island, it was probably twice
length of this room and probably as wide, at that time it was co
with grass, and Dutchman's gap also on the interior of
marsh——

Q. Finish about Round island; what is the present conditi
Round island?

A. Its present condition, there is a little shell reef th
367 out of water in low tide, that we found on the last vo
and——

Q. What experience have you had with Round island?

A. We ran aground there and stayed there four days and
out and walked around one side of the boat on the shells.

Q. How did that happen?

A. We had a bad steersman, we had a boy steering the boa
was cook aboard and he was sailing the boat.

Q. Was there anything above water at the time she groun

A. No sir; not a thing; there was just simply a stake there
he didn't see the stake and went on it and we stayed there four
we went way on to it.

Q. Any part of the island observable above water at the
your patrol boat ran aground there?

A. No sir.

Q. What was the condition of the tide at that time?

A. It was very high t[illegible] at that date and we didn't have a ti
high as that until I think five days after, instead of four, five d
the tide next morning was so low that where in the evening we
on that reef, the water was probably ten inches deep the next m
ing, you could walk around dry footed on that reef.

Q. Was the tide low the next morning?

A. Not unusually low, still it was a good deal lower than the
before when we went on to it.

Q. Is that island shown on the charts of today?

A. It is not shown; you can't see it on the water there; wh
was shown on the charts and known as Round island; my atten
was called to it in 1898 from the fact I saw probably a coup
hundred sea gulls on it and I wanted to go ashore being my
trip and I couldn't do it.

Q. Do you know anything about the condition of St. Jo
island?

A. No sir; only from hearsay.

Q. Have you, since your connection with the Oyster Commission of Louisiana, has sufficient time elapsed to enable you to know of any changes in the interior of the Louisiana marshes?

A. Well, there have been changes in Nine Mile bayou, what is known as Blind pass, when I first went out with the oyster commission there was only one pass there and now there are two; there is a place probably 40 or 50 feet wide cut through from the pass into Nine Mile bayou, and then at Pirate point, probably a quarter of a mile from the point there is a space cut through there probably 75 or 100 feet wide, that has been done since I went out with the commission's boats.

Q. That is within the last fifteen months?

A. Yes sir, eighteen months probably.

Q. Coming back to your original testimony in regard to the harbor made by a point near—was it Grand pass?

A. Yes sir. Grand pass.

Q. What was the area of land that has disappeared by being washed away in that interval?

A. As near as I can judge, probably 100 to 150 feet, right on the point.

Q. About what width?

A. Probably from the point it probably dropped back 30 or 40 yards, to the best of my recollection.

Q. And that you state was completely washed away?

A. Yes sir.

Q. Now referring again to Round island, what is visible at Round island at ordinary tide, above water?

A. Just a small pile of shells.

Q. How large?

A. Well, now, probably the length of this room.

Q. What would you estimate the length of this room to be?

A. Probably 50 or 60 feet, 75.

Q. About what width?

A. 12 to 18 feet wide.

Q. How does that compare to what it was when you first saw Round island?

A. When I first saw Round island, it was probably 100 or 120 feet, something like that in length, and covered with grass,
368 the grass was probably knee high on it at the time.

Q. How wide was it?

A. Probably 40 or 50 feet wide.

Q. Is there any grass on Round island today?

A. No sir.

Q. Now, Mr. Dillard, have you in your patrol boat ever gone from Petite pass as the western extremity, to Isle à Pitre as the eastern extremity, along the shore line of——

A. I have traveled that distance in a skiff and launch together, but not in the launch separately.

Q. Have you traveled it close enough to notice the general conformation of that line?

A. Yes sir.

Q. Is it a distinct line or not of the shore from Petite pass to Isle a Pitre.

A. It is a shore broken by bayous and passes.

Q. What are the several passes you refer to?

A. First is Blind pass, Three Mile bayou, Bayou Johnson, Turkey bayou, Drum bayou, Grand pass, Bayou Pierre and Creole gap.

Q. You omitted to mention Nine Mile bayou, do you know it by that name?

A. Yes sir; I thought I had mentioned Nine Mile bayou, it is after Blind pass.

By Mr. ZACHARIE:

Q. Have you ever gone or traversed this route down Nine Mile bayou, past Pirate point, passing by Raccoon island and going on down to and in Treasure bay and from there to Indian Mound and the Lake of the Mound?

A. Yes sir; in 1898 I made the trip in a small sloop over that route and stopped in the bayou opposite Indian Mound. Since then I have traveled over that distance with boats.

Q. When was the last time you went?

A. About three or four weeks ago, to the best of my recollection.

Q. What means of transportation did you make use of in making the trip?

A. The last time, with a gasoline launch.

Q. Did you, did you not go a part of the way in a schooner?

A. Yes sir. I went in a schooner part of the way.

Q. How far down did you go in the schooner?

A. I went opposite the mouth of Bayou Mussle.

Q. Why didn't you go further?

A. Because we didn't have enough water for the schooner to go in.

Q. How much water was the schooner drawing?

A. Three feet and a half.

Q. From the schooner where you left her, down there, to Indian Mound, what means of transportation did you have?

A. We went down on the gasoline boat and carried a skiff in tow for fear we might be unable to get to the destination we wanted to arrive at.

Q. Could you give us an idea about the depth of water on this part of the route?

A. From where we left the schooner, it was probably three feet, in some places maybe three feet and a half, until you strike the mouth of Treasure bayou, there you will find plenty water, but

n you strike the bay, you will have probably 18 or 20 inches, in high tide you will have two feet.

Did your schooner up to the place where she stopped, ground where?

No sir; she didn't ground, but she dragged across the mud in ral places.

How was it for the remainder of the route, when you were in naphtha or gasoline launch?

We touched bottom quite a number of times, in the running e boat we noticed a slowing down of the speed of the engine in- ting a dragging on the mud.

What draft did you say this gasoline launch had?

18 inches.

Are there any other changes, either in the islands adjacent to these Louisiana marshes, or in the Louisiana marshes themselves, which you have noticed, since your first visit there up to this time?

There is quite a difference in the width in what is known as chman's gap and Catfish pass, since I went there in 1898.

What is that difference?

It is probably 50 or 75 feet wider.

That is, Dutchman's gap?

And also Catfish pass.

Have you noticed any difference, and if so state it, in Nine e bayou or Three Mile bayou?

In Three Mile bayou, I did not visit that place in 1898 and w nothing about it only that the coast is gradually washing y there by seeing stakes on the shore and then seeing them in water later, probably nine or ten feet back from the shore, in e places.

In regard to Nine Mile bayou, have you noticed any changes if so what were they?

My first trip had with the commission or the first part of the e I worked with them there was only one pass from Blind pass Nine Mile bayou and at the present time there are two, one ou west of the other, probably 50 or 75 feet wide.

Can you state about what the depth of water in this new s is?

I have never been through there; I couldn't say.

Have there been any changes, and if so, state what changes, in mouth of Nine Mile bayou?

In the mouth of Nine Mile bayou I don't know, I never paid attention to the changes there, I don't go through there very n, but Blind pass is considerable wider than in 1898.

In regard to Turkey bayou or Johnson bayou, have you iced any changes there, and if so, what are they?

I never noticed any there.

Have you noticed any changes in regard to Creole gap?

A. We have not visited that section enough to notice any changes, I have not.

Q. Have you noticed any changes in regard to Grand pass?

A. The one I stated, the point being washed away.

Q. Have you visited Isle à Pitre as far as its most eastern extremity?

A. Within a very short distance, probably a quarter of a mile.

Q. Have you noticed there any changes since you have been working for the commission?

A. Well, I can't say that I have noticed any changes there for we have been so busy inside the marshes we had not time to be around that point very much.

Q. What is the nature of the soil along this northern coast of these Louisiana marshes?

A. Well, I am not an expert enough to tell you what it is, but it appears to me to be a mixture of clay and sand rather black in color.

Q. Is there any evidence of any vegetable remains in that grass or fibrous material of any kind, if so what?

A. That I don't know, it is grass growing there all the time and some few small—I don't know whether you would call them trees, around there, bushes, probably all the way from five to eight feet high ten feet high in places.

Q. What is the nature of this soil, is it soft or hard or porous?

A. In some places it is soft where it is a little low, but in others it is hard enough for a good sized horse or mule to walk over it without bogging over his ankles.

Q. Have you ever endeavored at any points along here, by your own weight to press a pole into the soil, and if so state what you saw or experienced?

A. Well, in some places I have tried, but very few, in some places I could push a pole probably ten feet, others I could not get more than a foot or a half or eighteen inches down.

Q. You say a pole; how did you attempt or try to get this pole down this eight or ten feet?

A. By working on it, putting my weight on it, moving it.

Q. Now, in these Louisiana marshes have you observed any trees, if so, state what trees if any, and about their dimensions and at what places you have seen them?

370 A. In 1898 on my first trip through the Louisiana marshes, in Nine Mile bayou, I saw one or two small oak trees on the left side going through, and another on Mud Grass island about the center.

Q. Going through what?

A. Going through the bayou.

Q. Which bayou?

A. Nine Mile bayou, near the south mouth of the bayou.

Q. How many trees did you see?

A. At that time, two or three, I don't remember exactly which, ut there — two or three trees there.
Q. You say they were oak trees?
A. Yes sir. They have since been dug up by treasure hunters.
Q. You have said they were small trees; can you give us an idea f the height*h* or diameter of the trunks——
A. One of them was probably 12 or 15 feet in height*h*, to the best f my recollection, and between three—between four and six inches t the butt, at the base.
Q. You say these trees have disappeared?
A. Yes, sir, they have been dug up by treasure hunters.
Q. Did you observe any other trees at any other points, if so, here?
A. About the center of Mud Grass island, in 1898, was an oak ree that was during the summer months or winter——
Q. Which is it, summer or winter?
A. Winter. I was there in the winter month, I don't remember he month, but it was green at the time, you could see it quite a istance, and today that tree appears to be smaller than it was at hat time, owing to the boughs being dead, the limbs being dead.
Q. About what was the height*h* of that tree when you first saw it?
A. Well, it appeared to me to be between 15 and 20 feet high; we ould see it from quite a distance.
Q. About what was the diameter of the trunk?
A. I never went to the tree at all, it was in the mud and I had no usiness there.
Q. How far were you away from the tree when you observed it?
A. Probably four or five miles, the first time I saw it.
Q. When was the last time that you saw it?
A. I think about 15 days ago.
Q. What changes, if any, did you observe in that tree?
A. Well, the tree was smaller in appearance owing to having no oliage on it, no leafing at all, it didn't show up as plainly as when first saw it.
Q. Have you ever at any time noticed any other trees in these Louisiana marshes?
A. At Indian Mound there is a large oak tree there.
Q. How large a tree is that?
A. I think about from 12 to 15 inches through at the base, as near as I can recollect.
Q. And about how tall, how high?
A. Probably about 20 feet, that is including the branches you know.
Q. What is the condition of that tree and of these other trees which you have seen?
A. They are all dead now.
Q. They are all dead now?
A. Yes sir, from what I have seen of them.

Q. I think you said you first visited these Louisiana marshes in 1898?

A. 1897 was my first trip, from Grand pass to Bayou Johnson and back to Bay St. Louis.

Q. Have you noticed any changes in any of these other islands to the north of these Louisiana marshes, I mean those islands lying between the north of the Louisiana marshes and the Mississippi shore?

A. On Grassy island in 1898 was a small camp, on the edge of the island, and today that camp has been washed away, the island is much smaller than at that time.

Q. About how much smaller?

A. That I couldn't judge; I know the camp was washed away.

Q. Is one quarter of the island washed away?

371 A. Probably so, that is, taking it from all around, to the best of my recollection.

Q. How has it been with Le Petit island off Le Petit pass?

A. About that island I can't say very much; I have only been passing that place in the last fifteen months, and of course I can't say much about that.

Q. Do you know anything about Malheureux point? Do you know that point?

A. Yes sir, I know the point.

Q. Have you noticed any change since you visited that point, if so, state what change?

A. I don't know of any change there because I never paid any attention, I simply visited the point once, working there, putting up a beacon.

Q. Have you noticed any particular change, generally in the shore line, on the north side of these Louisiana marshes, since you have been visiting them?

A. On the north shore?

Q. On the north shore, the coast line of the Louisiana marshes?

A. Only that in some places it has washed away, I know, from seeing stakes on shore and then seeing them lying in the water.

Q. Is this only partial or general along that coast?

A. I couldn't say about being general, because I never paid any attention at the time, I just remember by seeing stakes there and later seeing them in the water, probably two or three feet from shore.

Q. Have you noticed or observed how this washing away occurs?

A. Well, yes, I have thought of that quite often when I would be ashore and see the condition of the soil that had been washed up. The north winds blowing on that shore, it seems to me, that the water working, breaking against that shore, it is undermined or works out the foundation, and then the tide comes in there and just rolls it up on the shore and leaves it there and takes out, washes it back and forth.

Q. Have you ever observed, or not, and if you have, please state,

f you have noticed along this coast, portions of this soil which ashed back and into the condition it appeared?

A. I have noticed in one or two places, lumps of soil would be orn very near as round as a ball and others would be thrown up y the force of the waves in the condition in which it broke off.

Q. And tha-, as I understand you, was caused from the under-ining of the subsoil?

A. Yes sir, by the heavy north winds.

Q. You have not been out in this territory of the Louisiana narshes, in any of these great storms?

A. No sir; I was in one or two blows, but it was at night and it as not any serious blow, it was no storm.

Q. Can you state in a general way, what is the depth of the water long that northern coast of these Louisiana marshes?

A. From what few soundings I made in going back and forth, it as from 8 to 12 feet at some distance, and about a quarter or half ile from shore there would be seven or nine feet as a rule; in some laces shallower.

Q. What is the draft of this schooner Majestic?

A. Three feet and a half.

Q. How close, in making her patrol along this coast, can she ap-roach the coast?

A. In some places within a couple of hundred yards and in others ithin half a mile.

Q. You state that on the last trip that you made in the Majestic he went in as far as where? Mud island?

A. On the last trip, the trip that I made to Treasure bay is the ast we went in that far with the schooner, as far as Bayou Mussle.

Q. Did you notice, in going that far, or in coming out on the re-urn trip, whether the schooner dragged?

A. It drags every time we go in there.

Q. And you say the schooner drew how many feet?

A. Three feet and a half. If we didn't have a stiff wind we ouldn't go there with the schooner, we have to drop it and take he launch.

372 Cross-examination.

By Mr. McCLURG:

Q. Are we correct in understanding that you are testifying purely rom personal observation?

A. Yes sir.

Q. And that you do not undertake to be an expert on the subject f these formations, changes?

A. No sir, I don't claim to be an expert, just from personal obser-vation.

Q. And that your information covers only since 1897?

A. Yes sir.

Q. And when you stated your opinion as to the causes of these

changes in the borders of these islands, and passes, that is merely your idea about it without any scientific understanding?

A. From what I have seen, and with the north winds blowing to help.

Q. Is it not true that the east winds are the most destructive as to the shore there?

A. I don't think so, because Cat island breaks the force of the wind, Cat island protects that shore to a certain extent from the east winds; probably north, north east, north west, I don't refer to any particular wind, right to the point it may vary a quarter of a point to anywhere from to two to three points, that wouldn't affect it very much, it would be north, north east, north west.

Q. All of this vegetation and trees that you have testified about except perhaps the one on Indian Mound, are what you usually term bushes?

A. No sir; the one on Mud Grass island was an oak tree, from what I could see of it, and from the appearance of the limbs at the present time. I have never been to the tree to examine it, but from what I have seen of it, I have been within a quarter of a mile of it on a small boat.

Q. And you say that from that distance you supposed it was 15 or 20 feet high?

A. The first time I saw it, but at the present time it is not so high owing to the branches being broken off and dead. In fact there is only the body of the tree left.

Q. You looked at the tree a quarter of a mile and told it was an oak tree?

A. I don't claim it was an oak tree, but from the appearance it was an oak tree; I have never been to the tree.

Q. You do not undertake to say it was an oak tree?

A. No sir, not that particular tree; the others I do.

Q. It might have been a tree of more rapid growth than the usual oak tree?

A. It might.

Q. These other trees that you have spoken of; can you testify of your own personal knowledge whether they were trees of rapid or slow growth?

A. It would take a smarter man than I to tell whether a tree was of rapid growth or slow growth, without I was there to watch it and see it grow up.

Q. So you do not undertake to say whether they were trees of rapid or slow growth?

A. No sir.

Q. Now, these bayous along the north coast of the marshes, for instance, Nine Mile bayou and Three Mile bayou, Turkey bayou, Grand pass, and Creole gap, those passes have all been there since your knowledge of that shore?

A. Yes sir.

Q. And I understand you to say that some of them have widened during your observation?

A. Yes sir.

—. Washing of the points?

A. Yes sir.

Q. Do you know whether they have deepened or not?

A. That I can't say.

Q. Is it not true that the widening of those passes, does not affect the general depth of the same?

373 A. That I could not say; I never sounded through the passes; I know they have water enough to run a boat and that is all we care about, so we have water enough to run; I never paid any particular attention to the depth of water in any way.

Q. As long as you have got water enough to go on, that is all you want?

A. Yes sir; so we don't get aground and have trouble to get off, that is all I worry about.

Q. In starting out upon these inspections, where did you start from?

A. Generally from Three Mile bayou, according to the water, the schooners lying sometimes at Three Mile bayou and sometimes around Dutchman's gap.

Q. How do you get to them?

A. From the Rigolets we go through in a schooner.

Q. How long are the Rigolets?

A. I think the Rigolets are between five and seven miles long, I never measured it.

Q. Empties into Lake Borgne?

A. Yes sir.

Q. And then you go out of Lake Borgne down through Nine Mile bayou——

A. No sir; we go through from Lake Borgne into the sound and from there into Three Mile bayou.

Q. How far is that east of Nine Mile bayou?

A. Probably three miles or two miles and a half; I never measured the distance and I can't say exactly.

Q. I understood you to answer a while ago that you have been through Le Petit pass?

A. Yes sir; I have been through there probably 50 times in the last 15 or 18 months.

Q. Nine Mile bayou, do you know the depth of that bayou?

A. Only in one place, it is about 30 or 40 feet, in one place, that is all I can tell you about it, I don't know the depth only in that place.

Q. Do you know the depth of False Mouth bayou?

A. In some places there is three and a half and four feet of water, not more than that anywheres else over it, I don't think.

Q. How far is the mouth of the Rigolets west of the mouth of Pearl river?

A. I can't say; I never measured it.
Q. Give us your best judgment.
A. Probably from four to five miles west.
Q. Do you know where Lake Borgne stops and the sound begins?
A. I don't know the exact line.
Q. About the mouth of Pearl river?
A. No sir; I should judge it to be; I should judge it to be on a line between the Rigolets and Petite pass.
Q. Between the mouth of the Rigolets and Petite pass?
A. Petite Pass island.
Q. That line that you draw dividing Lake Borgne and Mississippi sound would be a line a little west of the mouth of Pearl river?
A. Yes sir, it would be west of Pearl river, that is only my supposition, I don't know, I never heard the line discussed there at all and I can't say, it is only my supposition if I was saying anything about it, between that and the outside water.
Q. Do you know anything about the depth of Lake Borgne from the mouth of Pearl river to Petite pass?
A. No sir; I never sounded Lake Borgne.
Q. How wide is Lake Borgne in its widest part?
A. I don't know; I have never been across it.
Q. How far is it from Three Mile bayou to the mouth of Pearl river?
A. I don't know; I have only travelled that distance once or twice.
Q. How far is it from Three Mile bayou to the Mississippi shore, due north?
A. I couldn't tell you that, I made the trip once or twice but never paid any attention to it.
Q. How far is it from Turkey bayou to the Mississippi shore, do you know?
A. I couldn't tell you that; that is out of my line; I can give you guess work but that wouldn't answer.
Q. Do you know how deep Three Mile bayou is, the channel leading from the sound into Three Mile bayou?
374 No sir; I do not; I never sounded it there. I didn't have a sounding pole to reach bottom.
Q. It is a fact that is a deep channel?
A. I know it is over ten feet.
Q. Do you not say the same about Turkey bayou, as to its depth?
A. I don't know the depth of Turkey bayou; I know after you get in the mouth 100 yards there is a mud flat that you can't go over with a skiff hardly.
Q. How about Grand pass?
A. All I know there is at least eight feet through the channel, eight to ten feet, maybe more, I don't know how much more.
Q. Is it not true, from your observations of these changes, in the conformation of those islands, that where the dirt and sand disap-

pears from one point it shows up in a neighboring point somewheres.

A. No; I have seen it washed away from one spot, and drop in and then be thrown up right there and then it would roll back again; now what became of it after that I don't know.

Q. Are the conditions the same down in Drum bay and California bay and Live Oak bay and those points as there are in False Mouth bay and Little Raccoon?

A. In some places the water is deeper and others not half as deep; in some places in Drum bay a boat drawing 15 inches would go aground and in some places I know it is four and five feet because I have been through there with a schooner and sounded.

Q. In some sort of craft you can travel all over that territory?

A. In a boat of light draft you can; not all over it either, because in some places you can't go with a boat drawing 12 inches, some places for a mile you can't go with a boat drawing 12 inches of water.

Q. Are there any of these islands east of the main land of Saint Bernard parish inhabited or cultivated?

A. I don't think there is, not that I know of.

Q. You are familiar in a general way with all of that section?

A. That is right in that immediate neighborhood, right around in Saint Bernard parish.

Q. Say from Nine Mile bayou——

A. No; there are none of those islands inhabited.

Q. East of Nine Mile bayou?

A. There are two camps on the shore there, but they are people living there taking care of oyster grounds.

Q. You don't know of any permanent houses?

A. Yes sir; there is one house that has been there for the last six years.

Q. That is a camp?

A. It is a good substantial house; of course it is raised so as to be off the ground.

Q. You don't know whether they till the soil or plant crops?

A. No sir; I think the house belongs to Mr. McGraw or Mr. Sanger of Bay St. Louis, I don't know.

Q. That is what you call an oyster camp?

A. I don't know about an oyster camp; a man is living there; it is a two room house with a gallery all around it.

Q. Does he live there all the year round?

A. Yes sir,

Q. For what purpose; what is the purpose of his residence there, what does he do?

A. I don't know what he does, I only know that he is living there, I have seen him there, he might be fishing oysters or watching oysters.

Q. You called it a camp?

A. Yes sir, or a house either if you want to call it that. I would call it a good comfortable house, if I owned it.

Q. Is there any stock or cattle kept there?

A. No sir; not that I know of; there are chickens and a dog.

Q. Any ducks?

A. I didn't see any tame ducks around there, I saw plenty of wild ones around there and a cat.

By Mr. DYMOND:

Q. You have spoken of a camp as suggested by the counsel
375 for the State of Mississippi, have you ever visited this house of Mr. McGraw's on Turkey bayou?

A. Yes sir; I have been there several times.

Q. Do you know of any other habitation?

A. Yes sir; there is one on what is called Doer point.

Q. What sort of a habitation is that?

A. I have never been closer than a quarter of a mile to that house.

Q. What appearance did it give from a distance of a quarter of a mile?

A. It looked like a very comfortable residence for the family living there, a man and his wife and two or three boys living there.

Q. Living there the year round?

A. Yes sir, Mr. Alfred Tancre.

Q. Are there any houses at the mouth of Three Mile bayou?

A. There were two building- there, one was a store, a couple of years ago, store and bar room, gambling house.

Q. Are those buildings still there?

A. Yes sir; they have been there now for the last 18 months and they were there in 1898, in going through Nine Mile bayou I could see the house from where I was.

Q. You were speaking a moment ago about a tree on Indian mound. What character of tree was that?

A. That was oak.

Q. Did you personally inspect that tree?

A. Yes sir; I have been up that tree I reckon three or four times in the last year.

Q. Then you climbed up the tree?

A. Yes sir, to look around the country and see what I could see.

Q. You know an oak tree when you see it?

A. Yes sir.

Q. Was that an oak tree?

A. Yes sir.

Q. Was it dead?

A. Yes sir.

Recross-examination.

By Mr. TAYLOR:

Q. Any of these houses you speak of, two story houses?
A. You might call the one at Turkey bayou a two story house.
Q. Any of them have brick foundations?
A. Not brick; it was piling, cemented and put in solid.
Q. Is it not a fact that they were just temporary board structures?
A. No sir; this was not a temporary board structure, it was ceiled up inside and fitted with wire screens and fixed up very comfortably inside; I wouldn't want any better if I owned it.
Q. Is that the place where the bar room was?
A. No sir, that was at Three Mile bayou.

HARRY CAGE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I am residing in New Orleans at present; my home is in Terrebonne parish.
Q. What is your present occupation?
A. Chief oyster inspector of the State.
Q. Of what State?
A. State of Louisiana.
Q. In your occupation as chief inspector of the Oyster Commission of Louisiana, did you have occasion to visit the oyster
376 territory of Louisiana?
A. Yes sir.
Q. Have you, in your various visits had occasion to go through the Louisiana marshes in the parish of Saint Bernard?
A. Yes sir.
Q. Is there any patrol system being operated under your supervision, of that locality?
A. Yes sir, through the entire marsh.
Q. What is the line, you are now patrolling, as separating that area from the outside fishing of non residents?
A. I am patrolling all the main shore line of the marsh.
Q. What do you mean by the main shore line of the marsh?
A. I mean all of the marsh of Saint Bernard parish, with the exception of the marsh and waters around Isle à Pitre.
Q. Is that line you are patrolling the line designated in the amicable agreement between the Mississippi and Louisiana oyster commissions?
A. Yes sir.

Q. Have you had occasion to sail along that line from Petite pas to Isle à Pitre sufficiently close to inspect the line?

A. Yes sir; I have sailed within a quarter of a mile probably.

Q. What is the general appearance of that line from Petite pas to Isle à Pitre?

A. Well, it is a well defined line cut by bayous.

Q. Is it well defined or poorly defined?

A. It is well defined.

Q. What sort of land is it?

A. It is marsh land, sea marsh.

Q. About how far above the level of the sea?

A. I should say about, possibly, 15 or 18 inches above ordinary tide.

Q. Have you ever had occasion to notice any buildings at the mouth of Three Mile bayou?

A. I have noticed buildings there.

Q. How many?

A. Two.

Q. Have you noticed any building at Johnson's bayou or Turkey bayou?

A. I have noticed one building there and have been into it.

Q. Have you ever noticed any building at Deer Point lagoon?

A. No sir; I never noticed that building; I don't know that I have been near enough to Deer point to have noticed the building.

Q. In accordance with the agreement between the two States, is the State of Louisiana, through you, as its chief inspector of its oyster commission, patrolling the area south of the line running from Petite pass to Grand pass?

A. You mean, including embracing what we call the neutral territory?

Q. Yes?

A. Well, our patrol of that, has not amounted to much as we have no boats fishing there.

Q. What do you refer to when you say "patrol of that"?

A. I mean what we call the neutral territory.

Cross-examination.

By Mr. McCLURG:

Q. I will ask you how far it is from Petite pass to the most eastern end of Isle à Pitre?

A. Well, I might as well state to you, in the beginning, that on my trips around the marsh I am always aboard of the patrol schooner and I am not responsible for the navigation and I have others thoroughly competent to navigate, a deputy inspector there, and I have relied so much on him for the navigation that I never have noticed or taken much account of distances.

Q. But it is true, is it not, that between those two points you have noticed only two buildings and they are at Three Mile bayou?

A. Two buildings at Three Mile bayou.

Q. And those are the only houses you remember of having noticed?

A. And one at Turkey or Johnson bayou; Mr. McGraw's house.

377 Q. Those are fishermen buildings, are they not?

A. Well, I do not think either one of them is properly a fisherman building. I understood that the one at Turkey bayou was the property of Mr. McGraw and his associate, while I believe he has a keeper. And one of the buildings at Three Mile bayou I always understood was erected for the purpose of carrying on merchandise business, store and bar room; though I don't know that.

Q. The merchandise business was carried on exclusively with fishermen, out there, was it not?

A. I would imagine so, yes sir.

Q. And there is no habitation or population on those islands for dealing with any merchants, is there?

Q. Well, there is nothing there that you would speak of as a population, no sir.

Q. They are rather supply stations for fishermen and raftsmen passing that way?

A. Well, they are merchants in the regular sense, they take out their State license and carry on regular merchandise business.

Q. What I want to find out is the class of people with whom you deal, transact business?

A. Their business, of necessity, must be very largely with fishermen.

Q. East of the main land, shore of Saint Bernard parish, there is no sort of agricultural pursuits, no habitations of any kind?

A. In the marshes you mean?

Q. Yes?

A. None that I ever saw.

Q. How long have you had observation of that country?

A. Since September 1892.

Q. Of your own knowledge you know nothing about the depth of those waters down there?

A. Nothing accurate, no sir.

By Mr. DYMOND:

Q. Did you mean September 1892 or September 1902?

A. September 1902.

J. M. BREAUX, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. I live in Houma, Terrebonne parish.
Q. What is your present official position, if any you have?
A. I am president of the Oyster Commission of Louisiana.
Q. Have you been president of that body since its organization in August 1902?
A. Yes sir.
Q. In your position, as president of the Oyster Commission of Louisiana, have you had occasion to visit the oyster territory of Louisiana?
A. Yes sir.
Q. Have you had occasion to visit the oyster territory in the parish of Saint Bernard?
A. Yes sir.
Q. Were you present, Mr. Breaux, at the conference of the oyster commissions of Louisiana and Mississippi which occurred in the city of New Orleans on September 9th, 1902?
A. Yes sir.
Q. Who presided at that meeting?
A. Well, the president of the Oyster Commission of Mississippi presided, Mr. J. A. Hatlestad.
378 Q. At that time, was the Oyster Commission of Louisiana arranging to patrol the waters of the State of Louisiana as interpreted by the Louisiana commission as their territory?
A. Yes sir.
Q. What was the purpose of that conference?
A. Well, the purpose of the conference was to have an agreement with the Oyster Commission of the State of Mississippi in regard to what we considered to be the territory belonging to Louisiana in the parish of Saint Bernard and to see if we could make any—come to any amicable settlement or understanding with the Oyster Commission of Mississippi in regard to instituting a friendly suit with the State of Mississippi to define this disputed line between the State of Mississippi and the State of Louisiana.
Q. Was such an agreement as that necessary?
A. Well, yes, it was.
Q. What made you think it was necessary?
A. Why, because we knew that the fishermen from the State of Mississippi were intruding on the territory of Louisiana, taking her oysters and transporting them into Mississippi.
Q. What was the attitude of the Oyster Commission of Mississippi as expressed on that occasion?
A. Well, the attitude of the Mississippi oyster commission was

hey thought they had a right to fish in this territory, part of least.

Was there any expression of what the Mississippi oyster com-on's attitude would be in the absence of any amicable agree-?

Well, they—I don't understand you well.

Read the question. (Question read.)

Well, no, not exactly. We had a discussion in regard to the r and I think that both parties were satisfied pretty soon after et that we would come on some agreement consequently—no than they did say they would, in fact, they could have it by if necessary.

Who said that?

Well, the president of the board of Mississippi said it.

This gentleman you referred to as Mr. Hatlestad?

Yes sir.

What did he mean by they could have it by force if necessary?

Well, from the expression of the president of the board of Mis-pi, he said that if we could not come on an amicable settlement this affair that he reckon they could have it by force or by means.

Was the Louisiana commission then prepared with an armed l boat to protect her rights?

Not right then, we were not, we had scarcely organized, no than organized, but we were preparing to get our patrol boats. That conference terminated, as I understand it, in the adoption e agreement between the two commissions which has been d in evidence as Document No. 4?

Yes, sir.

As the result of that agreement was there a neutral territory ed, in which Mississippi vessels could fish?

Yes sir.

Did that neutral territory include part of the water which was y claimed by Louisiana?

Yes sir, a good deal of it.

Has the State of Louisiana, through its oyster commission, any cial interest in that area?

Has it any financial interest?

Yes.

Yes sir, it has.

Of any importance or consequence?

Yes sir, of great importance.

Have you ever, on any trip, had occasion to go through the siana marshes?

Yes sir.

Q. How many times have you been through them?

A. I have been there, as far as I can remember, three or four times.

Q. Have you ever sailed along the coast from Petite pass to Isle à Pitre?

A. Yes sir.

Q. Have you ever been close enough to it to notice what the general appearance of the coast line was?

A. Yes sir.

Q. What is the general appearance of the coast line there?

A. I think it appears like a very well defined coast line.

Q. Have you ever been down in the interior of the marshes?

A. Part of them, yes sir.

Q. In what boat did you go?

A. In the Majestic.

Q. In sailing through on the inside of the marshes, have you ever noticed whether the boat dragged on the bottom?

A. Yes sir; in several instances, very often.

Q. What is the general condition, does that boat drag or not drag when she is on the inside of the Louisiana marshes there?

A. As a general thing she drags.

Q. Has that question of a suitable boat for the patrol of the interior of the marshes, come up before you for consideration as the president of the oyster commission?

A. Yed sir; on several occasions.

Q. What character of coat would be needed and best suited for the patrol of the interior?

A. It would be a boat that would draw as little water as possible.

Cross-examination.

By Mr. McCLURG:

Q. The Majestic seems to have been a kind of dragger?

A. Well, yes, and any other boat would have been a dragger drawing the same depth of water as the Majestic did.

Q. Did the meeting of the oyster commissions at New Orleans, on September 9th, undertake to settle the boundary dispute between the two States?

A. Well, we did not feel that we had the power to settle the dispute of the boundary line, but we felt that we had a deep interest in this and at our first meeting on the day of the organization of our commission this was one of the principal discussions of the meeting. We came to the conclusion that it was best to place ourselves in communication with the Oyster Commission of the State of Mississippi and try and so arrange it as to have an amicable understanding between the two States with the understanding that we would institute a law suit before the Supreme Court of the United States and demand a settlement of this disputed line between the two States, and we thought by doing so, so did the Oyster Commission of Mississippi, that we would have no hitch in this suit whatever; in other words, it was understood that it would be a friendly suit and that we would

let the court take its own course in the matter so we could have a speedy decision in regard to this disputed line.

Q. That was the question with your commission when it was organized?

A. That was the question with our commission when it organized and also the day we met the Oyster Commission of Mississippi, between the two commissions.

Q. The objective point was to provide for a suit in the United States Supreme Court?

A. A friendly suit, so as to have a speedy decision in regard to the disputed line between the two States

Q. As a matter of fact, the Oyster Commission of Louisiana understood that they had no authority to settle the boundary line between the two States?

A. Well, yes, I think they all understood that to be a fact, that we had no authority.

Q. And they understood also that the Mississippi commission had no authority to settle the boundary line between the two States?

380 A. Yes sir, that is the way I understood it.

Q. And pursuant to the resolution adopted at the September meeting 1904, this suit was instituted?

A. Yes sir.

Q. Between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi, both understanding that they had no authority in law to make an agreement as to neutral territory that would be binding upon the citizens of the respective States?

A. Well, we took it for granted that we had that right to establish this agreement.

Q. Did you not preside, at a meeting held in this city in November 1902, immediately after the institution of this suit, in which the governor of your State and of the State of Mississippi and the attorneys general of those two States, and the oyster commissions of those two States participated?

A. Yes sir.

Q. Was not that meeting called at the suggestion of the governor of Mississippi?

A. It was—at least it was not called by me at the suggestion of the governor of Mississippi; it was called by me at the suggestion of our governor.

Q. It was requested of your governor by our governor, was it not?

A. I can't say that I am sure of that but I understood it to be so.

Q. What was the purpose, if you remember, of that meeting?

A. As near as I can remember, the purpose of it was in regard to the dissatisfaction of the agreement, that the agreement had created in Mississippi, the agreement between the two commissions.

Q. As to what?

A. As regarded the neutral territory, and Governor Longino then took up the matter with our governor and requested him to advise

with me in regard to having an extra session or a conference with both governors and both commissions.

Q. And that meeting was the result of the dissatisfaction of the people of Mississippi with the agreement that our commission had made with your oyster commission with reference to the neutral territory?

A. That is my understanding, it was.

Q. Do you not remember that at that meeting, the attorney general of Mississippi recommended as the safest, quickest, cheapest and best way to settle this trouble between the certain inhabitants of the two States, was, that the governor of Louisiana recommended to his legislature the appointment of a boundary commission and the governor of Mississippi recommended to his legislature the appointment of a boundary commission?

A. Yes sir.

Q. And that those two commissions should meet, settle and mark this boundary; do you remember that proposition having been made?

A. No; the proposition was not made in regard to the two commissions meeting to settle this question.

Q. I say, whether at the meeting of those two commissions this proposition of settlement was not made by the attorney general of Mississippi?

A. Well, there was a proposition somewhat similar to that, but I can't remember it very well now. All I can remember is that Governor Longino, after discussing the matter a while between him and Governor Heard and between the attorney general of Louisiana and the attorney general of Mississippi, they discussed the matter a while and then Mr. Dymond produced a map which would show the governor of Mississippi, Governor Longino, exactly the territory that we had allowed the Mississippi people to use as a neutral territory between the two States, and on looking at the map Governor Longino, he looked over it carelessly, and finally I imagined that I could see in his appearance that it was not satisfactory to him, and right then and there I was asked to excuse the two governors of both States and leave it to the two commissions to settle the question, and owing to the lateness of the hour of the day, we decided to put it off for a few days and have a conference again with the Mississippi commission, which we did, and in our next conference the Oyster Commission of Mississippi told us that they were perfectly satisfied with the first agreement and they saw nothing to kick about and the matter was left just as we decided at first.

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Q. Do you remember that I represented Mississippi as her attorney general at that meeting?

A. Yes sir.

Q. Do you not remember that I made the statement suggesting a settlement, substantially as I have asked you about in a previous question?

A. You made some remarks of that kind, yes sir, but I don't remember——

Q. Don't you further remember that that proposition was declined by the governor and attorney general of this State in that open meeting?

A. I do not know that they declined the proposition at all. On the contrary, in the discussion the whole matter was turned over to the two commissions, everything was dropped.

Q. By vote of that meeting?

A. No sir, not by a vote of that meeting, but by the proposition of the two governors that they would withdraw and leave the decision in the hands of the two commissions as regarded what Governor Longino was asking of us.

Q. The governors and attorneys general retired?

A. Yes sir.

Q. And left it to the two oyster commissions?

A. Yes sir.

Q. And you say that was at the request of the two governors?

A. Yes sir.

Q. And the two oyster commissions after these officers retired failed to come to any agreement that day?

A. We did not undertake to come to any agreement. It was the mutual understanding that we should meet a few days later.

Q. You did meet a few days later?

A. Yes sir.

Q. At what point?

A. Right there in the office of the Oyster Commission of Louisiana, 339 Carondelet street.

Q. Were all of the Mississippi members of the Mississippi commission present?

A. Yes sir; I think they were all present.

Q. Now, at the first meeting, the president, President Hatlestad was not at our first conference owing to illness, but at our second meeting he was present.

Q. So that it is a fact that the neutral line was agreed upon between the two oyster commissions of the States?

A. Yes sir.

Q. And both of those commissions understood, when they made that agreement, that they had no authority, in law, to bind the people of either State by agreement?

A. Of course we felt we could bind the people of either State by our agreement, as far as the neutral territory was concerned; that is the only reason why we came on that agreement.

Q. You understood you had that authority?

A. Yes sir, certainly, pending the decision of the United States Supreme Court in the matter.

Q. There was no express ratification of that agreement mutually between the governors of the two States, subsequently?

A. Of what a greement?

Q. Fixing this neutral line.

A. Subsequently to that, no sir; it was altogether left to the commissions.

Q. Can you tell us how far it is from Petite pass to the most eastern end of the Isle à Pitre?

A. No sir.

Q. From the main shore of Louisiana along the eastern part of Saint Bernard parish, to the eastward, through the marshes, are there any habitations or industrial life of any kind?

A. Yes sir, there are some buildings at Three Mile bayou, there are two buildings there at Three Mile bayou.

382 Q. How are they inhabited?

A. Those at Three Mile bayou, why, I didn't see either of them inhabited. I understood there was one that was built there for the purpose of keeping a store.

Q. To trade with what class of people?

A. Well, any class that worked in the waters around there I suppose.

Q. Fishermen and that kind of people?

A. Yes sir.

By Mr. TAYLOR:

Q. You said that in the course of these negotiations between the two commissions, the primary object was to arrange for a friendly suit?

A. Yes sir.

Q. Please explain to us what you understood by arranging for a friendly suit?

A. Well, I suppose you understand what a friendly suit means?

Q. I want to understand what your understanding was? Was it to make up a case by agreement?

A. Make up a case by agreement to fix the line.

Q. So the court could decide it?

A. So there would be no hitch on either side from either State.

Q. Did it occur to any of you that if you agreed to make up such a case by agreement that the court wouldn't hear it at all?

A. No sir.

Q. Was it taken into consideration that if a case was just made up by consent, there was no real controversy, the Supreme Court would have no jurisdiction in the matter; did you take that into account?

A. No sir. Of course we thought we had a perfect right to make up a case. The object of it was we were anxious to settle this disputed line between the two States. Our object was to get this thing settled. We knew that the Mississippi people were taking our oysters; we were satisfied they were on Louisiana territory and we did not wish to aggravate the thing and we thought the best thing to do was to hold a conference and try and have an amicable decision by the court in regard to this line.

Q. And you wanted to make up a case with that end in view?

A. Not exactly make up a case but we wanted the thing decided in one way or the other. We did not call this conference for the simple purpose of making a law suit or a case. It was for our own satisfaction, to know where we stood, and for the protection of our State industry.

Redirect examination.

By Mr. DYMOND:

Q. In this case, was that to be conducted by the law department of the State, or, was it to be conducted by the oyster commission?

A. What?

Q. This proposed boundary suit between the two States?

A. By the oyster commission.

Q. Who was to handle that case; was it to be handled by the oyster commission or by the law department of the State government?

A. By the law department of the State.

Q. Were you aware of the fact and was the commission aware of the fact that there was a serious boundary dispute with the State of Mississippi?

A. Yes sir.

Q. Were both commissions aware of the previous negotiations between the amicable boundary commissions appointed by the governors of Louisiana and Mississippi?

A. Yes sir.

Q. Were they aware of the fact that the Mississippi Boundary Commission had recommended a friendly suit in the Supreme Court of the United States?

383 A. Yes sir.

By Mr. ZACHARIE:

Q. What did you mean by the use of the words agreed upon case? Did you mean a case to be submitted on an agreed upon state of facts or did you mean an ordinary suit in which evidence was to be adduced?

A. Why, of course that is what we meant exactly, where the evidence would be taken, just as we are doing now.

Q. Then when you say a friendly suit, what did you mean by that?

A. Well, what I meant by a friendly suit, the meaning of the word, when I mentioned a friendly suit, was it would be an agreement between the two States, you understand; as far as that was concerned, we did not consider it anything to do that with them, but we decided it would be a sort of a friendly decision in regard to the line between the two States.

Q. Then the word friendly had nothing at all to do with the matter?

A. No sir.

Q. It would be just an ordinary suit?

A. Yes sir.

Q. In regard to this neutral zone, do I understand you correctly that the result of that was simply a concession on the part of the oyster commission that during the pendency of this suit they would not endeavor to enforce the law of Louisiana within that zone?

A. Yes sir.

Q. You do not profess that you had any authority to bind the State of Louisiana or the people of the State of Louisiana, but it was only in regard to your own official action?

A. That is all. In other words, we thought by doing this, that it would be understood, and that the law suit would be started and that neither of the States would file any demurrer against the suit, you understand, that the suit would go on right straight through and we would have a speedy decision in regard to this disputed line.

Q. What do you mean in regard to the State filing a demurrer?

A. Neither State would file a demurrer; that the thing would go on and we would have a speedy decision so we would know exactly——

Q. In other words, you wanted a judicial decision to settle this boundary?

A. Yes sir.

Q. And in the mean time you agreed that the Oyster Commission of Louisiana would not attempt to enforce the Louisiana law within this zone?

Mr. TAYLOR: Don't you think you are leading him a little too much?

A. Yes sir.

Recross-examination.

By Mr. TAYLOR:

Q. Why is it you say that this word friendly had nothing to do with it when you used it so warmly then, over and over again; why did you use that word so warmly then if it did not mean anything?

A. Because it was just a matter of using a word as to show when we decided to confer with the Oyster Commission of Mississippi, it was on that understanding, that it would enable the two States to bring in a suit between themselves, a friendly suit.

Q. There was to be no demurrer on either side?

A. No sir.

Q. Who is the counsel for the oyster commission?

A. Mr. John Dymond, Jr.

Q. Has he got anything to do with carrying on this suit?

A. Yes sir.

384 A. Yes sir.

Q. Has he taken any part in these proceedings, as far as you have heard?

A. I think he has.

Q. He is conducting them with great ability, is he not?

A. Yes sir, I think he is able to hold his own.

Captain ALFRED C. RUIZ, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. In St. Bernard parish, in the 7th ward.

Q. At what place?

A. At Ycloskey plantation.

Q. How long have you lived in the parish of Saint Bernard?

A. I have lived there a good while, I suppose somewheres like 40 years.

Q. Where were you born?

A. I was born in New Orleans.

Q. What is your business at present?

A. I am deputy inspector of the Louisiana Oyster Commission.

Q. Are you in charge of the oyster commission's patrol boat Majestic?

A. Yes sir.

Q. What was your business before you became a deputy inspector of the Oyster Commission of Louisiana?

A. Immediately before that I was planting.

Q. What was your business before you became a planter?

A. I was a sailor, boatman.

Q. When did you first start into the boat business or sailing business?

A. I started in the steamboat business in the neighborhood of 1871

Q. When did you start in the sail boat business?

A. It must have been somewheres around '74 or '73.

Q. Are you familiar with the Louisiana marshes?

A. In some parts.

Q. When did you first become familiar with the Louisiana marshes?

A. Somewheres around 1874.

Q. What were you doing at that time?

A. I was running freight from the rear part of Saint Bernard parish to New Orleans.

Q. Did you have occasion *re*frequently at that time to go through the Louisiana marshes?

A. That was my route.

Q. And that was about the year 1874?

A. Yes sir.

Q. How long did you continue that business?

A. I ran there only two years, that is, in the winter time, when the road was put up to go down to Proctorville then I went around so I could get nearer to the planters so we could get the freight.

Q. How many years, Captain, were you engaged in going through the Saint Bernard marshes or Louisiana marshes?

A. I went through there, as I told you before, two years in succession, but my regular route was from Proctorville to the old basin.

Q. Did you in that two years' time, which I understand to be from 1874 to 1876?

A. Yes sir.

Q. Become familiar with the route which you were traversing?

A. Yes sir.

Q. When, then, did you again visit or go through that section of that country?

A. I went through in 1903.

Q. Under what circumstances did you make your second appearance there?

A. Under the employment of the Oyster Commission of Louisiana.

Q. What route was it that you took?

A. I used to go through Nine Mile bayou and from there into Mussle bayou and from there down Bayou Pitre and from Bayou Pitre to Bayou La Loutre and then to Bayou Eloi and from these to Lake Coquiee and from there to Lake Robin and from
385 there to East bayou and up to the plantations.

Q. When you speak of right up to the plantations, do you refer to the plantations in that portion of Saint Bernard parish?

A. Yes sir.

Q. When you made your second trip in 1903, did you go through anywhere near the same route?

A. I did, as far as Bayou Mussle from the north side, from Nine Mile bayou.

Q. Did you notice whether any changes had occurred around in that interior country between the year 1874 and the year 1903?

A. Yes sir, a great deal, to such an extent that I did not recognize the country in a good many places.

Q. Of what character were these changes?

A. Well, I presume from the storms.

Q. No, I mean——

A. Washings away.

Q. Can you indicate any particular point at which these changes had occurred?

A. Well, yes, commence at the beginning, at Round island and Petite Pass island and also Petite pass.

Q. What changes have occurred there?

A. Well, Round island has partly disappeared, in fact, it has become a key, at the time I was navigating around there it used to be quite a good size island.

Q. What do you mean by quite a good size island?

A. I presume it was four or five acres; I didn't measure it, I just presume it was.

Q. Do you mean four or five acres in circumference?

A. Yes sir.

Q. What change has occurred in Petite pass?

A. It is much larger and Malheureux point has shortened up a great deal.

Q. Had any change occurred in the width of Petite pass?

A. Yes sir, it is very near twice its width, the width it was before when I was there.

Q. Had any change occurred in Grassy island?

A. Yes sir, a good deal, it has partly disappeared.

Q. Had any change occurred in Half Moon island?

A. I never visited that much, but I think there must be, I couldn't tell you how much.

Q. Had any change occurred in Nine Mile bayou?

A. Yes sir, that also.

Q. What change had occurred there?

A. There was quite a good size piece of land between the bayou and Blind pass, and today it is a very narrow strip with two cut offs in it connecting Blind pass with Nine Mile bayou.

Q. Had any changes occurred further along in Nine Mile bayou?

A. Pretty much all the way along. There is Pirate point on the northeast end of Nine Mile bayou, that was a good deal longer than it is now.

Q. Had any change occurred south of Pirate point?

A. Yes sir, it is much narrower than what it was, the point is.

Q. Following on down south from Pirate point what was the next change you noticed?

A. Pretty much all along to Mussle bayou it is wider and the point shorter by being washed away, on to Treasure bay.

Q. Going on further south, what other changes did you notice?

A. I didn't go through that bay further south.

Q. All of this territory you have spoken of, with the exception of Petite pass, Round island and Grassy island, is south of the shore line running from Petite pass to Isle à Pitre?

A. Yes sir.

Q. Do you know whether any changes have occurred further eastward, so far as your personal knowledge goes?

A. I didn't run through there before; I just went there here of late, since I have been employed by the commission; before I didn't pass there; I went around through Deep Water pass and outside of Isle à Pitre and inside of Cat island; in fact, I ran all around
386 Cat island and all the other islands and from there Chandeleur islands.

Q. Do you know whether any changes have occurred in Isl
Pitre since the first time you saw it?

A. Yes sir; the pass looks to be wider than before, the pass
tween Isle à Pitre and Cat island.

Q. Do you know whether any change has occurred in Three M
bayou since you first saw it?

A. Yes sir.

Q. What was the width of that bayou when you first saw it?

A. I would have to guess at that. I only passed through the

Q. How wide do you think it was?

A. It must have been about ¼ of what it is now.

Q. What was the width of it, in yards?

A. At that time I suppose it was probably 100 yards; now it m
be nearly 300 yards, as near as I can approximate it, I don't kn
for sure.

Q. Do you know, from your personal knowledge, whether a
changes have occurred in Turkey or Johnson bayou?

A. No sir; I did not visit that part of the marsh at all; latel
have, I have not taken any notice there.

Q. Do you know whether any changes have occurred in t
Chandeleur islands?

A. Yes sir.

Q. What changes have occurred there?

A. They have been washing away; the Chandeleur islands ha
been cut into several different pieces, when it used to be all one so
piece.

Q. What changes, if any, have occurred in Grand pass, with
your knowledge?

A. I did not go through Grand pass.

Q. When you were testifying a moment ago in regard to an
crease from 100 yards to 300 yards, what bayou did you refer to

A. I referred to Three Mile bayou.

Q. What change, if any, in width, has occurred in Nine M
bayou?

A. I couldn't exactly tell you what change has occurred.

Q. Is it wider now than when you first saw it?

A. I am sure it is wider, but I could not say whether it is 50 f
or 75 feet. I know it is something in that neighborhood, wider th
what it was.

Q. Do you know whether any changes have occurred as a res
of the north winds, on the shore line extending from Petite pass
Isle à Pitre?

A. Undoubtedly they have, it is a north shore.

Q. Do you know Alfred Joseph Monier?

A. Yes sir.

Q. And George Thiel?

A. Yes sir.

Q. Do you know whether either of those parties walked fr

Petite pass to Isle à Pitre along the north shore of the Louisiana marsh?

A. Yes sir.

Q. Of your own knowledge?

A. Yes sir. They walked along there under my administration.

Q. Which one did the walking?

A. Alfred Monier.

Q. What did George Thiel do?

A. He rowed the boat along so as to cross Monier over the bayous.

Q. What bayous do you refer to?

A. Such as Blind pass, Nine Mile bayou, Three Mile bayou, Bayou Johnson, Turkey bayou, Drum bayou and down to Grand pass.

Q. Were you on the patrol boat Majestic at the time?

A. Yes sir; I put them down at Malheureux point and left them there and I sailed down to Three Mile bayou and let them walk along until they got to Three Mile bayou and they came back to the schooner there, and then I started them off the next day from Three Mile bayou down to Isle à Pitre and I went later and met them there.

Q. They are here as witnesses in this case?

A. Yes sir.

Q. What is the character of the soil of the Louisiana marshes?

387 A. Well, it is a marsh, same like any other marsh; the marsh will grow anything if you just drain it.

Q. How high is it above the sea level, tide level?

A. In regular tide it ought not to be no less than 18 inches, 12 to 18 inches.

Q. Have you got a sample of the soil taken from the Louisiana marshes?

A. Yes sir.

Q. Have you got it with you?

A. Yes sir. (Witness produces sample referred to.)

Q. Is this a sample of the soil taken from the Louisiana marshes?

A. Yes sir, that was taken off of Isle à Pitre, at the eastern end of Isle à Pitre.

Mr. DYMOND: Counsel for the State of Louisiana exhibits to the witness the said sample.

Q. From what part of the Louisiana marsh was this sample taken?

A. From the southeast end of Isle à Pitre.

Q. How close is that to the western end of Cat island?

A. I do not know.

Q. Well, about?

A. I presume it is about ¾ of a mile.

Q. What separates Cat island from Isle à Pitre at that point?

A. A deep water channel.

Q. Did you take a sample of soil from Cat island, from the west ern end of Cat island?

A. Yes sir.

Q. Have you got that?

A. Yes sir. (Witness produces sample referred to.)

Q. Is this a sample of soil taken from the western end of Ca island?

A. Yes sir.

Q. Were these two samples taken by you?

A. Yes sir, by me, personally.

Q. Are these the identical samples that you took?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witnes counsel for the State of Louisiana, now offer in evidence the sampl of soil taken from the eastern end of Isle à Pitre, which will b marked "Sample No. 1" and the sample of soil taken from th western end of Cat island which will be marked by the commis sioner "Sample No. 2."

Mr. MCCLURG: Counsel for the State of Mississippi waive the ne cessity of any part of these samples being given to them, the sample to be deposited with the commissioner.

Q. How does the soil of the balance of the Louisiana marshes com pare with this sample of soil marked No. 1 which you took from th eastern end of Isle à Pitre?

A. It is pretty much all the same. In some places, of course, i is lower and other places higher, but it is about the same soil al the way through.

By Mr. ZACHARIE:

Q. In the difference of conditions you have testified to in the in terior of this marsh land, that is, the changes which have taken place between 1874 and 1903, did you find any places in the interio where there had been land at your first visit which was now water or did you find any places which was water at your first visit which are now land?

A. I found none that was water that is now land, it was all land and now water, the changes in the places that I noticed.

388 Q. Was that a special or a general change, so far as you observation went?

A. Yes sir.

Q. Well, yes, does not mean anything. I asked you in the alter native, whether it was special or general.

A. All through the Louisiana marsh from the mouth of the Mis sissippi river it is pretty much the same way, it washes away; well near the mouth of the Mississippi river it makes up but from ther this way it don't, it washes away.

Q. That is a general change you noticed?

A. Yes sir.

Q. Have you ever been in any of these storms, either on your first visit, or on your subsequent visits?

A. No sir. I never was caught down there in any storm; I have been in a northwester but no storm.

Q. Have you ever visited these Louisiana marshes after any of these violent storms?

A. Yes sir; around my place, around my premises near the woods.

Q. What years was that in?

A. 1893 to 1894.

Q. Have you noticed any changes which have taken place on account of those storms?

A. Well, yes, back of my place it has dug out all the little lagoons and has piled up the drift about eight or ten feet right up against the woods, drift and mud mixed up.

Q. How near to your place are these Louisiana marshes?

A. It is surrounded by the Louisiana marshes, my place.

Q. Have you stated the time you noticed this?

A. Yes sir, it was right after these storms.

Q. After the storm of what year?

A. After the storm of 1893. Why, the very next day we were out there looking at it.

By Mr. DYMOND:

Q. I omitted to ask you, within what period of time you took these samples, how recently?

A. I took these samples on the 30th of last month.

Q. 30th of March?

A. Yes sir. (Referring to samples No. 1 and No. 2.)

Q. On your original visit through this area you have testified about, did you see any trees through the Louisiana marshes?

A. Yes sir.

Q. Where did you see them?

A. I saw some on Nine Mile bayou, on my first visit in the marsh, and some on the eastern coast of Mud Grass island, and also a bunch on Indian Mound bay.

Q. What character of trees were those?

A. I didn't go ashore to either one of them, but they looked at least —. I did go to the Indian Mound Bay tree, that is a live oak tree there, but I didn't go to the tree on Nine Mile bayou and neither to the one on Mud Grass island.

Q. Are those trees living or dead?

A. The one on Nine Mile bayou has disappeared entirely.

Q. What about the one on Mud Grass island?

A. There is nothing but a snag of it there, the limbs are dead and it is pretty much broken away.

Q. How about the one on Indian Mound bay?

A. It is dead also.

Q. The one on Indian Mound bay I understand you to say is a live oak tree?

A. Yes sir, it is a live oak tree.

Cross-examination.

By Mr. McCLURG:

Q. From what direction do these storms usually come which you have spoken of?

389 A. They generally come from the eastward, northeastward, but most of the damage is done when they come from the northwest; after blowing a certain length of time from the northeast it whips around to the northwest and forms a terrible big sea and that is what does most of the damage.

Q. What is your idea about the deposit of the land that is cut away from these points, where does it go?

A. I presume,—it is a light soil,—it is carried right out through the deep water channels and carried out to the sound outside.

Q. Outside of what?

A. Outside of Isle à Pitre.

Q. You mean to the south of Isle à Pitre?

A. Yes sir, near Point Chicot and all over there it forms mud flats all along there.

Q. You testified about Petite pass, that it had widened within your knowledge?

A. Yes sir.

Q. Where do you think the ground taken from there, rested?

A. I have no knowledge where it went. I wasn't out there, I have not any idea.

Q. And that is true — to all of these other widenings and cut offs you speak of?

A. Yes sir.

Q. You don't know where it was carried?

A. No sir.

Q. While you have seen the territory disappearing you have not seen any made?

A. No sir.

Q. No new islands?

A. No sir.

Q. And no increase of any of them?

A. Not to my knowledge, not where I have been, so far.

Q. You don't know where it goes?

A. No sir.

Q. In plying your steamer in 1871 and your sail boat from 1874 to 1876, you were carrying on a transportation business between planters and New Orleans?

A. Yes sir.

Q. Between the planters along the eastern coast of Saint Bernard parish?

A. On the western coast.
Q. Where is Proctorville?
A. That is in the back of Lake Borgne between Saint Malo and Proctor's point.
Q. That is to the west of Petite pass?
A. To the southwest of Petite pass and due north from the Rigolets.
Q. How did you go from Proctorville to New Orleans?
A. I went through the Rigolets at the first beginning we used to go before I undertook the carrying myself, I went with schooners that used to go through Chef Menteur, before the bridge was built and—that Chattanooga railroad at the time it was called that, built a bridge over there and then we had to change our route and go through the Rigolets.
Q. Chef Menteur is west of the Rigolets?
A. Southwest.
Q. It empties into Lake Borgne?
A. Yes sir, and Lake Pontchartrain, it connects the two lakes.
Q. You mean Chef Menteur does?
A. Of course, it empties into Lake Borgne right to the west of Alligator point.
Q. It was the channel?
A. The channel, which?
Q. The Chef Menteur.
A. It is a very deep channel in there, some places there is I reckon as much as 40 feet of water; I came to an anchor at one spot there and my anchor didn't touch bottom.
Q. Do you know where that old fort is down there?
A. Yes sir, it is right in about the middle of the Chef, between the two mouths.
Q. How long is the Chef?
390 A. I couldn't tell you, I never measured it. All I can do is to give hearsay and I don't propose to say that. I did not measure any of it, and I can't swear what it is.
Q. I will accept hearsay. How long do you guess it is?
A. I presume it is about two miles and a half or three miles, three miles at the outside, it is very crooked and that makes it look a good deal longer than it is.
Q. Have you any idea how long that old fort has been there?
A. No sir.
Q. Is it built of brick?
A. Yes sir.
Q. Has it the appearance of having been there a good many years?
A. Yes sir.
Q. What fort is it?
A. Fort Macomb.
Q. When was that railroad built?
A. I don't remember the year.

Q. After 1871 of course?

A. Yes sir—no, I think they were building it I believe about that time.

Q. How wide is Lake Borgne at its widest part?

A. I was told that it was 22 miles long, from the Rigolets you mean, that is the route we used to take.

Q. What is your best judgment as to the distance from the mouth of Pearl river to Petite pass?

A. I never ran it.

Q. Do you know the distance from Petite pass to the eastern end of Isle à Pitre?

A. I never ran it direct.

Q. I thought you said you went along there at the time your friends walked it?

A. I have run it, but I went in the marsh in some places and came out there; but to run it direct from point to point I never did, but I have gone all over the ground.

Q. So you did not see, then, those two witnesses in that trip, all the way from Petite pass to Isle à Pitre?

A. I told you before that I put them down at Malheureux point and left them there and went from there to Three Mile bayou and met them there and started them the next day at Three Mile bayou and met them on Isle à Pitre.

Q. Which way did you go?

A. I went in on the coast.

Q. On the inside?

A. No sir, on the outside.

Q. Didn't you travel then from Petite pass to Isle à Pitre?

A. I travelled from Petite pass to Three Mile bayou first and laid there one night and started off the next day.

Q. I didn't mean one continuous passage?

A. How do you want me to tell you the distance?

Q. If you went from Petite pass to the eastern end of Isle à Pitre, I ask you?

A. I have gone there.

Q. What is the distance?

A. I couldn't tell you.

Q. Give us your best judgment?

A. I reckon, let us see, probably 10½ miles.

Q. You never undertook to walk any of the distance between those two points yourself?

A. No sir.

Q. Is it not true that they were then, and are now, low wet places?

A. On the north shore of that coast?

Q. Yes?

A. No sir, I don't believe there is, there may be some very small spots, but it don't look so to me, and I have run very close to it.

Q. Is it covered with grass?

A. Yes sir, all over there is covered with grass; there is not a

place that is bare with the exception of a few spots of shells, wherever the shells have been washed up it prevents the grass from growing.

Q. Can you tell us how far it is from Three Mile bayou to
391 the Mississippi shore, directly north?

A. No sir.

Q. Do you know how far it is from Nine Mile bayou directly north to the Mississippi shore?

A. From Nine Mile bayou?

Q. Yes?

A. No sir, I never ran it.

Q. Do you know how far Turkey bayou is directly north to the Mississippi shore?

A. No sir.

Q. Do you know how far it is from the north end of Isle à Pitre to the Mississippi shore, directly north?

A. Well, up to Cat island, but not to the main land.

Q. Cat island is not the Mississippi shore. Do you undertake to say that the sample No. 2, taken from the west end of Cat island, is a fair sample of all the material, dirt or earth, that is in that island?

A. Yes sir.

Q. And that this other sample No. 1 is a fair sample of all of the formation of Isle à Pitre?

A. Yes sir.

Q. Is the whole of Isle à Pitre of the same character of soil as this sample?

A. I never walked all over it, but I presume it must be, what we walked over was pretty much the same and other parts I saw was very much the same kind, there is probably a difference in the growth of the grass or probably different grass; in some places you will find this tall caney prairie grass and other places you will find this fine prairie grass and other places you will find a sort of myrtle grass.

Q. How far from the water line was sample No. 1 taken?

A. It was taken, I presume about three or four feet from the edge, right on the surface of the land.

Q. At that point it is about 18 inches above the usual tide level?

A. Somewheres about that.

Q. Do the high tides run over most of the marshes?

A. It does in some places. I have never been there, as I told you, before, in a storm to judge that. I never saw any water over any of it, to the best of my recollection. I have been there in northwesters, some people might call it a storm, it lasts a day or two, but it was not enough to carry water or spread water over the land.

Q. What is your best judgment as to the distance from the well marked high tide line on the main land of Saint Bernard parish to the eastern end of Isle à Pitre?

Q. You mean in general, on the whole line?

Q. On a direct line?
A. The difference between the low tide and the rising tide?
Q. Both?
A. It is just what I gave you a while ago.
Q. Eight to ten miles?
A. No sir, I didn't tell you eight to ten miles, I said 12 to 18 inches.
Q. You don't catch my question?
A. Your question isthe distance?
Q. The distance from the well defined water line high tide or mean tide on the main land of Saint Bernard parish——
A. On the whole coast?
Q. Yes, to the eastern end——
A. There is a difference in that coast; some places are much higher than others.
Q. The average?
A. It would be a hard thing to average.
Q. Approximate it?
A. It would be very hard to do because of those parts on a medium tide are two feet and a half to three feet out of the water, where other parts with a medium tide are level with the water.
Q. Do you understand where the high tide marks on the
392 main land of Saint Bernard parish, the eastern border of Saint Bernard parish are?
A. No, I do not, I never laid there long enough to see it.
Q. How far is it from the land that is cultivated in the eastern portion of Saint Bernard parish to the eastern end of Isle à Pitre?
A. About four miles.

By Mr. ZACHARIE:

Q. The ex attorney general of Mississippi asked you a question, how far it was from the cultivated land of Saint Bernard parish to the eastern edge of Isle à Pitre?
A. I understood him to say on the coast along Three Mile bayou. Oh, from Isle à Pitre, that is quite a bigger distance.
Q. Answer the question?
A. It is a longer distance from Isle à Pitre. But I understood you to say along the shore line right about there, the lower end of Saint Bernard is not cultivated it is out in the wild woods.
Q. He has asked you about the cultivable portion of the parish of Saint Bernard out to the eastern extremity of Isle à Pitre, what the distance is?
A. I understand what you mean; but I couldn't tell you the distance, I never walked it or never sailed through it, in fact you can't sail through it, you have to walk it, how can I tell you something——

By Mr. MCCLURG:

Q. You are not familiar with the territory, then, between those two points?

A. I am in the navigable part of it.
Q. Is not the greater portion of it navigable by light draft crafts?
A. It must be done only by light draft crafts; you can't go with afts drawing any depth.
Q. And the greater portion of it is navigable in that way?
A. Yes sir.
Q. And has been during your knowledge of it?
A. Yes sir.
Q. Those trees that you spoke of, that you saw there some years o have all gone or dead, were near the water's edge when you first w them were they not?
A. No sir, they were a little distance off from the water's edge, obably they are now on the water's edge with the exception of one, e one on Mud Grass island, that is right near the edge now and hen I first saw it it was quite a distance from the edge.
Q. What kind of trees are they?
A. I think they are live oak, one I am certain of, I am positive but the other two I did not go to them, the other two clumps.
Q. How large are they?
A. Pretty good size trees.
Q. There are no trees lying back on the interior of any of those ands?
A. The only one is on Indian Mound island.
Q. What is the vegetable growth on that island?
A. Most of it is this prairie grass, myrtle, there is some blue weed.
Q. Is that the characteristic of all that marsh, that kind of growth?
A. Yes sir.

By Mr. DYMOND:

Q. Suppose you were at the Rigolets and wanted to go to Proctorlle, in which direction would you start?
A. We generally sail south.
Q. If you testified a moment ago that the direction that Proctorlle lay from the Rigolets was north, were you correct in saying at?
A. No, I meant to say that the Rigolets were north from Proctorlle.
Q. Then is Proctorville south from the Rigolets?
A. Yes sir, undoubtedly.
3 Q. Captain, are you familiar with the channel which existed, running from Pearl river into Mississippi sound, in 1871 1874?
A. I went through there with lumber, and I went and got lumr there. You can just follow the buoys and get the channel.
Q. Where was that channel in 1871 or 1874 in relation to Half oon island?
A. It was to the north of Half Moon island.
Q. Where is that channel today?
A. About the same place.

Q. Is that the deep water channel that leads from the Rigole into Mississippi sound?

A. Yes sir.

Q. Or from Pearl river into Mississippi sound?

A. Yes sir, it goes down to Chandeleur.

Q. Will you please look at this document which is marked Exhibit E, and notice the red ink line emerging out of the mouth o Pearl river, passing north of Half Moon island through Mississipp sound southwest of Cat island and northwest of Isle à Pitre, an state whether or not that is the deep water channel——

A. This is about the course that I used to run when I went throug there; we used the two channels together to get in there, that wa about 1873 or 1874 I used to go down to east Pascagoula and ge lumber from Moss point.

Q. Did you ever pass by that channel there between Cat islan and Isle à Pitre?

A. Yes sir, in 1871, I went right in there between Cat island an Ship island.

Q. Will you please look at this map which is marked map No. and notice the black ink dotted line emerging from the mouth o Pearl river and extending eastward north of Half Moon islan through Mississippi sound southwest of Cat island and northeast o Isle à Pitre, and state whether or not that line is or is not along th deep water channel?

A. It looks to me to be so. Here is about the course we used t take.

Q. Is that the deep water channel you used to take in 1871?

A. This is the deep water channel, known by all sailors tha have been sailing down in those waters.

Q. Is that the deep water channel known as such today?

A. Yes sir.

By Mr. McCLURG:

Q. Do you know the distance from the deep water channe marked on map No. 6, to the Mississippi shore at any point?

A. No sir.

Q. Do you know the distance from the deep water channe marked on Exhibit E, to the Mississippi shore at any point?

A. No sir.

Q. You have no idea?

A. I can't tell you exactly.

Q. Do you know whether the deep water channel marked o Exhibit E. is precisely the same as that marked on map No. 6?

A. I believe it is, yes sir.

Q. Do you know of any other channel out of Lake Borgne, excep this deep water channel?

A. Lake Borgne has no channel.

Q. Out of Lake Borgne?

A. The Rigolets is the only channel that passes in front of Lak

Borgne and Petite pass, that is, the Rigolets passes in front of Lake Borgne.

Q. In which water does Petite pass lead?

A. That leads in the sound.

Q. Into Mississippi sound?

A. Yes sir.

Q. Is there any pass or channel leading to the southeast of Petite pass?

A. No sir.

Q. Do you know how far it is from Petite pass to Nine Mile bayou?

A. It is about seven or eight miles.

Q. Has that Nine Mile bayou a deep channel?

A. Very deep.

394 Q. How long is Nine Mile bayou?

A. It is surely not nine miles.

Q. Into what does it lead going south?

A. Into Nine Mile bay.

Q. And then, going out of that, south, what is the channel?

A. In the marshes.

Q. Yes?

A. There is no channel at all, very small channel.

Q. I mean small or large, going south now through Nine Mile bayou into Nine Mile bay and then going southerly?

A. Over here?

Q. Yes, how would you go?

A. That is a very shallow channel, no channel at all, it is about 2 feet and a half to 3 feet, with the exception of some holes.

By Mr. DYMOND:

Q. Counsel for the State of Mississippi asked you just now in regard to a channel down Nine Mile bayou; is there any channel after Nine Mile bayou enters the bay in the marsh?

A. None of those bays have any channel, they have got merely a little deep water in the center, but to call it a channel you can't.

Q. What is the average depth of water on the inside through which you would pass after you leave Nine Mile bayou?

A. The only place I could pass with the Majestic was from there through Mud Grass Island pass.

Q. How deep was that?

A. That, well right near the points, at least the western point of the pass, there is probably five or six feet of water.

Q. Does that extend all the way from the end of Nine Mile bayou?

A. In spots.

Q. Is there any well defined channel through the Louisiana marshes?

A. No sir, there is not.

Q. What is the average depth of the water inside of the Lou marshes?

A. Taking the average it would be about 2½ to 3 feet.

Q. How would that in depth compare with the deep water nel extending north of Half Moon island?

A. It wouldn't come anywhere near it. There is always, at in places that I have sounded, nine and ten feet of water; a some places I have sounded even more.

Q. Which channel?

A. On the north shore of Half Moon island.

Q. Now, in a general way, what is the change and transiti any, which is occurring in the Louisiana marshes, which ha curred and is occurring, so far as you know?

A. It is occurring yet as far as I can see.

Q. What is it?

A. Washing away this Pirate point, it is forming a cut off near the point.

Q. I am not asking you in regard to particular instances, asking you——

A. Yes, I know, but I just mentioned this as a point I have t particular notice of.

By Mr. ZACHARIE:

Q. From your general observation and experience in the la years, is the interior of these Louisiana marshes making land the land being disintegrated?

A. It is losing land, it is not making it.

By Mr. MCCLURG:

Q. How much water does the Majestic draw?

A. Three feet and a half, with ballast.

Q. She has been going through these marshes as you have t fied?

A. With high tide. I have to take my chances to go, pick my chance to go, and them I am dragging. I can't use any cer board.

By Mr. TAYLOR:

Q. It is possible, then, to navigate in there with a b
395 drawing three feet and a half down as far as Indian Mou

A. Vessels go there but very light draft vessels. I can't there with the Majestic; I may have gone there with the launch she would touch bottom before she gets there and she only draws inches.

At this stage of the proceedings, the commissioner adjourned t hearing for recess to be resumed again at 2:15 p. m. at the sa place and date.

Resumption of Proceedings.

APRIL 16, 1904—2:15 p. m.

Pursuant to adjournment and all parties being present the commissioner resumed the hearing.

GEORGE H. DUNBAR, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live in New Orleans.
Q. How old a man are you?
A. I am just 60 years old.
Q. What is your business?
A. I am a manufacturer of canned goods, I am in the canned goods business.
Q. Do you can oysters?
A. Yes sir.
Q. Have you a canning establishment at English Lookout in Louisiana?
A. I have, that is my firm has, G. W. Dunbar and Sons.
Q. Have you an oyster canning establishment at Bay Saint Louis?
A. Yes sir.
Q. Did you ever have an oyster canning establishment at Biloxi Mississippi?
A. I was interested in one there.
Q. How long have you been in the oyster business?
A. Since April, 1870. I was a pioneer in the State, about 1872.
Q. Are you fond of sailing, Mr. Dunbar?
A. I do a great deal of it.
Q. And live on the water?
A. Yes sir.
Q. Have you a schooner in which you make excursions for pleasure?
A. Yes sir.
Q. How long have you been accustomed to indulge in this character of sport?
A. About 20 or 25 years.
Q. Throughout what general localities have your excursions extended, during that period?
A. All the way from Mobile down, coming in through, among the different islands, as far as Bird island, Battledore island, almost down to the passes, and all through the marsh.
Q. What marsh do you refer to?

A. The Louisiana marsh.

396 Q. Are you familiar with the section of the country from Biloxi on the east to the Rigolets on west, the water I mean?

A. Yes sir, slightly, not as much as an expert.

Q. Are you familiar with the water from the main shore of Mississippi on the north down to Breton island on the south?

A. I have a general idea of all that country, yes sir.

Q. Have you been sailing through that country on your various trips?

A. Yes sir.

Q. Do you make use of the charts of the United States Government as published by the Coast and Geodetic Survey on those trips you make?

A. I generally do, but I mostly depend on the knowledge of the captain of my schooner; of course I observe a good deal as I go along with him; I don't say that I could go through this marsh by myself.

Q. Have you had occasion on these excursions of yours, to familiarize yourself with what is commonly known as the Louisiana marsh?

A. Yes sir.

Q. Have you had occasion to familiarize yourself with what is commonly known as the north shore of the Louisiana marsh?

A. Yes sir.

Q. As well as with the east shore of the Louisiana marsh?

A. Yes sir.

Q. When did your excursions into this country first begin?

A. Into this marsh?

Q. Yes?

A. I suppose about seven or eight years ago, I commenced going into the marsh; I was going to the eastward mostly all the time.

Q. When did you first make your excursions down along the eastern shore of the marsh?

A. About that time.

Q. Have you noticed any changes to have occurred in the topography of this Louisiana Marsh country, in the past seven or eight years that you have known it?

A. Only at certain points. I can't say that I have been down there often enough to say that I have seen this island go off or that island taken away.

Q. Do you know of any particular instance where there has been any change of which you have made observation?

A. I know of one especially, up near Half Moon island, down there by Saint Joe light.

Q. What has occurred near Half Moon island?

A. An island was washed away.

Q. Is that Round island?

A. Yes sir, that is gone.

Q. Did you ever see Round island before it had washed away?

A. Yes sir.
Q. Have you seen the locality since it was washed away?
A. I saw it last week.
Q. What is there now?
A. There is nothing but breakers on there in ordinary tide.
Q. Do you know of any other instance where there has been any disappearance of any land or island?
A. No sir; I can't say that I do, of islands, that have gone away.
Q. What about Saint Joe?
A. That little island, yes sir, that is the one I referred to before, that has gone; I fished on that two years ago and last year I went there and that is gone.
Q. Is there any other island or point which you have noticed or have knowledge of having changed its formation?
A. Well, there has been a general change in the conformation, the gaps have widened since I have been going through there, one, Creole gap, for instance, and Grand pass has changed too in widening and I believe there were some islands down at the southern end of Grand pass there, I think my captain, when I was with him last year, told me they were washed away.
Q. You have not seen it yourself?
A. I saw there were no islands there, they are turned into a key.
397 Q. Had you previously, in Grand pass, seen the island to which you refer?
A. Yes sir.
Q. When was it you last saw it?
A. About two or three years ago.
Q. Was it an island then?
A. It was what you call keys, small islands, where these rotten oyster shells came out about two or three feet out of the water.
Q. Is it there now?
A. Yes sir, but under water, the key has washed away from the heavy winds.
Q. Have you been in the neighborhood of Point Chicot?
A. Yes sir, I have been there two or three times.
Q. Where does Point Chicot get its name from?
A. Well, I can't say but I know it is full of chicos, stumps, there are a lot of stumps down there.
Q. What sort of stumps are those?
A. I couldn't tell you the quality of the wood but I should judge they were cypress.
Q. Were they observable above the surface of the water?
A. No, not since I have been going down there.
Q. Were these stumps at Point Chico?
A. Yes sir, right along this beach here.
Q. How far were they from the land?
A. Possibly 50 or 75 feet.
Q. What were you doing there?

A. I was fishing and lost my fishing line there by getting it caug on one of these stumps.

Q. Did you lose your line as a result of its becoming entangled the stumps?

A. Yes sir, I had to keep quite a supply of them.

Q. Did you hear the testimony of Major Harrod as to the exi ence of stumps at this point 50 years ago?

A. No sir.

Q Did you have any knowledge of the fact that he testified as that fact?

A. No sir. I only know from my own experience that the stump were there, from being down there and getting my lines caught i them.

Q. As I understand it, those stumps are under water?

A. Yes sir.

Q. Are you from your knowledge of sailing in Mississippi sound able to say what is the recognized deep water channel between the mouth of Pearl river and the pass between Cat island and Isle à Pitre?

A. Yes sir, I think I can point it out.

Q. Will you please look at this map which is now before you marked map No 6 and state whether you can point out that deep water channel?

A. It is the channel mapped out by the Government as the deep water channel. This is the line; I think it is called the South-western channel, running through here.

Q. When you say this line is the line, do you refer to the black dotted line extending from the mouth of Pearl river eastward to the deep water channel between Cat island and Isle à Pitre?

A. The line of the channel is marked on the chart but not this way.

Q. How is it marked on the chart?

A. It is marked in this shape.

Q. Is it marked by buoys?

A. There are buoys between Saint Joe and Cat Island lights, or possibly Heron light, there is a channel right here; I have been through there following the channel, I have been from Biloxi to New Orleans by way of that channel.

Q. As marked on this chart?

A. Yes sir; I followed it by my compass in my boat, in my launch.

Q. Is that channel north of the line marked C. C.?

A. Yes sir, that channel is north of it.

Q. How close is that channel to the Mississippi shore?

A. Well, the shore varies very much as you can see here, it shows for itself, I should judge from two to four or six miles, in different places, opposite Pass Christian it is further.

Q. Where does that channel start from, on the westward?

398 A. I can't tell you where that channel starts from, I know when we get into the Rigolets, just coming into the Rigolets around that point we leave it.

Q. Is there a channel extending out of the mouth of Pearl river?

A. Yes sir; it is buoyed too.

Q. Does that channel extending out of the mouth of Pearl river, take up the other channel after it leaves Pearl river?

A. Yes sir, it does there, it is buoyed out.

By Mr. ZACHARIE:

Q. You say that a part of your business is canning oysters?

A. Yes sir, I think since about 1872 or 1873.

Q. Where did you get your oysters from at that time?

A. Well, from the Louisiana marsh; they always told me they brought them from there, that is, the fishermen.

Q. You have always got them from the Louisiana marsh?

A. Yes sir, that is, when I was canning oysters in the city of New Orleans.

Q. Well, when you were over in the State of Mississippi——

A. I was over there in 1882.

Q. Where did you get them from then?

A. We were drawing both from Louisiana and Mississippi.

Q. How does the supply from Mississippi compare with that from Louisiana?

A. Well, the supply from Louisiana is the greatest.

Q. Are there any very large natural reefs of oysters in the Mississippi waters?

A. I couldn't tell you about the reefs.

Q. Are they still plentiful in Mississippi waters or pretty well exhausted?

A. I don't know that I could answer that. I know the factories are all getting pretty well supplied, I think that with greater capacity——

Q. Did you ever penetrate into the interior of these Louisiana marshes?

A. I have, but I don't know that I could say anything much about it, as I am not familiar enough with it, I have not been there often enough to be able to answer any questions as to what has happened there.

Q. Have you ever visited these Louisiana marshes at any time after any of these storms, these severe autumnal gales?

A. Yes sir, I was in the marsh right after the storm of 1893.

Q. Do you think you saw some effects of that storm in there?

A. I can't say that I did.

Q. You had not seen the territory before?

A. If I saw it I did not pay enough attention.

Q. Can you, from your recollection, state what severe autumnal gales we have had on that Mississippi coast and on that por-

tion of the State of Louisiana bordering there, within your recollection?

A. The one that did the most havoc was the storm of 1893.

Q. Do you remember any before that?

A. No sir.

Q. Have you ever been in the Chinch country?

A. No sir, I never have been.

Cross examination.

By Mr. TAYLOR:

Q. How many years did you say you have known this area of land and water in reference to which we have been speaking?

A. I have been going through there just about eight years or more.

Q. You live in the vicinity?

A. I live in New Orleans.

Q. You have a factory at Bay Saint Louis; you are often in that neighborhood? the territory we have been speaking of?

A. Yes sir, I am often in the neighborhood; I was there last week.

Q. Have you seen Nine Mile bayou?

A. Yes sir, I have been in it.

Q. Have you been in Three Mile bayou?

A. Yes sir.

Q. Have you been in Turkey bayou?

399 A. Yes sir, sometimes called Johnson bayou.

Q. And Grand pass?

A. Yes sir. Creole gap and Isle à Pitre.

Q. Have they always been there since you knew them?

A. Yes sir.

Q. Have you any knowl*dege* of a time those bayous were not there?

A. No sir.

Q. Have you ever been in these waters down in here?

A. Yes sir; I have been down in here.

Q. And down there?

A. Yes sir.

Q. Down in Treasure bay?

A. Yes sir.

Q. Down in here, Lake of the Mound?

A. Yes sir.

Q. We will say, from Nine Mile bayou——

A. I don't know whether I came through Nine Mile bayou; I believe I came in through the eastward.

Q. You have been through Nine Mile bayou?

A. Yes sir, not any further down than Raccoon island.

Q. Have you ever been in Treasure bay?

A. Yes sir.

Q. Ever been down in this Indian Mound bay?
A. Yes sir.
Q. Ever been down in this Lake of the Mound bay?
A. No sir, not without I came out through——
Q. After Indian Mound bay where did you go, show us how you got there?
A. I can't show you there, I might have come from the eastward.
Q. Let us stick to Indian Mound bay, then, going southeast——
A. I don't say that I went through Indian Mound bay, I say I came through this——
Q. Through Southwest pass?
A. Yes sir.
Q. Then what direction did you go to get out?
A. Don't ask me. I got down here. I came through inland to Point Chico.
Q. You went inland through these islands?
A. Yes sir.
Q. Until you got to Point Chico?
A. Yes sir.
Q. Ever since you have known this area of waters which we have referred to, has the general conformation of the country been the same, this area been the same, the general aspect of it?
A. I just simply suppose it is, I won't say for sure, I have not been down there often enough.
Q. I want to know, since you have known it, has the general conformation been just as it is now?
A. Except as to storms——
Q. Such as you have described?
A. — and winds and bad weather which have caused different embrasures in different parts of this marsh.
Q. Is it not a fact that such changes and embrasures, as you refer to, from such causes, are minor changes in the general profile of the country there?
A. I don't know about that; I think it depends a great deal on the severity of a storm or the severity of the wind, as to what the change will be.
Q. I am asking you what changes you know took place there, is it not a fact that they are minor changes?
A. You mean in this section right here?
Q. In any section that you have been in, that they are mere minor changes?
A. No sir; I do not think so.
Q. Specify one that you would call a great change?
A. For instance there will come a great storm say and another storm comes and they will take away a quarter of a mile and a mile of land, cut it down into the water. I am not saying that I have seen it done.
Q. I am not asking you about what might happen. I am asking you about what has happened, so far as you know, Will you please

state whether any such change has taken place where there has b
a mile of land swept away that you know of?

400 A. No sir, I couldn't testify to that; I know it has tak
away——

Q. Let us come back to the question as I stated it. Such chang
that you have known to take place from these effects, have they
been minor changes, such as you have known?

A. Yes sir, such as I have known.

Q. Have you ever heard in this locality, any tradition about a
general change in the conformation here, in the memory of men no
living, have you ever heard any tradition of that sort, of a gener
change in these lands here?

A. I have.

Q. What have you heard?

A. I have heard that every time there is a storm or bad weathe
or high winds, that different localities take different aspects, certai
parts goes under water, certain parts are washed away.

Q. That is not my question at all. I am talking about the gen
eral aspect of the country within the memory of man now living, is
there any tradition that the general aspect of this country has
changed?

A. I should suppose that the general aspect has changed if a part
of the country has changed.

Q. You give that as a theory not as a fact?

A. As a fact, that the general aspect must have changed if part of
it did.

Q. Have you any personal knowledge upon which you base that
assertion?

A. No more than what I testified.

Q. Have you got any personal knowledge except such facts as you
have given?

A. Except as I saw.

Q. Is this district of which we are speaking, east of the Nine Mile
bayou, is that an inhabited and cultivated section?

A. No sir.

Q. There are some houses here and there?

A. Yes sir.

Q. But it is not an inhabited and cultivated section of the coun-
try?

A. No sir.

By Mr. McCLURG:

Q. This deep water channel that you have spoken of, leading out
of the mouth of Pearl river through the Mississippi sound, you only
testify to that from your own general observation and information
from others?

A. Not as to that. I have testified to that channel, having gone
through it myself and followed the chart and the instructions ac-
cording to the topography marked out on that chart.

Q. I meant to ascertain whether you had ever made any soundings of the depth of water there yourself?

A. I can't say that I have made the soundings from the fact that they were already printed on the chart and I followed the chart.

Q. You followed the chart?

A. Yes sir.

Q. That is what I intended to ascertain when I asked the general question. You said something about the proximity of that channel to the Mississippi shore between the mouth of Pearl river and Saint Joseph light house; does not that channel pass very closely to the Mississippi shore?

A. Yes sir; right there.

Q. Within a few hundred yards of it?

A. Yes sir, that is the nearest point that it touches.

Q. How far is that point to the most eastern mouth of Pearl river?

A. I should judge, I am not going to give you anything exact about that.

Q. I don't ask you, that, I ask for your best judgment.

A. I should judge about six miles east.

Q. Please keep your eye on map No. 6 and answer me this, how far it is from the Mississippi shore at Waveland, due south, to this deep water channel indicated on that map?

A. I should judge that would be four miles.

Q. How far is the line indicated on your map as the deep water channel line, due south from Gulfview or Lakeshore?

401 A. About four miles and three quarters.

Q. Now the same from Bay Saint Louis, the town of Bay Saint Louis I mean?

A. About five miles.

Q. Now, from the center of the Bay Saint Louis?

A. That is it, about the same distance, to the best of my judgment.

Q. Now, how far is it from Long Beach?

A. I should judge it was about five miles.

Q. Now, how far is it from Gulfport?

A. That is about seven and a half or eight miles.

Q. How far is it from Pass Christian?

A. It is very near five miles from Pass Christian to the channel.

Q. Take Mississippi City?

A. That is about seven miles.

Q. You are giving those distances down to the deep water channel you have indicated?

A. I am following the channel right along, I am taking those distances from the channel.

Q. Take next, Biloxi?

A. That is very near ten miles.

Q. What channel is it that you have been following in answering my questions?

A. This channel that is north of this line that I testified about.
Q. What is the name of the channel?
A. I don't know that there is any name to it, but we call it the southwestern channel.
Q. Is that what you know as the deep water channel?
A. Yes sir, that is what I know.
Q. And is that the channel that Louisiana claims to be the dividing line between that State and Mississippi?
A. I don't know anything about that; I only say about this channel that I have used to go to New Orleans, that is what we call the deep water channel.
Q. From where?
A. From Biloxi.
Q. Is there not, south of that channel, on that map, another channel, marked prominently, than the one you have been following?
A. May be, but I never took any notice of it.
Q. Look on it again and follow the black dotted marked channel out of the mouth of Pearl river and tell me how far that channel is, south of the Mississippi shore at its nearest point five or six miles east of the mouth of Pearl river?
A. That is about the same distance as I testified a little while ago.
Q. Name it please.
A. About three or four hundred yards.
Q. How far is it from Gulfview or Lakeshore, due south, to this deep channel line that we are now speaking of, marked C–C?
A. This is exactly at the junction of the channel that I have been speaking about, and it is the same distance I testified where Lakeshore was a moment ago, I think I said about four miles.
Q. How far is that C–C deep water channel line, due south, of Waveland?
A. Six miles.
Q. From Bay Saint Louis?
A. Five miles.
Q. You have been speaking of statute miles?
A. Yes sir; if these squares are statute miles that changes the whole thing——
Q. I understand that gives statute miles?
A. —that would increase all of that.
Q. Statute miles?
A. Yes sir.
Q. You have been speaking of nautical miles?
A. I have been taking these squares as nautical miles; I did not get an opportunity of measuring them.
Q. Keep up your measurements at the same rate, as nautical miles, and tell me how far it is from Bay Saint Louis to this deep water channel line?
A. About ten miles.
Q. Give me Pass Christian on the same scale?
A. Gentlemen, this is all guess work I am giving you here be-

cause — have not got a compass the same as a mariner would
402 go to work and measure these miles off, I am simply giving you my idea; if you want to get the correct idea about it——

Q. I am not responsible for your answers; I just want to get the best I can on cross-examination. Take Pass Christian, how many nautical miles, due south, from Pass Christian to this deep water channel?

A. About eight miles I should judge.

Q. Give me Mississippi City next?

A. About 15 miles.

Q. And Biloxi?

A. About 18 miles, from Biloxi light.

Q. Is it not true that this deep water channel is within 18 miles of the Mississippi shore at every point east of the point due south of the town of Biloxi?

A. East of the town of Biloxi?

Q. Due south of the town of Biloxi?

A. 18 miles, south of Biloxi light?

Q. West?

A. Yes sir.

Q. Less than 18 miles of the Mississippi shore?

A. Yes sir.

Q. Can you tell us of your own knowledge what islands lie between the Mississippi shore and this deep water channel indicated on your map?

A. You mean at Biloxi?

Q. From Biloxi to the mouth of Pearl river?

A. Ship island, Deer island, Cat island, they are the three principal islands that I know of, Ship island, Deer island and Cat island, I don't know of any other.

Q. The principal public oyster reefs in the Mississippi sound lie north or south of this deep water channel as indicated on this map?

A. I can't tell you, I don't know.

Q. Do you know the depth of this deep water channel indicated on that map?

A. This one?

Q. Yes?

A. No sir.

Q. I mean this black one, this particular one?

A. The first one I spoke about?

Q. I mean the black one marked C–C?

A. No sir; I don't know the depth of it.

Q. Can you tell us of your own knowledge the depth of the water in the sound between the line marked as the deep water channel line and what we understand you claim to be the north shore of the Louisiana marshes from Petite pass to the end of the Isle à Pitre?

A. Well, 8, 6, 10, 12 feet of water all through that section.

Q. And the depth of the water north of that channel to the Mississippi shore between the mouth of Pearl river and Biloxi along

the neighborhood of the line you first indicated that you travelled from Biloxi to New Orleans?

A. About 12 feet, 10, 8, 6, about the same depth of water all through that sound, some parts possibly a little deeper.

Q. In the usual course of trade and commerce, vessels of all kinds plying the Mississippi sound and the neighborhood of these two channels of which you have spoken are informed as to the depth of them, they have general information; vessels travelling in that neighborhood understand the depth of water?

A. Yes sir.

Q. You do not undertake to speak scientifically as to the changes in the conformation of the marshes down there?

A. Not scientifically, no sir.

Q. Only from your observation covering the years that you have spoken of?

A. Yes sir.

Q. Can you tell us from which directions the storms come that destroy the general contour of those points or islands?

A. In case the wind is north, northwest, north, northeast,
403 why of course the northern shore is one of the most attacked and [with southerly, southeasterly, and easterly winds, this eastern shore suffers much more than it would with north winds.

Q. The storms coming towards the Gulf are the most violent?

A. Yes sir, they are longer duration.

Q. And most destructive?

A. We have northwest winds just as strong as almost any gale but they don't last as long as the eastern gales.

Q. They would come in the direction of Lake Borgne?

A. Yes sir.

Q. Yes sir, and would have a short sweep until they strike the outwards coast between Petite pass and Isle à Pitre?

A. Yes sir.

Q. They would have a greater sweep from the east or southeast over the waters?

A. That is to say, according to the direction, you know; as I said before I think that the southeasterly winds are of longer duration than the northwesterly, therefore they would beat up against the shore for a longer time than the northwesterly winds, but one would be equally as damaging as the other while it lasted.

Q. The longer it lasted the more damaging it would be?

A. Yes sir.

Q. The greater the violence the more damage?

A. Yes sir.

Q. Have you any idea what becomes of the delimitations of those islands washed away by the action of the waters?

A. All I could account for it would be they are washed away and driven back with the force of the tide and allowed to rest in deeper water and causes these shoals that we have all along on the eastern shore here.

Q. Would there not be a tendency to build up the east shore of the Louisiana main land by the storms coming from the east or southeast?

A. I do not think so; build up the land you mean?

Q. Yes?

A. No sir; not at all.

Q. Can you say whether there have been any accretions to the main land along the eastern boundary of Saint Bernard parish?

A. I don't know, I can't answer that.

Q. Can you say from what direction the storm of 1893 which you spoke about a moment ago, came?

A. Yes sir; I think that storm came out from the northeast in the morning. I was in Biloxi then.

Q. Was that the storm that drove some of the schooners and like craft up on the shore at Biloxi and that neighborhood?

A. Yes sir, and drove my own too.

Q. Biloxi lies on the northern side of the sound there?

A. It is north of the sound.

Q. How could the wind from the north drive crafts on to the north shore at Biloxi?

A. Well, it started with a northeast wind and then the wind hauled around to the southward and carried the tide with it, the current.

Q. As a matter of fact the damage was done by the winds from the south in 1893?

A. I couldn't tell you. The whole was bad enough; the northeast wind was bad and when it went to the southeast that was bad too.

Q. At any rate the crafts driven ashore were north of the waters?

A. Yes sir, that is, as far as Biloxi was concerned.

Redirect examination.

By Mr. DYMOND:

Q. You were asked in regard to tradition; do you know whether there is any tradition in regard to Creole gap as to how it was created then?

A. Well, I know that gap has increased in width a good deal since I have been going through it.

Q. Do you know how it originated, is there any tradition or history about it?

404 A. I don't want to say positively, but it came from a storm, the water cut through there.

Q. You were speaking about Biloxi; is not Biloxi north of Ship island?

A. Yes sir.

Q. Is not Ship island between it and the gulf of Mexico?

A. Yes sir.

Q. You were speaking also in regard to Gulfport; is it not no of Cat island?

A. Yes sir.

Q. Does not Cat island come in between it and the gulf of Mexi

A. Yes sir.

Q. You were speaking of a deep water channel shown on map 6 as being the deep water channel that you would sail from Bil to Pearl river and you were also speaking of another channel, de water channel, marked C–C. Now, if you were to go from Pe river with the intention of going out between Cat island and Isle Pitre, would you follow the channel called the deep water chann on map No. 6, or would you follow the channel marked C–C?

A. Well, gentlemen, that would depend on the weather; if t weather was very fine, I think I would just come—I would follo this inside channel, it is the shorter course, unless I had to go Chandeleur.

Q. I do not think you understand my question. I asked you, you were leaving the mouth of Pearl river for the purpose of goin out between Cat island and Isle à Pitre, would you follow the dee water channel marked by the original line on the chart, or woul you follow the line marked C–C?

A. I would follow the line marked C–C; you mean to go betwee Ship island and Chandeleur——

Q. To go between Cat island and Isle à Pitre?

A. Yes sir, I would follow this channel.

Q. When you say this channel, what channel do you mean?

A. The C–C channel, for convenience, on account of shortness.

Q. Is that the shortest channel between the mouth of Pearl river and the channel between Cat island and Isle à Pitre?

A. Yes sir, this is the shortest channel.

Q. The one marked C–C?

A. Yes sir.

Recross-examination.

By Mr. McCLURG:

Q. Is it not true, Captain, that very little attention is paid to any of those channels, unless the draft of the boat requires it?

A. I think so, yes sir, very little attention.

Q. If you want to go anywhere in this neighborhood and have a boat of very light draft, you go regardless of the channel?

A. Yes sir.

Q. And that is the way with all commerce down in the Sound?

A. Yes sir; with all light draft vessels you take the shortest way through.

EDWARD MCCULLOM, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?
A. I reside in Terrebonne parish.
Q. How old are you?
A. I am 59 years old.
Q. What is your business?
A. Sugar planter.
405 Q. Are you familiar with the western coast of Louisiana the sea coast of Louisiana on the gulf of Mexico south of Terrebonne, Lafourche and those other parishes?
A. I am between Terrebonne and as far east as Grand island.
Q. What islands lie south of the territory where you reside?
A. Facing the sea, first is Timbalier on the east, then Caillou, then Wine, and then Last island.
Q. Is there an island there by the name of Bear island?
A. There are a number of marsh islands that go by local names.
Q. How long have you been familiar with that coast?
A. Since 1875.
Q. From your observation during that time, up to date, have there been any changes that have occurred by storm in that coast or in those islands?
A. Well, on the general coast, facing the Gulf, there has been no radical change; in all of the interior there has been very marked changes.
Q. What have been those changes?
A. There has been a general widening of all the bays, a washing away of nearly all of the islands that I am familiar with more or less, and a general erosion of the coast line.
Q. What, so far as your observation extended, have these changes been caused by?
A. I think by causes, by wave action principally.
Q. Ordinary wave action, or action from the results of storms?
A. My observation has been there has been a gradual and progressive change; of course storms do produce an effect, but I never saw a radical change of the coast made by any one storm.
Q. By any one storm that you have been able to trace?
A. Yes sir.
Q. But you do know, there have been, since 1875, very marked changes in those islands and the coast?
A. Yes sir, and some of them to the extent of absolutely disappearing.

Cross-examination.

By Mr. McCLURG:

Q. Can you say that there is any violent or marked change on t
main coast of Louisiana from the mouth of Pearl river south for
miles?

A. No sir, you mistake me; I have given no testimony with r
erence to anything except in Terrebonne parish which is west of t
Mississippi river; I know nothing about——

Q. You know nothing about this territory we have been talki
about?

A. No sir, nothing whatever. I was questioned in regard to chan
on the coast of the parish of Terrebonne which lies west of the M
sissippi river.

Q. You don't know anything about this country that we are qu
reling about?

A. No sir.

ALFRED JOSEPH MONIER, witness sworn and examined on beh
of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. Saint Bernard parish.
Q. Whereabouts in Saint Bernard parish?
A. The lower part of the parish.
Q. How old are you?
A. I am twenty years old.
Q. Do you know Mr. Alfred C. Ruiz?
A. Yes sir.
406 Q. Does he live anywhere near you?
A. He lives in the same house.
Q. Did you, at the request of Mr. Ruiz, make a trip on th
schooner Majestic?
A. Yes sir.
Q. Out as far as Petite pass?
A. Yes sir.
Q. Who was with you at the time, the name of the party?
A. George Thiel.
Q. What did you do when you came to Petite pass?
A. Well I got ashore and I walked on down——
Q. When you say you got ashore, where did you get ashore?
A. I got ashore on Point Malheureux.
Q. Was that south of Petite pass, was that at Petite pass?
A. That was abreast of Petite pass.
Q. Who was with you when you left the schooner, anybody?

A. When I left the schooner, George Thiel.
Q. Did you have a skiff?
A. Yes sir.
Q. What did you do after you got on land?
A. I walked on down through the marsh.
Q. Where did George Thiel go?
A. He pulled on the edge of the shore.
Q. Did he pull the boat along the water?
A. Yes sir.
Q. He rowed along as you walked along?
A. Yes sir.
Q. Where did you walk from; starting at Malheureux point in which direction did you walk according to the compass, in a general way?
A. I couldn't tell in what direction because I didn't have any compass.
Q. Did you follow the shore line?
A. Yes sir.
Q. Do you know where Isle à Pitre is?
A. I walked down to the north end of Isle à Pitre.
Q. Did you walk along the north shore of the Louisiana marsh from Malheureux point to Isle à Pitre?
A. Yes sir.
Q. When did you do that?
A. On the 9th day of January.
Q. Of what year, was it this year?
A. Yes sir.
Q. How many days did it take you to walk that——
A. Two days.
Q. —distance?
A. Two days.
Q. Did you have any difficulty in walking along this shore line?
A. None at all.
Q. What was the character of the shore line as you went along?
A. The shore line was hard.
Q. Was it above water?
A. Yes sir.
Q. What did you do when you came to Blind pass?
A. Well, the one that was with me pulling the skiff crossed me over.
Q. Did you get out of the skiff again when you got on the other side of Blind pass?
A. Yes sir.
Q. Did you walk then along to Nine Mile bayou?
A. Yes sir.
Q. What did you do when you got to Nine Mile bayou?
A. The one I had with me, he came and got me and crossed me over on the other side.
Q. Who was the one you had with you?

A. George Thiel.
Q. Is he here as a witness?
A. Yes sir.
Q. Did you then get out of the boat again at Nine Mile bayou o its eastern side?
A. Yes sir.
Q. Then from there to where did you walk along the coast, wha was the next place you came to?
407 A. I couldn't tell you.
Q. Do you mean that you don't know the name of it?
A. Yes sir, I don't know the name.
Q. Whenever you came to a bayou what did you do?
A. Well, whenever I came to a bayou that I could not walk around George Thiel pulled me across.
Q. About how many bayous did you cross that way in the trip you made from Malheureux point to Isle à Pitre?
A. I couldn't tell you exactly but it was between seven and eight.
Q. Did you have any trouble in walking along the shore line?
A. No sir, no trouble at all.
Q. About how much above the water was the shore line?
A. About a foot and a half to two feet.
Q. Did you come to any part of the shore line where there were shells?
A. Yes sir.
Q. What sort of a shore line was that, was it hard?
A. Yes sir, it was hard.
Q. Could you have driven a buggy on any part of that shore line?
A. Yes sir.
Q. How much of it; what proportion of it could you have driven a buggy along?
A. I couldn't tell you because I don't know the names of the places.
Q. How much of the whole trip was of such a character as you have just mentioned where you could drive a carriage, was it half of it, quarter, three quarters?
A. I couldn't tell you.

By Mr. ZACHARIE:

Q. Could you have driven it the whole way, a horse and buggy?
A. Not the whole way because they had those bayous to cross.
Q. I mean with the exception of the bayous?
A. Very near the whole way.

By Mr. DYMOND:

Q. Did you get your feet wet walking along there?
A. No sir.

By Mr. ZACHARIE:

Q. You went dry shod?
A. Yes sir.

By Mr. DYMOND:

Q. For that whole trip, from Malheureux point to Isle à Pitre?
A. Yes sir, to the north end of Isle à Pitre.

Cross-examination.

By Mr. MCCLURG:

Q. You didn't find any boulevards laid off there, did you, for buggy or carriage driving?
A. No sir.
Q. You saw no lands in cultivation over there?
A. No sir.
Q. You saw no cattle or other kind of stock over there?
A. No stock at all.
Q. You didn't find any industrial life of any kind on your walk from Malheureux point to the east end of Isle à Pitre?
A. No sir.
Q. How came you to make that trip?
A. Well, I was sent out there by Captain Ruiz.
Q. For what purpose?
A. For the purpose of walking this marsh.
Q. Was there any high tide during your trip?
A. No sir, there was no high tide at all.
Q. Do you undertake to tell the commissioner that that sort of a trip could be made at any time during the year?
408 A. Yes sir.
Q. And that there is no difficulty about it at all?
A. No sir, there is not.
Q. There is no tall grass or anything to interfere with you?
A. Very few places they have tall grass.
Q. Do you mean to say that is the character of the islands across to the south of you. Could you have made that trip anywhere across those islands from Malheureux point out to the east end of Isle à Pitre the same as you made it along the water's edge?
A. Yes sir.
Q. What houses did you find along that route, habitations that people lived in?
A. Well, I did not find but one house that people lived in.
Q. Where was that?
A. I couldn't tell you the name of the bayou.
Q. It was by Three Mile bayou was it not? Is it not true that that is the only house you saw on that trip?
A. At Three Mile bayou there is one house, but nobody lives in it.

Q. And you only encountered one house inhabited?
A. Yes sir.
Q. And don't you remember where that was?
A. No sir.
Q. By whom was that house inhabited, I mean to say the occupation of the people?
A. I couldn't tell you
Q. You don't know whether they were fishermen?
A. No sir.
Q. What sort of a looking house was it? Was it a mere fisherman's camp or resort for people who take oysters and fish down there?
A. It was more of a fishing camp.

Redirect examination.

By Mr. ZACHARIE:

Q. Which house is that, that you allude to, what is it called, whose house is it.
A. I couldn't tell you the name.

By Mr. McCLURG:

Q. And you had to resort to your skiff, seven or eight times, in making that trip?
A. Yes sir.
Q. How far is it from Malheureux point to the east end of Isle à Pitre?
A. I couldn't tell you.
Q. You say it took you two days to make the trip?
A. Yes sir.
Q. About how many miles an hour did you walk in making it?
A. I couldn't exactly tell you.
Q. You travelled in your usual gait?
A. Yes sir.
Q. Unobstructed by high grass or anything like that?
A. Yes sir.
Q. You walked as fast as three miles an hour you think?
A. Something like that.
Q. Did you travel constantly from morning until night?
A. Yes sir, from half past seven until about four o'clock.
Q. From half past seven until four?
Q. Yes sir.
Q. About nine hours a day?
A. Yes sir.
Q. Each day?
A. Yes sir.
Q. So, then it took you about 18 hours' travelling to make it?
A. Yes sir.

Q. And you think you made as much as three miles an hour on an average?

A. About that.

Q. According to that, then, it would be about 50 miles you went over?

409 A. I couldn't tell you how far it was.

Q. What was the character of the soil over which you travelled, sandy?

A. Some parts of it was.

Q. Easily influenced by the action of the waters, wasn't it that character of land?

A. I believe it was.

Q. The character was about the same from start to finish on your trip, was it not, the same character of soil?

A. Yes sir.

Q. Along that line you travelled, have you any idea how far you were from the Mississippi shore?

A. No sir; I have no idea.

Q. How wide do you think that Nine Mile bayou is?

A. I couldn't tell you.

Q. Blind pass, do you know about how wide that is?

A. No sir.

Q. And Three Mile bayou?

A. No sir.

Q. You had to cross Turkey bayou too, did you not?

A. I believe I did.

Q. How about Grand pass, did you cross that?

A. Yes sir.

Q. Did you cross Creole gap?

A. Yes sir.

Q. Cross Jack Williams bayou?

A. I never heard of such a name.

Q. How about Johnson bayou?

A. Yes sir.

Q. Did you cross that?

A. Yes sir.

Q. Do you remember how wide it was?

A. No sir.

Q. Did you ever go down the east water line of Saint Bernard Sh?

A. No sir.

Q. You don't know anything about that territory down there?

A. No sir.

Q. That trip was made to prepare you to testify in this case, was it?

A. Yes sir.

Q. And so it was with your companion?

A. Yes sir.

Q. The time was selected by others for your start?

A. Yes sir.
Q. And you were paid for the trip?
A. Yes sir.

GEORGE THIEL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live in the city of New Orleans; I used to live down in Saint Bernard, La Chinch, the lower part of it.
Q. Do you know Mr. Alfred Joseph Monier who has just testified in this case?
A. Yes sir.
Q. Did you go with him in January 1904 out to Malheureux point?
A. Yes sir.
Q. What purpose did you go there for?
A. I was sent over there for the purpose of pulling a boat along the lake and Monier was to walk the marsh, when I would carry him to the marsh he walked the marsh, and I pulled the boat along and while I went along I would get off from time to time and
410 and go ashore and walk the marsh a piece to find out whether it was solid and it was perfectly solid the best marsh I ever went in, you can carry cattle there and turn them loose and they would be very well off, that is one of the best marshes I ever travelled on and I have been on many marshes but that is the best I ever travelled on.
Q. Did you follow along with the skiff all the way from Malheureux point to Isle à Pitre?
A. Yes sir.
Q. Did you see Alfred Joseph Monier walking along there?
A. Yes sir, I saw him walk every step of it.
Q. Did you see him walk that whole distance?
A. Yes sir.
Q. What did you do when he came to a bayou or anything like that?
A. Then I pulled him to the shore, I carried him across the bayou, then he would get out on the other side and walk again, and I would row into the lake and go to pulling again.
Q. Did you follow along that whole shore line from Malheureux point to Isle à Pitre?
A. Yes sir.
Q. How long did it take you to do that?
A. Two days.
Q. Do you know whether Monier got his feet wet in making that trip?

A. No sir, he did not, it was perfectly dry, he couldn't get his feet
ct, it was a solid marsh, that is one of the best marshes I have ever
en in, I know I have been in many marshes but that is one of the
st marshes I ever was in, that sure is a fine marsh, I have been
lding back from it, I have been hunting ducks all my life in
rshes and I was kind of scared of the marsh, they told me it
uldn't be walked, but when I went there I found a different
ng.

Q. You have had some experience in trembling prairies?
A. Yes sir.
Q. Was that a trembling prairie?
A. No sir, it was perfectly solid, there was no trembling prairie
ut that.
Q. Who was it that requested you to make this trip?
A. Captain Ruiz.

Cross-examination.

By Mr. McCLURG:

Monier would mash the marsh and you would shoot the shutes?
No, he didn't mash the marsh.
The marsh wouldn't mash?
No sir, that is one of the best marshes I have ever been in,
are oyster shells and clam shells all piled upon the bank there
as an oyster reef.
Was Monier webb footed like a duck?
No sir; he had on his shoes, his feet never got wet, there wasn't
h water to get his feet wet.
The marsh doesn't overflow from the high tides of the Gulf
there?
I don't say it don't, it overflows sometimes, in storms it will be
wed like anywhere else; I have seen land sometimes have three
water over it, high land, when we cultivate it, from storms,
torms come up it certainly has got to be overflowed.
n that two days' travelling from Malheureux point to the east
Isle à Pitre what evidence of industrial life did you find, cul-
n of the soil, gardens and things like that?
didn't find anything of the kind there, but I suppose if they
go there and plant it it would grow such as cotton that can
lt water, rice, cane.
ou didn't find any of those things there?
o sir.
d you ever raise any cotton?
A. Yes sir.
Q. Do you think it will grow there?
A. Yes sir.
n't you think fish and oysters will pay better over there than

on't know about fishes, I never did fish any.

Q. You didn't find any cattle or stock grazing?
A. No sir.
Q. No manufactories?
A. No sir.
Q. No commercial life of any kind?
A. No sir.
Q. Just sea grass only?
A. Coons, they got raccoons over on the prairie, I saw several of them over there.

At this stage of the proceedings, the commissioner adjourned the hearing to be resumed at the hour of 10.30 a. m. at the same place, April 8th, 1904.

Resumption of Proceedings.

NEW ORLEANS, April 8th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed this day at the same time and place.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y gen'l of Louisiana.
Mess. John Dymond, Jr. F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. William Williams, att'y gen'l of Mississippi.
Hon. Hannis Taylor, Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Dr. WILLIAM C. STUBBS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. At Audubon Park, New Orleans, that is my domicile.
Q. What is your present occupation?
A. Well, I am engaged in work for the State of Louisiana, first as professor in the State university, second as director of the experimental station, and third as director of the geological survey. At present, also, I am engaged in making the State exhibit at St. Louis. You know I am State commissioner, but that is just temporary.
Q. Of what geological survey are you a director?
A. The Louisiana State geological survey.
Q. Of what branch are you a professor at the Louisiana State university?
A. Professor of agriculture.
Q. When did you come to Louisiana?
A. I came here in September 1885.

Q. Where were you located previous to that?

A. At Auburn, Alabama, in the State agricultural and mechanical college there for 16 years.

412 Q. What connection did you have with that institution?

A. I was professor of chemistry, and the last eight years, I believe it is eight years, I was State chemist and at one time I was assistant State geologist.

Q. Where were you born?

A. I was born in Virginia.

Q. How old are you?

A. I was born on December 7th 1846, I think that makes me 60 years of age.

Q. Referring to this geological survey of the State of Louisiana, have any steps been taken to make a geological survey of this State?

A. Oh, yes; we have published six reports and have the 7th one nearly out; the survey has been in operation about ten years, and every two years we issue what is called a biennial report, they vary in size from 100 to 300 pages, they are printed and are being distributed to anybody that wants them. I think you have copies of them.

Q. In connection with this geological survey of Louisiana which is being conducted, have you had occasion to study the geological history of Louisiana?

A. That has been the first and primary object of the survey and in every volume we discuss that subject. In one of my volumes is a very full discussion of the embayment, as we term it, of the Mississippi river, and gives a geological map, not only of Louisiana but of the surrounding States, showing the geological changes which have taken place from the beginning up to the present. That has been one of the main objects of the survey.

Q. What is the geological history of the formation of that section of Louisiana south of New Orleans, in a general way?

A. You mean the Mississippi part, the river part?

Q. Yes?

A. That is a portion of the Mississippi embayment and of alluvial formation that has been entirely formed within recent geological times, and is but a continuation of the same delta that extends from Cairo down to the Gulf, and it is increasing, I may remark, growing rapidly, every year. The amount of sediment brought down by the Mississippi river is being deposited near its mouth and along the banks on both sides of the Mississippi river and is increasing the area of Louisiana continually.

Q. Prior to the completion of the levee system what was the annual phenomena that occurred in Louisiana with a rise of the Mississippi river?

A. Overflow of its banks, thus making a deposit on the banks of the river and therefore bringing the banks of the river to higher places in the rear, and then an overflow at every point carried the sediment into the swamps and out through the various bayous and

channels which were distributaries of the Mississippi while in an overflow. I would like to explain that. Our bayous, properly speaking, in Louisiana, are not tributaries but distributaries, they are the outlets for overflow and before the days of levees there were from the Atchafalaya down to the Gulf numerous little outlets flowing in every direction to the ocean acting as so many mouths for the discharge of the water at flood tide.

Q. What phenomena took place at the point where those bayous would reach the sea?

A. There would be a deposit of matter and a reformation of the soil above the surrounding marsh. Hence, all of our bayous have what are called banks that are cultivable or can be used for agricultural purposes, while in the rear they cannot.

Q. If you were to look at the map of the parish of Saint Bernard and see leading from the Mississippi river to the Bayou Terre Bœuf which is divided up as it progresses eastward into two branches, one called Bayou La Loutre, and the other called Bayou Terre Bœuf, what effect in the formation of that section of the country would those bayous have had prior to the construction of the levee
413 system in that locality, on the banks of the Mississippi river?

A. Your question means this, that prior to the levee system what influences did these bayous have on the surrounding country as they went to the sea?

Q. Yes.

A. They had in a small way, the same effect that the Mississippi river had upon its surrounding country in overflows, they deposited a great deal of sediment that was being carried to the sea and helped to build up that section of the country. All the marsh lands that we now have along the banks of Bayou Terre aux Bœuf that are being cultivated came from the deposit of this stream or bayou that ran through that country, and in fact the whole of Saint Bernard parish has been built up by that agency, the bayous coming from the Mississippi river.

Q. Are you familiar with the alluvial soil of Louisiana?

A. I should say I am. I have made thousands of analyses of it I reckon.

Q. Will you look at this sample of soil which is marked sample No. 1, as coming from the eastern end of Isle à Pitre and state whether or not, in your opinion, that is a sample of alluvial soil?

A. It is hardly worth while for me to examine it as I gave it a thorough examination yesterday. This is unquestionably Mississippi detritus; brought down by the Mississippi river, and is unquestionably Mississippi mud. The other sample that I examined yesterday——

Q. Which other sample are you referring to, sample No. 2?

A. The one in sand there; that is not of Mississippi origin.

Q. When you say Mississippi do you mean Mississippi river?

A. Yes sir, Mississippi river. In speaking of the Mississippi river, the whole southern portion of the State of Louisiana and the greater

portion of Mississippi and especially this entire territory has been built up by the material brought down by the Mississippi river and its distributaries, its tributaries extend from the extreme eastern portion of the United States as far west as Yellowstone park. We have got perhaps in this soil the best material of 29 States and Territories, therefore it comes down to us ladened with this material and as it reaches the lower portion of this delta it is deposited and particularly is it deposited when it strikes salt water. Whenever fresh water loaded with sediment comes in contact with salt water, it is immediately deposited and hence we have this whole land running from Morgan City clear around here beyond Lake Pontchartrain, all of that has been nothing more nor less than deposits made from this water carrying this sediment striking the salt water of the Gulf. The accretion has been gradual, the salt water areas once extended up to Cairo, Illinois, and from there down to here, to here, this deposit has been formed and placed by contact with the salt water which has been gradually receding in front of it.

Q. If this earth therefore marked sample No. 1, was found at the eastern end of Isle à Pitre in the Saint Bernard marsh, how would you state that it got there?

A. Evidently from the Mississippi river through some of its bayous or outlets.

Q. Would the bayous be in that locality?

A. Not necessarily now, but they have been. You must not forget one fact, that the bayous are constantly changing, for instance, our Lake Pontchartrain and Lake Maneinae are nothing more nor less than arms of the ocean that are cut off by deposits thrown around them and they are remnants of the old gulf of Mexico and not true lakes.

Q. Do you consider yourself sufficiently an expert on Louisiana soil to identify this as a sample of Louisiana alluvium?

A. I would give it as my opinion, as an expert, that it is unquestionably Mississippi alluvium, brought down by the Mississippi river and deposited at some time within recent geological years.

Q. Will you explain, when you say recent geological years, within what period of time you mean?

A. Geology does not deal with time, but only in compari-
414 sons; this applies to what we call the Quaternary age of geology, that is the age of geology that is going on today.

Q. Can't you give us some more definite information as to point of time?

A. No sir, because after all geology is measured only by what we call periods and not time. There is no period of time we can apply to geology, whether this was a million, or five hundred thousand or five million years the geologist can only speculate; but I would like to remark so you may understand, that Louisiana is a very young State geologically speaking; our oldest records are of the latest Mesozoic age. All the balance of Louisiana has been

made by water deposited within what we call geologically recent epochs or periods.

By Mr. TAYLOR:

Q. That might be a period of five thousand years?

A. It may have been a million or five million years, we don't know. Now, count the bluff lands of Baton Rouge, and Vicksburg in your State, with them count what we call the underlying cluster or Port Hudson cluster, as we term them geologically as being anterior to this, and the alluvium is the last formation, the youngest formation in geology, it represents today what is going on now, and this alluvium was the latest geological formation which is still in pregress.

By Mr. DYMOND:

Q. Are you able to state what effect the construction of the levee system in Louisiana would have on those localities where the levees were constructed in so far as it kept out the annual overflow from the Mississippi river?

A. Yes sir. There is no doubt about one fact and that is that our levees are preventing the formation of fresh land in the rear of our levees in Louisiana from Baton Rouge on one side and the Arkansas line on the other.

Q. Down to what point?

A. Down to the Gulf, down as far as your levees go, I believe your levees don't go quite to the Gulf. Because now, by means of our levees all water coming down the Mississippi river is forced at some time in the year to take its sediment and carry it on to the Gulf. Sometimes we find a sand bar formed, sometimes a deposit made and in a few months of overflow you will find that the scouring effect of the river digs that up and carries it away. In other words, there is a shifting continuously of the bottom of the Mississippi river on account of contracting the current between its banks and making it scour as it goes to the Gulf, and therefore we are carrying to the Gulf an immense quantity, estimated to be the equivalent to a mile square and 360 feet high every year, of sediment and which sediment is being deposited in the gulf of Mexico, that is Humphrey and Abbot's estimate, and this leveeing of the river has prevented the marsh lands or swamp lands in the rear of our plantations from filling up. They are added to now only by the washings from the plantation itself between the levee and the rear carried down by our ditches. Before that, every overflow, as every crevasse does now, filled up these bottom lands very considerably.

Q. That being the case, where is this land now being deposited as it is carried by the river?

A. Through the present outlets of the Mississippi consisting of the Atchafalaya and until recently, of the Bayou Lafourche, but the Bayou Lafourche is now stopped up, and the passes down at the mouth of the river; for instance, you have at the mouth of the

river the Jump, Southwest pass, South pass, and Pass La Loutre, and Northeast pass, all those are outlets of the Mississippi river and assist in carrying off this sediment to the Gulf every year; the Atchafalaya is carrying quite a considerable quantity. The Lafourche carried so much that one of the reasons for stopping it up was that its mouth was being constantly filled up with sediment carried down by the fresh water, meeting with the salt water and depositing it at the mouth, and they couldn't keep it open; therefore they decided to close it up, where it debouches from the Mississippi river.

Q. If the levee system was completed from New Orleans down to English Turn in about 1750, would there have been any increase or elevation of this Saint Bernard territory by the alluvium of the Mississippi river after that date?

A. Unquestionably if the levees stopped at English Turn, because there would be a general overflow below that just as we have now below your levees during high water. I went down to the mouth of the river during that very high water here and after you passed around the levees there was a big sea; only occasionally we see it.

Q. Are you familiar with the locality you are talking about in order to speak intelligently?

A. I am speaking intelligently about it, in a general way. If

Q. If the levees had extended down to English Turn?

A. Let me see, English Turn——

Q. Just below the original mouth of Bayou Terre Bœuf at the Mississippi river, about three or four miles below, whether there would have been any deposit in this section which is 50 miles north-

A. Answering you on general principles I would say no; but I could not tell you without studying the geology of the country be- there may have been some backward flow, but I would say general principles as to the question abstractly but a study of topography of that country might show me that the water might discharged backwards, but it is hardly probable. I would have see a topographical map to decide that question.

Q. If you were now shown a geological map of the northeast of the parish of Saint Bernard, with the original Bayou La shown thereon, and were told that Bayou La Loutre was a of Bayou Terre aux Bœuf, which latter bayou connected the Mississippi river, and if Bayou La Loutre was closed about by the closing of Bayou Terre aux Bœuf where it connected the Mississippi river would there have been any increase by alluvium in the northeast portion of the parish of Saint since 1750?

A. I should answer that, broadly speaking, No; but an explana- may be in order, and that is, that a great deal of the sediment down to the Gulf has its very finest particles deposited and

when very high tides come and sweep over the surrounding country for miles around, there might be a very small deposit but so little it would be inconsequential; for instance, the peninsula of Florida has been built up by the Gulf stream carrying the sediment from the Mississippi and as it turns the coast of Florida and goes up and touches it and Cuba it is deposited there and it is building up Cuba, so that geologically speaking some of these days Florida and Cuba will be united but that is a very slow growth.

Q. Would you please tell me which direction the current takes at the mouth of the Mississippi river where it discharges into the gulf of Mexico, if you know, what is the general tendency?

A. The general tendency is this, in the tropical portions of the Gulf——

Q. I am speaking immediately at the mouth of the river?

A. In the tropical portions of the Gulf where the waters are heated and rise to the surface and an undercurrent sweeps down to take its place creating what we call the Gulf stream and this stream is presumed to go on out through the Gulf northward passing around the Florida coast. Now, the presumption is, that as this current passes through the Gulf it has a sort of northwest direction going on up, ascending, around the coast of Florida. If I had known you were going to ask me that question I would have gotten Maury's chart of the Gulf; it is a physical geography of the sea. I can only say there is a current coming from the southern portion of the gulf of Mexico, going on northward through the straits of Florida to Cuba, going on up the coast and then diagonally over to England. It is that warm Gulf current that gives life to England and Ireland, and as Bob Taylor said in one of his speeches, it had its birth in Dixie.

416 Q. Have you ever been on Grand island, immediately to the westward?

A. No sir; I have never personally visited that island, but I have had it examined by one of our geologists very thoroughly.

Q. What influence has the deposit of silt and sediment from the Mississippi river had on the eastern end of that island?

A. You mean the watering place down here?

Q. Yes?

A. I should not say very much. That is an island—you know there is one noted fact about the coast of Louisiana and that is that from the mouth of the Mississippi river westward, nearly all the islands are of wind and tide origin and are sand, they are sandy, and I do not think they have any real connection with the deposit of the Mississippi river. They are sand beaches, as we term them. Last island and the island called Grand Terre and other islands in other words the coast of Louisiana. If you will notice, to the westward, from the Mississippi river, is almost a continuous line of those sand islands running on to Texas and the Texas coast is full of them. Galveston is situated on one of those islands, it is a big sand beach washed up probably by storms and not of alluvium origin.

Q. Are you aware whether there is or is not any difference in the color of the sand on the east end of Grand island as compared with the color of the sand on the west end of it?

A. No sir; I never examined that critically, but I should imagine that the east end would be a little alluvium mixture, the alluvium brought through Barrataria bay before Bayou Lafourche and other bayous were closed, for a number of years, and several times since by water from overflow caused by crevasses; last year we had a crevasse and the discharge from it passed by the eastern end of Grand island and therefore you would expect to find in the course of time some alluvium mixed in with that soil.

Q. Where there has been a cessation of deposit, what has been the transformation, if any, which has occurred in that alluvial section, where there has been a cessation of deposit?

A. Well, the deposit always gravitates and passes to a certain extent with water and sinks in the ordinary clay; in other words when the soil is first deposited it is filled with a great deal of water, each grain is independent and after considerable time and pressure it becomes molded as it were into a thinner stratum or layer and sinks in common parlance. Then, besides that, we have got,—I don't know whether I ought to answer that until you are ready to ask it.

Q. What is this process, this geological process called, that you are speaking of?

A. You mean that I just now——

Q. Yes?

A. I expect that you are alluding to another process which is the result on a large scale of this smaller process. We have had throughout all time, from the earliest geological times, upheavals and subsidences, going on in various parts of the world. The subsidence has been due to the transferring of large quantities of matter by various agencies from one section of the globe to the other and putting increased weight upon another portion of the earth, and you must recall the fact that the interior of the earth is liquid and when subjected to great pressure will break forth into volcanoes, mountain ridges, etc. We find that this transference of matter causing an increased pressure at certain places has caused subsidence so gradual that the average individual never notices it, and while subsidence is going on in one part of the world an upheaval is going on in another part, and by these subsidences and upheavals we have had all the changes we have had on the globe at present. Now, it has been found in the course of study by all geologists that the entire Mississippi River coast, the coast of Louisiana around the Mississippi river, has been undergoing this subsidence ever since the discovery of this country and the rate is put down at about four to five feet a century, and all of the land around the mouth of the Mississippi river is gradually sinking at the rate of four to five feet a century, that is, the conclusion of the best geologists, unquestionably, today, it is now recognized that it is a fact and therefore we will find a great deal of the Mississippi river alluvium,

te the old original mud lumps or mud islands or deposits from the Mississippi river which once were above the soil are now beneath the clay, that occurred before the alluvium deposit, that extends from Morgan City around you may as well say to Pearl river.

Q. Does that apply to the locality along the northeastern portion of St. Bernard parish?

A. It applies to all alluvial land within the region from Pearl river around to Morgan City, the whole coast line, I mean now, when I speak of this, I mean the subsidence of this entire country and therefore there is a great deal of land today submerged and covered by the Gulf that was originally out of water.

Q. Looking at this sample of soil marked No. 1, and being told that it came from this northeastern portion of the parish of Saint Bernard, and being told that that portion of Saint Bernard parish is south and slightly east of the mouth of Pearl river, would you state that that geological process was taking place in that locality?

A. Well, I would see no reason why it should not occur to some extent, at least, probably not as great as at the mouth of the Mississippi river where there is continued increased pressure each year by the sediment brought down, but I would say that the sinking has been the same there but not as great as out here in front.

Q. When you say out here, do you refer——

A. I refer to the mouth of the Mississippi river. And when I refer to the mouth of the Mississippi river I mean all of its mouths right immediately around here.

Q. Major H. M. Harrod testified that at Point Chicot which you will notice on map No. 6 marked with that name, some 50 years ago he saw cypress stumps just above the water, and Mr. George H. Dunbar testified yesterday that in fishing at that point he had gotten his fishing line entangled in these stumps and that in recent years these stumps are now below the surface of the water. What would that indicate to you, from a geological point of view?

A. That is what I remarked just now, that there is a subsidence of that land, it is sinking gradually, and that occurs all over this alluvial formation.

Q. If you were told that witnesses have testified that there were trees growing in this locality, years ago, amongst them, oak trees, and that now there was nothing there but the dead stumps of those trees; what would that indicate to you?

A. That would indicate to me that there is a gradual subsidence and going down under the water of this land, and the roots unquestionably died from being exposed to this salt water as would necessarily be the case if you subjected them to it.

Q. What effect would the salt water have on the roots of an oak tree?

A. It would be more pernicious than fresh water.

Q. Are you familiar with the habitation and locality of cypress stumps?

A. I might say so, because we have examined them quite frently and made quite an extensive study of them.

Q. Would you say that cypress trees would grow with their roots posed to the salt water of the Gulf?

A. I would say emphatically, no, not with the salt water. A ckish water they could live in, but they could not live in the salt er of the Gulf.

Q. Is this point which you will notice, Point Chicot, out in the f of Mexico?

A. Yes sir; it seems so to me.

Q. If, then, there were cypress stumps at that point, what must e been the physical condition of the country at the time those ress trees were growing trees?

A. It was comparatively dry land, high. I may remark, if you tlemen will pardon me, I may remark right here that underneath this city at a depth of 180 to 300 feet, you will find first class living cypress stumps, every now and then we bring up a first-class specimen of cypress. I may also remark that in the same logical formation, in New Jersey, they are digging up trees of same age as these, geologically speaking, and making good gles of them. So that is an evidence that this country has been dually sinking ever since it began, with this accumulation of h above on top of it as it sinks. If you go to Vicksburg and t Hudson across the river there, you will find there where the & S. railroad has come way down to the river, you will find at crossing probably 75 or 100 immense cypress stumps standing there. The same thing occurs at Port Hudson and all along Mississippi valley, showing that cypress trees have been grow- where there was originally dry land. When I use the word dry, on't mean absolutely dry because cypress trees don't grow on ab- tely dry land, but they don't grow in the salt marsh.

Q. Are you familiar with what has occurred in the putting down iling of the New Orleans and Northeastern railroad out towards Rigolets?

A. Yes sir. They have done the same thing. They have dis- ered out here in the construction of this railroad, quite an amount ypress stumps, knees, etc.

Q. That were below the surface?

A. Yes sir.

Q. How far, about?

A. I do not recollect the exact depth, at some distance, I don't w that I can quote that exactly.

Q. When you stated a moment ago that there were cypress stumps to 200 feet under the city of New Orleans, living, you did not n now they were living?

A. I did not mean living, I meant in good sound condition; in r words the wood was not decayed; I used the expression living represent that it was sound good wood, that was a slip of the

tongue, I am glad you corrected me. I would like that to be eliminated from my testimony.

Q. Have you any knowledge or experience with the effect of storms on this southern coast of Louisiana?

A. I have not had any experience, I have never been in one; but I was here in the storm of 1893, when Cheniere Caminada was so badly destroyed and when the storm was violent all the way on the coastfrom Morgan City over to Biloxi, and I went down and witnessed some of the effects and I experienced a little of it over here in New Orleans, we had quite a blow here.

Q. Do you know how many people were killed in Cheniere Caminada?

A. I do not know, but the newspapers put it at about 1000, I think it was somewhere between 1800 and 2000.

Q. What localities did you have occasion to inspect in order to see the results of that storm?

A. I went down the river to look at the cane fields and orange groves to see what affect it had on them. I was not studying the question geologically so much as I was agriculturally. I went down into the orange groves and saw the effect of that immense body of salt water going over them and studied the effects from that stand point, not so much geologically as agriculturally.

Q. From the marks you saw can you approximate what depth this salt water attained over the area to which you have referred?

A. In some places it went over the tops of the orange trees.

Q. How high were the orange trees?

A. Probably 12 feet, the tallest. In one instance, I remember having my attention called to a baby that was found lodged in an orange tree in the grove, drowned, and it was taken out.

Q. Was that close to the Mississippi river?

A. It was not over from two to four acres from it, two acres perhaps from the banks of the Mississippi river. It went over the lower portion, it went over the levees and all.

Q. Will you please look at this sample marked sample No. 2, and state to what geological period it belongs?

A. Well, it is hard to tell what geological period, but it is
419 of a different origin from that entirely. This is either——

Q. What do you mean by that when you say different from that, do you mean from sample No. 1?

A. Yes sir. Sample No. 1 is true Mississippi alluvium brought down from the cultivated lands and uncultivated lands of all of these States that bound the tributaries of the Mississippi river; this is unquestionably of alluvium origin.

Q. When you say this what do you refer to?

A. No. 2 is of local origin, pure sand and is either produced by powerful streams in close proximity to where it was obtained, or by winds and waves and water; that sand has very much the appearance as you will find on the banks and shores of tidal waters, washed up by the waves.

Q. Referring to this sample No. 1, do you notice any presence of vegetable life?

A. Yes sir; there are roots all the way through that. I examined it very closely yesterday and picked out, I think I could show it to you gentlemen present in a very short while, vegetable matter even here, see there, all those are roots.

By Mr. ZACHARIE:

Q. You spoke of the scouring by the current of the Mississippi river being confined between levee banks?

A. Yes sir.

Q. Is that or not the theory of the jetties?

A. That is the theory of the jetties and that is Captain Eads' principle by which he induced the Mississippi River Commission to spend money in levees in the original instance. It was not done for the protection of the riparian owners of land at all but for the navigation of the Mississippi river, upon the principle that the scouring would keep the river channel open.

Q. Are there different characters, different kinds of silt that are brought down by the current of the Mississippi river from the upper country?

A. Decidedly; you can go and stand at low water below the mouth of Red river and you can almost tell the number of overflows that have taken place by Red river, by the sands colored represented in the banks, and showing that each tributary of the Mississippi brings down its own peculiar sediment and when you examine the banks you can see the layers almost and a geologist who has given great thought to the subject might probably even unfold the overflows of the different tributaries in the past by examining the accretions that have been laid down one upon the other in the banks of the Mississippi river.

Q. The major portion of this sediment that is brought down is discharged into the Gulf?

A. Now it is, unless there is a crevasse.

Q. Now, what is the action on this silt as soon as it meets the salt water?

A. It is deposited.

Q. Precipitated?

A. Yes sir.

Q. Is there any portion of that silt carried off by any of the currents?

A. A small quantity, as I alluded to just now which has gone to make Florida and Cuba.

Q. Is there, or not, any portion of it that goes westward by a littoral current?

A. I am unable to answer that question having never studied it.

Q. Is that, or not, the theory of the projectors of the Eads jetties?

A. I believe that Captain Eads named that as a theory.

Q. Do you know, or not, where the drift logs etc. which pass out

of the passes of the Mississippi river, go, whether to the eastward or westward?

A. I think they go westward.

Q. All of them?

A. I wouldn't like to answer that because no one has maps
420 that will show that, but I think the testimony shows they have all gone westward; they have frequently been found on the peninsula of Yucatan and in that bay there.

Q. Were you here in the State of Louisiana at the time of the Bonnet Carre crevasse?

A. No sir. I came here the year after it was closed, it was closed in 1884.

Q. Now, you know where Bonnet Carre is?

A. Yes sir.

Q. How far is it above the city of New Orleans?

A. I would say on a guess, 30 miles.

Q. Now, any silt that might have been carried through that crevasse, and those waters passing through Lake Maurepas, Lake Pontchartrain, and Lake Borgne, which are salt water lakes, would there be any probability of any of that silt reaching beyond into the gulf of Mexico or Mississippi sound, reaching this territory about which we have been talking in Saint Bernard parish?

A. There is a possibility and a probability perhaps of a small quantity, but the largest amount of that sediment was deposited in Lake Pontchartrain and filled it up very rapidly; that was one of the arguments to close the crevasse, that it was filling up Lake Pontchartrain very rapidly and destroying the fish and oysters in proximity to the lake.

Q. Was not the theory which you have just advanced, in regard to the precipitation of the silt, fresh water bearing silt meeting salt water abundantly illustrated in that case, from those observations?

A. Yes sir.

Cross-examination.

By Mr. TAYLOR:

Q. You are familiar, are you not, with the geography of this archipelago of islands lying off the east coast of Saint Bernard parish and the south coast of Mississippi?

A. Yes sir.

Q. Is it not a fact that in many portions of the world, upon many coasts, there are archipelagoes of islands; is not that one of the common features in geography and not unusual feature, the archipelago of islands along the coast; for instance such an archipelago that lies off the coast of Alaska. Are you familiar with that?

A. Not very much there, but I know what you mean.

Q. It is a very simple phenomenon of history; that there is an archipelago of islands lying of- the coast?

A. I will answer by stating I have already said that there are just

uch a string of islands lying from the mouth of the Mississippi iver around to Mexico.

Q. And is it not a fact that there is an archipelago of islands long the coast of Cuba known as the——

A. You have gone into another thing.

Q. Just omit that?

A. These are all alluvium origin.

Q. We won't go into that. But that is a very common phenomenon in the geography of the world, an archipelago or string of slands lying off the coast?

A. Yes sir.

Q. Is it not a very familiar matter in the study of geology, the auses by which these archipelagoes are formed; the process by hich such islands have been cut off from the main land?

A. Sometimes, and at others not. These on the coast of Louisiana have not been cut off; they have been formed by the waves and inds of the Gulf.

Q. We will come to that in a moment. I don't want to go into a articular case. I want to get through with the general first. Are ou familiar with the geological history of Alaska and the formation of the archipelago off its coast?

21 A. No sir. I have several volumes about it but never had time to go through them.

Q. You never then have studied the explorations which the geologists have made of the processes through which by glacier action hese deep Tiodo have been made and these islands created by the ction of glaciers, which have resulted in cutting those islands off om the main land?

A. I have.

Q. That is true as a general proposition?

A. Yes sir.

Q. If you look at that coast line there, as a geographer and would o on one of these islands which were miles from the main land and ould take soil from one of those islands, and then go upon the ainland and examine and see the soil was identical with the soil f the mainland, would you say, as a geographer, that one of those lands was any less an island because it had been formed by that rocess?

A. If it is an island, it would emphatically be an island.

Q. The mere fact of its geological origin would not affect at all e fact, from the standpoint of a geographer, that it was an island, it was miles from the coast and entirely surrounded by water?

A. Not at all. There is one explanation I want to make and that that before we decided it was cut off by glacier action, you would ave to show that the geological formation in the island and on the ainland, are identical and have the ear marks of the same cause nd after effects.

Q. But, assuming now, for the sake of argument, that the geol-

ogists are right in saying that these islands here were cut off from the mainland by that process?

A. Yes sir.

Q. And we come out in a bay to one of those islands and find it at eight or ten miles from the mainland, and you, as a geologist take some of the soil and then go on the mainland and take some of the soil and find the soils identical would that be any the less an island, if it was ten miles away from the mainland entirely surrounded by water, because it was formed in that geological process?

A. No sir.

Q. It would not affect its geographical character?

A. No sir; an island is a body of land entirely surrounded by water, it is immaterial how it is made.

Q. The fact of its geological formation has got nothing to do with its geographical character?

A. No sir.

Q. Now, is it not recognized by geologists that there was a time when the British islands were a part of the mainland?

A. Yes sir. There——

Q. There was a time when you could walk dry shod all the way across what we call the English channel, that was all a part of the mainland?

A. Yes sir.

Q. The British islands are no less islands because of that geological fact as to their formation?

A. No sir. You can go a little further and can take Asia and North America, and take the Behring straits, it was all land and the Indians came to this country over that highway.

Q. So, is it not true that when it comes to determining from the standpoint of a geographer that an island is a body of land surrounded by water, the fact of its geological origin has got nothing to do with its geographical character?

A. Yes sir, that is true.

Q. Now, as I understand you, your opinion is, that this sample No. 1, which the testimony tends to show came from the Isle à Pitre, you say looking at that as a geologist examining the qualities of it, your conclusion is that that is part of the general deposit that has been made by the Mississippi river out in that direction during the same period or epoch, as to which geologists will state no time?

422 A. We won't state any length of time. But the geological time in which that was deposited is today, it is the present age.

Q. But that present age, as I understand, may embrace a period of five million years?

A. We don't know.

Q. It may be five million years?

A. Yes sir.

Q. That was in the process of formation?

A. Yes sir.

Q. Well, assuming that it was a fact, just for the sake of argument, within five million years, would the process of formation have been perceptible to the eye of any inhabitant living on or near that land, formed by a process so gradual as that?

A. I think you are making it a little more gradual than it actually occurs. For example, the Eads jetties have extended out ten miles since they began to jetty; that was about 20 or 23 years ago when they commenced to jetty. And the jetties are still continuing out every year into the Gulf, and as I remarked to you just now, the Mississippi river is bringing down an amount of sediment equal to one mile square and 360 feet high; that is the amount of sediment that has been determined by accurate and scientific data, taken up here at Carrollton under the auspices of Humphrey and Abbot in their investigation of the Mississippi river, that is perceptible, very appreciable. Now before the days of levees, this immense amount of sediment was spread over the surrounding country with every overflow instead of being carried straight out to the mouth of the Mississippi river.

Q. But, does not the illustration of the jetties to which you refer typify an upheaval and artificial process as contradistinguished from the normal and natural process?

A. So far as the place of deposit is concerned, but not as to the quantity.

Q. Are you not mistaken in saying that, for the reason that the artificial confining of the channel within a narrow limit does not necessarily produce within a jurisdiction a vastly greater deposit than could take place under normal conditions when there is no such contraction of the channel?

A. At that point, but not the quantity brought down by the Mississippi river and distributed somewhere.

Q. Do you mean to say that prior to the confining of the channel of the Mississippi river, by that artificial process, that by the natural and normal process as large an amount was brought down and deposited in that particular place?

A. Not in that particular place, but somewhere within close proximity to the stream.

Q. Is it not unfair to assume, as you do, that this deposit which takes place through the formation of this artificial channel through which the sediment is carried through the contraction made by the jetties, is it not unfair to take that as an illustration of the rapidity of the process under normal conditions in a channel which is not contracted in any such way?

A. I think, Mr. Taylor, that we both agree as to the quantity. It must be admitted that the quantity brought down by the Mississippi river within certain limits remains constant. The place of *of* deposit is simply altered and changed by the levees. What was once spread out over the whole country is now forced by artificial conditions to one point, the mouth of the river.

Q. Do you not make by that answer a demonstration of the fact

that the deposit made under those conditions is no criterion by which to measure the ordinary normal deposit when no such artificial conditions exist?

A. At the point, again I answer at the point near the mouth of the Mississippi river, yes; but for the general land spread out over the whole country in a flood period, no. In other words, the quantity brought down by the Mississippi river today excluding the factor that I brought in just now, is the same today as it was before the levee was erected, but before it was erected it was spread out
423 over all places wherever the water went; today it is forced by the levee system to go where we want it, that is to say near the mouth of the Mississippi river, but the same quantity is there.

Q. The object of my question is to ascertain the probable rate or rapidity of change made in the preceding periods by the operation of the Mississippi river in its deposit of alluvium. Do you still persist in your contention that the results of the artificial process which is now taking place under the operation of these jetties, is a fair criterion by which to measure the probable changes which went on before any such artificial system existed?

A. Emphatically.

Q. You persist in that?

A. Yes sir.

Q. That it is likely that it was just as rapid?

A. Bar-ing of course the small factor I brought in just now, that is why I explained. There is a greater amount of denudation today of the lands contributing to the upper Mississippi by virtue of the forests being removed by the lands going into cultivation, because cultivated lands wash much more than those occupied by forest and that small factor will of course be used by furnishing a modicum of increase to the present deposits brought down by the Mississippi river.

Q. I understood you to say that the estimate of competent geologists was that the subsidence that was going on in this locality was at the rate you said I believe of four feet a century?

A. Yes sir, about four feet.

Q. But you said that that subsidence would not be so great, for instance, in the locality of the Isle à Pitre as it would be near the mouth of the Mississippi river?

A. We have no data on Isle à Pitre, but the mouth of the Mississippi river has been accurately gauged for over a century I believe and without further study or examination in detail I would state that perhaps all of the shore line from Pearl river around to the Atchafalaya has undergone to a very large extent this same change and while we have reason to believe that; on account of this increased pressure due to the increased amount of sediment brought down every year and deposited near the mouth of the Mississippi river that particular locality may have sunk a little bit more than that surrounding it that has not been subjected to that pressure.

Q. The probability is that the subsidence in the locality of Isle à Pitre would be less?

A. Very scantily less just a mere fraction less, because, I will have to deal with generalities here, the amount of time that has been needed and the amount of mud that has been brought down and that fact you gentlemen will realize when I tell you that in digging wells in this city they have gone through 1800 feet of this alluvium deposit without going through it, when you imagine that this enfilling this deep area with 1800 feet of mud brought down by the Mississippi you can see that the factor of pressure which I allude to at the mouth of the Mississippi river will be infinitesimal in its difference between the mouth of the river and that — Isle à Pitre.

Q. Look at this map and examine it and see the general geographical formation along this coast from Nine Mile bayou eastward to the Isle à Pitre, and then southward through Nine Mile bayou to Treasure bay, Indian Mound bay down to take of the mound; have you reason to believe that since 1812 there has been any material change in the general physical and geographical aspects of that region?

A. I would say so, yes; for this reason, I would say that this has undergone the same subsidence as the remaining part of the Mississippi coast and that many points that were formerly islands are now submerged.

Q. That is, you speak of this general subsidence of about four feet in the century?

A. Yes sir.

Q. Have you any reason to believe that any general change in the physical and geographical aspect of the area to which I have referred has taken place except such as would result from that subsidence?

A. I do not know of any other.

Q. Except the inference that you draw from the general operation of that subsidence? then——

A. That is all.

Q. You know of no reason to suppose there has been any general change of appearance in the physical aspect of the region I have indicated from 1812 down to this date?

A. That is right.

By Mr. McCLURG:

Q. Your statement as to the subsidence at the rate of about four feet per century, I believe you also stated that the alluvium or accretion was about at the same rate, did you not?

A. No sir; on the contrary, the accretions are going out further into the Gulf every year; not the accretions laid one upon the other, which has stopped long ago in all the parishes by virtue of our

Q. I meant to ask you, on general principles, not with reference to any particular——

A. There is a prolongation of the alluvium deposit out into the Gulf, but I would not call it accretions because perhaps that word would not be fitly used.

Q. You spoke of the scouring of the River Mississippi and of these deposits. Is it not true that your doctrine is disputed by a great many scientists and statesmen on that subject?

A. Not altogether, there are a great many men like Captain Leathers and I believe Captain Cowden who claim that we do not keep the river in a navigable condition and that the river bottom gradually and slowly fills up as we elevate the levees; but I think they do not deny the process of scouring to some extent, because we find the channel of the river is constantly shifting. We frequently find a sand bar here today and gone tomorrow.

Q. That is due to the violence of the river, the sudden changes in the bed?

A. Not necessarily, it depends, a log——

Q. Let us come back to the point. Is it not true that a great many scientists and statesmen contend, upon high authority that the leveeing of the Mississippi river does not produce a scouring of its bottom and a deepening of its channel, but has the effect of filling the bottom and lessening the depth of the river in proportion to the restricting of the waters of the river by levees?

A. I will answer that question by referring you, with all due respect, to the Mississippi River Commission reports and also to various reports that have been sent to Congress from the other side. It is unquestionably a disputed question and discussed a great deal and therefore I give you Captain Eads' theory and give you the testimony of the Mississippi River Commission which has extended now about 20 years and that commission assures us from the standpoint of science that it is a fact that this leveeing is scouring the river and keeping it clean. If we have any reliance on the Mississippi River Commission we will accept their published reports which are to that effect. I will refer you to the last one.

Q. After all there is some dispute of that theory?

A. Always will be; we never expect to find humanity of the same opinion.

Q. How far is Point Chico, if you know, from the Mississippi shore?

A. I do not know sir. I would have to measure it.

Q. Your best judgment from the map?

A. I am not sufficiently acquainted with the scale of this map to express an opinion. That is simply a question of measurement. I have no personal knowledge of it at all. I would have to judge by the map.

425 Q. I want to get your judgment on this proposition. If I understand it correctly your statement that this subsidence is at the rate of four feet per century is a general one?

A. Generally accepted by geologists.
Q. I mean that is the average subsidence?
A. Of the embayment of the Mississippi river, yes.
Q. Of course it may be greater at some points and less at others?
A. Well, within a very small limit.
Q. Give us, please, your estimate of what that subsidence would
be since 1812, for 18 miles south of the mouth of Pearl river?
A. I have no personal knowledge of that. I would just have to
answer you like I did before, that I would only *accept* the theory of
the geologists who have studied this subject, and would expect to
find a proportion of four feet as the time bears to a century.
Q. The discoveries of these cypress stumps and timbers under
the surface indicate, both subsidence and filling do they not?
A. It depends altogether on whether the stumps are found in
places without the stumps being covered with dirt, it filled in there,
whether the stumps are covered or not with dirt, like at Vicksburg,
they are covered there; but we have on the coast here a number of
cypress stumps that are just in almost identically the same relation
to roots, still, as they were when they were growing, therefore that
is clearly a case of subsidence.
Q. May they not be filled in and covered without being shaken?
A. Their roots though, their little roots beneath have still just
such a relation as exists between soil and roots as exists today in
stumps.
Q. I meant to ask you this. If we find cypress knees or stumps
stumps under the surface——
A. Under the surface of water?
Q. Of soil. Can the geologist say whether——
A. No sir.
Q. ——they hold their position differently, where there has been
natural subsidence, from the position they would hold if there
had been an accretion or covering up?
A. I would say certainly there had been an accretion, a subsid-
ence could not be predicated upon such premise.

Redirect examination.

By Judge GUION:

Q. If you should find cypress stumps rooted in the soil below tide
level would you state that there had been a subsidence of the soil
at that point, or that these stumps had been covered by alluvium?
Q. If I understand you right, they are not covered now by
alluvium.
A. I am speaking of stumps now covered by the soil. If you
should by digging down into the soil find a number of cypress
stumps rooted in the soil at a depth below tide level, would you
say that at the point at which these stumps were discovered had sub-
sidence would if you were to discover them below tide level.

Q. That is what I asked you; whether if you found them below tide level?

A. Yes sir.

Q. In digging the soil, you say that would be an evidence of subsidence?

A. That's right.

Recross-examination.

By Mr. McCLURG:

Q. The accretion by alluvium has no effect, as I understand you, upon tide level?

A. I think I can make myself clearly understood by a round about way. If there is an accretion around a stump as it grew, that stump with all its accretions would be above the ordinary tide level because a cypress stump could not grow in tidal waters; if, on the other hand there was an accretion and I discovered afterwards that this stump with accretions was below tide water, I would say there has been an accretion and subsidence because the tree is now below tide water which according to our knowledge of cypress is impossible to grow in that condition and hence must have sunk. I think that brings it out clearly for both of them.

426

By Mr. DYMOND:

Q. Taking this section of the country forming the northeast corner of this Saint Bernard peninsula and considering its origin and formation, recognizing that it is now a little above tide level, what would be the general effect after the levee system had been completed, say between 1750 and 1800, what would be the effect subsequent to that date, 1800, produced by storms, rains and subsidence in that section on its general topography and superficial appearance?

A. It would modify it very greatly.

Q. In what way?

A. By forming new bayous, washing down some of the higher grades, and as I remarked just now, by a subsidence to some extent. The appearance of the whole geography of that country may have modified in that time very materially, fresh outlets for drainage, denudation by tidal waves, by the waves that form very high during storms, etc., washing over these lands, and another important factor that is omitted is a growth of vegetable matter on these lands, that modifies to some extent the geography of an archipelago similar to that.

Q. Referring to this particular territory and considering the period of less than 100 years or since, say 1812, considering this particular peninsula in question, since the levee system was completed and the alluvium deposit terminated, is it your opinion there have

have not been great changes produced by the elements and causes ou have mentioned?

A. I would not like to use the word great; but unquestionably, ere have been changes, how great, I would not like to emphasize em by that word, but there is no doubt *it* at all there have been anges, so much so that comparing a detail map of it at that time th a detail map of it today, one would scarcely recognize it in all details.

Q. Now, where vegetation has been able to maintain itself, does does not that have a tendency to keep that particular spot above e surface of the water?

A. Yes sir. The peat bogs of Ireland are many feet thick pro-ced by continuous growths on top of former growths, and similar nditions are produced in that way in a great many of our allu-um formations; we have some bogs in the back part of this city ilt up almost exclusively by a process similar to the one just de-ribed in Ireland, showing the existence of the process of vegetation owing on vegetation and making an immense amount of vegetable atter elevating the soil by that growth.

By Mr. ZACHARIE:

Q. In regard to the scouring or not scouring by contraction of the ssissippi river or other streams, what is the consensus of opinion the highest scientific authorities on that subject?

A. Nearly all the information we have comes from the Mississippi ver Commission which, as you know, is composed of United States gineers, and in their published reports which are made annually, ey make the assertion that the levees are valuable adjuncts to the vigation of the Mississippi river by keeping the bottom well oured and opened for navigation.

Q. Are Humphrey and Abbot high authorities?

A. They are the very best authorities up to a generation ago.

Q. How are European scientific authorities on this subject in connection with other streams; for instance do you know about the writings of the president of the Physical and Geographical Society Reclue?

A. No sir.

Q. Can you state what the consensus of opinion of the European entists is in regard to European rivers, in this respect?

A. I can only in one statement perhaps answer your question st, and that is that all rivers that are subject to overflow are today veed, all over the world.

Q. Do you know what the results have been with the Danube and e Po?

A. Yes sir; they have continued to build higher levees.

Q. As to scouring I mean?

A. Well, I would say there is some contention about the Po and e Danube just along the same line as regards the Mississippi, but

the best engineers continue to build the levees there and maintain them, so that it is accepted as a fact that they are doing the work.

Q. Can you mention a single eminent scientist who maintains the contrary?

A. With your consent I would rather not go into that because I have got some personal friends that are on the other side. I do not like to answer that question.

Q. Is that the theory that the United States Government is now going on?

A. It is.

Q. You have spoken of the effects of storms upon low lying territory and this archipelago or peninsula which is involved in this suit. What would be the probable effect of these storms acting upon the character of the soil of which sample No. 1 is a specimen, as compared with other soils?

A. It has been found that this Mississippi mud, alluvium, probably offers more resistance to the water than any other soil we have, hence it is used almost exclusively for building levees. Wave wash is not so great upon a soil of the character of No. 1 as on No. 2, No. 2 constitutes the sand which is constantly shifting, subject to tidal waves, subject to winds and subject to running streams.

Q. While this material is placed upon levees and dries it makes good levees, does it not?

A. Yes sir.

Q. How is it when it is in its wet condition, is it soluble?

A. It is easily transported by water by virtue of the fact that its physical size is very minute, consisting mainly of clay and silt it is easily transported by water; in other words, it is very nearly of the same specific gravity as water, and hence it is very difficult to settle it.

By Judge GUION:

Q. Are you able to state whether the marsh lands out in what is called the Louisiana marshes, claimed by Louisiana as belonging to the parish of Saint Bernard, are of the same character as the marsh lands of Terrebonne parish and Lafourche parish and other parishes on the southern coast of Louisiana?

A. It is my belief they are identical.

By Mr. MCCLURG:

Q. The subsidence of the surface that we have been talking about is going on with the bottom of the Mississippi sound at the same rate is it not?

A. Yes sir.

Q. Being above water makes no difference?

A. No sir.

Q. The subsidence of the land under the water is at the same rate as the subsidence of the land above water?

A. Yes sir.

ROBERT R. BARROW, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

428 Direct examination.

By Judge GUION:

Q. Where do you live?
A. I live in Terrebonne parish.
Q. Do you know anything about the southern coast of Terrebonne parish?
A. Well, yes, I know something of it.
Q. How long have you known it?
A. From my boyhood up.
Q. How old are you?
A. I am 44 years old.
Q. For how many years, then, have you known that southern coast of Terrebonne parish?
A. As far back as I can remember; I suppose when I was ten or 12 years old my first acquaintance began with it.
Q. Have you been in the habit of going out there frequently or infrequently?
A. Frequently.
Q. For how many years have you visited that section?
A. How many years have I visited it?
Q. Yes, for how many years have you visited it?
A. Since that time up to now, I very frequently go over there still.
Q. For what purpose?
A. For different purposes, for pleasure, sometimes on business.
Q. What business have you down there?
A. I am interested in a canal opposite New Orleans.
Q. What is the name of that canal.
A. The Barrataria and Lafourche canal.
Q. What does the Barrataria and Lafourche canal connect?
A. It connects with all those waters.
Q. Connects what?
A. Connects with the Mississippi river at this end and with the lakes, bays and bayous in the rear.
Q. Extending to what point?
A. Extending all the way down, you may say they connect one with the other going all the way down.
Q. During the time you have visited the southern coast of Terrebonne parish, have you noticed any changes in the configuration of that country?
A. Yes sir, I notice them each year, every time you go down there you notice a slight change of some kind.
Q. What is the kind of change you refer to?
A. The washing away of the land, widening of the bayous and the making of inland bays and all that sort of thing.

Q. Caused by what?

A. By the action of the water, possibly by storms, possibly by currents, various causes.

Q. Is there any instance in your recollection of the cutting in of the marsh land?

A. Decidedly, yes sir.

Q. At points where there was no inlet?

A. Yes sir.

Q. Could you name some of the places that you remember?

A. I do not know that I could name them by name there are so many and such peculiar names, each fellow names a bay if he discovers it first, some name strikes him as a good name for it, but there are lots of instances where they are cut out, channels are made, and after a storm I know back of Bayou Terrebonne, right close to the land, several little bays have been eaten out by the storm where there was no bay at all.

Q. What was it before?

A. Marsh.

Q. What became of the marsh?

A. I don't know, the marsh went away and the bays took its place. Whether it was washed away on to the main land or what became of it I don't know, it went away.

Q. What kind of marsh was that?

429 A. It was ordinary sea marsh.

Q. Was it anything like sample No. 1?

A. It is regular turf, yes sir, it is something similar to that.

Q. Is it to your knowledge that any part of that kind of marsh is ever taken up bodily and carried out to the sea or disappears in a body?

A. No—yes, I have known islands to disappear but I don't know what became of them, whether they went off by pieces, I am very sure that some of it goes off by pieces, but I don't know that the whole island goes off in one piece and lodges in one place.

Q. I was referring to the marsh.

A. Yes sir, it is cut up in places and goes off in chunks and washes away where the current strikes it.

Q. And carried off?

A. Carried away.

Q. Do you know of any instances where there have been any islands forming in the marsh?

A. What do we understand by islands, high land?

Q. Whether the marsh, or otherwise, a body of land surrounded by water whether large or small?

A. No, I do not recall to mind anything of that sort; it is to the contrary.

Q. You say it is just to the contrary?

A. Yes sir.

Q. What is the condition that you speak of as being to the contrary?

A. Well, they are washing away all the time, these marshes, by he action of the water, you know a fellow goes along in a pirogue nd cuts a channel to go from one bay to the other, and by the vashing away continually of the land in those places first thing you :now there is a great big bay there.

Q. You say that it is to your knowledge that within the period eferred to there has been a cutting out of the marsh land?

A. Decidedly.

Q. And the formation of what in those places of what was marsh?

A. Well, bays and streams. Now, for instance, for example, we vill say right in Cat Island lake or they call it Coon Island lake here was an island down there between Caillou island and the nain land, there are two islands there, one is called Cat and the ther one is called Coon; originally old fishermen around there tell ne it was one island at one time; but to my knowledge I can re-nember at one time when there was only a small passageway be-ween them, not over half a mile wide or something like that and oday, why, there is a mile or so between them, and the same thing ccurred between Wine island and Caillou island, that was a little mall pass in there, you could see one island from the other very vell, and today you can scarcely see one island from the other be-ause the pass has widened so much.

Q. And that condition of things is also taking place in the narshes?

A. Yes sir, all the way around there.

Q. Do you know where Rome island is?

A. I don't remember Rome island.

Q. Do you know Caillou island; what is the condition of Caillou sland today as compared with what it was some years ago?

A. I know the place where the old hotel was and the buildings s now right in the Gulf.

Q. There is where there was a hotel?

A. Yes sir, a hotel and buildings belonging to it.

Q. How long ago was that? That there was a hotel there?

A. I could not say when that hotel was destroyed, there was a air down there, and——

Q. Did Mr. Viguorie build that hotel?

A. I don't know who built it, but he was the proprietor when I new it.

Q. For how long was it kept open?

A. For a good many years.

Q. And you say the place where the hotel was——

A. Is now in the pass, in the water.

Q. Do you know where Last island is?

30 A. Yes sir.

Q. Could you say anything with reference to its condition oday as compared with what it was some years ago?

A. There has been a great deal of cutting away there since I first new it, it has been cut through in two or three places, two or three

channels pass through the island today and I can remember when there was no channel there.

Q. You speak of the cutting in of the marsh by water coming in there and bays forming in the marsh?

A. Yes sir.

Q. Are you able to state whether or not these bays that have been cut in there have resulted in the formation of islands between them in any way?

A. Certainly; if there is a bay on the island and somebody comes along and cuts a little channel, why, by the action of the storms the simply fact of the water rushing into the place and rushing out scours as it goes in and out and that action of the water will widen that place, deepening the water and the marsh will fall in and be carried off by the current and there are lots of places like that, in fact you will find all over this marsh little islands formed that were not there when you came over there, possibly in a couple of weeks time, there will be a storm come and cut off a little chunk and there is a little island formed and that continues to be eaten away until there is no more of it.

Q. Is that condition of things going on constantly down in the parish of Terrebonne?

A. Yes sir.

Q. You say that you are at the head of the Barrataria and Lafourche Canal Company?

A. Yes sir.

Q. It is under your supervision and control?

A. Yes sir.

Q. Have you had occasion lately to do any work on that canal?

A. Yes sir.

Q. What kind of work?

A. I built a new lock there.

Q. In order to do so what did you do?

A. I had to excavate to cut this lock through.

Q. Where did you excavate?

A. I had to dam off the river from one side and the waters from behind in order to excavate between the two.

Q. What distance was there between the dam you built next to the river and the one that you built next to the canal proper which extends out into Lake what?

A. Lake Salvador. Let us see, the dam at the river was put, the front cuts we used as a dam at the river, we made the dam out of the front cuts, and the distance between those two may have been 135 and the distance between the other two might have been 176, the dam was behind that about four or five feet, something like that, just add those two together and that will give you the distance between.

Q. What was the space in between that you had to cut off for the purpose of excavation?

A. Well, it was a space——

Q. Did you do any excavation?
A. Yes sir.
Q. For what purpose?
A. For putting down the foundation.
Q. How deep did you go?
A. I went down between 11 and 12 feet.
Q. Below tide level?
A. Yes sir.
Q. How do you know that fact?
A. Because I figured on tide level.
Q. Did you have any visible tide level at the canal?
A. I had this dam which was eight feet wide between the work I was doing and the tide level of the back country, the tide
431 rose and fell every day right behind this dam.
Q. Did you excavate below that tide level?
A. Yes sir; that is what we figured on, to go below tide level and we went down 12 or 12½ feet below tide level.
Q. What did you find there at that depth?

By Mr. McCLURG:

Q. I want to know whether you went down 12 feet below the tide level or below the surface?
A. Below tide level; we figured on low tide for the boats to pass over the sill of the gates consequently we figured on what we supposed to be low tide level which was the tide right behind us that came to us, within 8 feet, between——
Q. You could notice the ebb and flow of the tide?
A. Yes sir.
Q. How deep below tide level did you go?
A. About 12 feet.
Q. What did you find, did you find any stumps?
A. Lots of them.
Q. What kind?
A. Cypress stumps.
Q. Were these stumps rooted in the soil?
A. Yes sir, they grew there. There was a forest, a perfect layer, not only did we find stumps but we found a layer there such as you will find in woodland timber, the character of the timber, just as though it was a carpet, about ten to 11 feet, where we struck this layer. We found branches cut a peculiar size, branches laid down and then these stumps below all laid in there just like a cypress tree would grow.
Q. How far below the level of the land you say you saw this a certain distance below tide level, now——
A. It would be hard to say that because, the banks were filled up by the excavations you see, we threw it on the banks and the banks were very much higher than the level of the land; but I presume about, I won't be positive, about it, but I think about seven or eight

feet is the water level below the actual bank, the bank of the river; I should judge it would be about that much then.

Q. Then you went somewhere about 20 feet down?

A. Yes sir.

Q. Below the surface of the soil?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. How long is that canal?

A. It is a canal that connects the different streams and lakes and bayous with Morgan City, with the Atchafalaya river.

Q. How far is that from New Orleans?

A. About 108 miles, Morgan City is.

Q. That is on the Gulf coast?

A. Practically on the Gulf coast.

Q. If there is a subsidence of the land at the rate of four feet a century, how long will it be before you will have no need for that canal?

A. I have not troubled myself about that as I don't expect to be here then.

Q. You spoke about these cypress stumps and trees ten or 12 and 20 feet below tide level?

A. Yes sir.

Q. It has been testified here, you know, that the tide level rises as the earth sinks and also that there is a raising of the surface by deposit from the overflow of the Mississippi river?

A. Yes sir.

Q. Do not these deposits from these overflows resist the flows of the tide the same as they do in other waters?

432 A. Yes sir. They would do that if they were banked up to do so, with the formation of the bank.

Q. If the silt, sediment, and alluvium from the Mississippi river is banked up along the Gulf coast it would resist and stop the flow of the tide and raise the level of the tide just like it would do that in other waters would it not?

A. I don't know that it would raise the level of the tide, but with a formation like a levee formed by these deposits it would keep the inflow of the tide from coming in provided the embankment was high enough.

Q. If it was possible to levee the Gulf and restrict and resist the flow of the tide, it would raise the level of it, would it not?

A. The level of the tide?

Q. Yes?

A. I don't know that it would, I don't see that it would. The tide that we have here is affected by the Atlantic ocean and its connecting waters, it is out of the Gulf that we get our tide from and by keeping it out I do not see that it would raise the tide.

Q. You do not think that the tide would be raised, whether it would have a wide area to overflow or narrow?

A. I suppose if it was confined within a small space and the water rushed in it would raise it possibly a little.

Q. I want to find out if it be a fact, as has been testified to here by a gentleman, that the earth is sinking in this section especially at the mouth of the river, at the rate of four feet a century, if there is not some recompense in this immediate section by deposits from overflows?

A. Well, I think so, I think that this coast is sinking and the best evidence in the world that I have of it is the changes what I have testified to in regard to those stumps; we know that cypress stumps do not grow in salt water and these cypress stumps were found ten feet underneath the level of the tide water with a simple dam of eight feet damming out—between this excavation and the tide water which is brackish water, salt water right behind the dam, eight feet separating the two; there is a rise and fall of this water showing there what was tide level. I noticed that not only for one or two days but for a period of several months, because it took me that long to get through this excavation, and to illustrate this I will explain like, this table say would be the dam, on this side of the table would be the salt water connecting streams that connect with the lakes and Gulf below; on the other side, over here, we are down 12 feet lower than this water over here; now, if that is tide level and these stumps grew here which there were not one but a great many of them showing it was a forest there; if they grew there, had the salt water been as high as it was at this time over here it was not likely they would have grown there because we know that they do not grow in salt water, of course therefore I jumped at the conclusion it must have been fresh water when they grew there, and the question is if they had not sunk why is it the salt water is higher here than there.

Q. Let us accept that conclusion as accurate. How long do you think it would have taken to have created those changes?

A. I know of no way of figuring that out and it would be a large element of doubt in my mind——

Q. It would take many centuries, would it not?

A. It would take a good while.

Q. A long time before 1812?

A. I don't know how long it took nor what could have brought it about, it may have been an earthquake that shook this country.

Q. You never heard of any violent earthquake since 1812?

A. No sir.

Q. You don't know——

A. Consequently it would be out of the question for me to figure on it.

Q. You don't know about the conditions that existed about 1812?

A. No sir.

433 Q. You are on the west coast of Louisiana?

A. Yes sir.

Q. You do not undertake to say or profess to know anything about the conditions on the eastern coast of Louisiana from the mouth of Pearl river 18 miles south?

A. No sir.

Q. Do you know anything about the deep water channel out of the mouth of Pearl river north of Half Moon island, Cat island and east of Chandeleur islands?

A. No sir.

Q. Have you any idea of the distance from the mouth of Pearl river by what Louisiana claims to be the deep water channel eastward from the mouth of Pearl river through Cat Island channel and to the east of Chandeleur island around to the Sabine river that divides Louisiana from Texas; what is your judgment as to that distance?

A. I don't know, I have not studied that up and I don't know things I have not studied, I couldn't tell you, it would be a hard matter unless you take a map and figure it out and then you would have to go by somebody else's estimate.

Q. Estimate it in your own judgment; you are familiar with——

A. It would be simply a case of guess; if I were to tell you ten thousand miles it would be just the same, I would have nothing to base it on, it would be just an idea; I would have to figure how wide I thought the State of Louisiana was, and you see the distance would be different if you take it one way and then another, it would depend on how you take it, if you went around by the outside it would be longer than if you went straight through the State, this State is shaped like a boot.

Q. The line I want you to draw now is, go out of the mouth of Pearl river and follow what Louisiana claims to be the deep water channel, goes south of Cat island and east of Chandeleur islands and swings around the mouth of the Mississippi river around to the Sabine river; I would like to get your estimate if you can give us one that you think would be of any value, what that distance is, in order to show what water frontage Louisiana would have?

A. Well, if I were to answer that question I could only do so by guessing, I wouldn't have anything to go on that would be of any value as evidence in the matter, it would be just simply guess work.

Q. I do not think with that statement it would be worth much. I thought perhaps in your business with that canal——

A. I do not go that far east of the Mississippi; I have never been out on that coast so I am perfectly ignorant of it.

Q. East of the Mississippi river you don't know anything about the conditions?

A. No sir; the only way I have been there is by train.

Redirect examination.

By Judge GUION:

Q. You have not told us where that Barrataria and Lafourche anal is; you said——

A. It starts right opposite Audubon park in the city of New Orans, right on the opposite side of the river from Audubon park in he city of New Orleans.

By Mr. MCCLURG:

Q. Is there any perceptible difference in the depth of the water ere at this end of the canal?

A. Than the other portions of it?

Q. No, not the other portions of it, but the rise or fall of the depth water at this end of the canal, whether——

A. I don't think I exactly understand the question.

Q. I mean to say and so you may fully understand it I will put this way. You have testified, in substance, that there has been a subsidence of the land out to the west, and that certain islands have disappeared and that the waters have made inroads on the inland or main land?

A. Yes sir.

Q. I want to ask you if those influences that have created those nditions down there, have had any material effect on this end of ur canal, whether your water has grown deeper or shallower?

A. I don't know that I would be prepared to say whether the ater at this end has become shallower or not because we are conntly dredging and if there was any difference why we would arcely notice it.

Q. Does not the bottom of your canal sink at the same rate as the rface does?

A. It may but the water from the Mississippi river bringing in is deposit which we let through the locks possibly offsets that.

Q. Interfering with it by artificial means?

A. It might be.

JAMES C. HOUGH, witness sworn and examined on behalf of the ate of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. New Orleans.

Q. What is your present profession?

A. Civil engineer.

Q. How long have you been a civil engineer?

A. Twenty years.

Q. How old a man are you?

A. I am forty-nine.

Q. Are you connected with any railroad now?

A. I am connected with the New Orleans and Northeastern railroad.

Q. What is your official title?

A. Resident engineer; as such I have charge of the physical features of the road.

Q. Where does that railroad run?

A. From New Orleans to Meridian, Miss.

Q. Does it skirt the southern shore of Lake Pontchartrain at any point.

A. It skirts the southern shore of Lake Pontchartrain for a distance of 13 miles, about, and then crosses Lake Pontchartrain and crosses the marsh for two miles more.

Q. What is the general character of this section of the country over which it goes?

A. It is marsh land.

Q. I refer now to the Louisiana side of it.

A. I mean along Lake Pontchartrain, crossing it, and two miles on the opposite shore, it is all marsh land. We have filled in all of the marsh land, the marsh that is way back and low that you couldn't walk it, to the height of the marsh that is higher.

Q. Are you at all familiar with the character of the marsh forming the peninsula of the parish of Saint Bernard commonly called the Louisiana marshes?

A. Only from a little travel by rail and a little travel by boat.

Q. Is that the same character of land as that through which your railroad traverses on the southern coast of Lake Pontchartrain?

A. In general appearance it is; it is marsh land, about, probably from marsh that is barely above sea level to marsh land two feet higher, interspersed with numerous lakes and bays.

Q. Will you look at this map marked map No. 6 and state if this line extending from the city of New Orleans along the southern shore of Lake Pontchartrain and marked the New Orleans and Northeastern railroad, is the line that you have reference to?

A. Yes sir, going out from People's canal and then skirting
435 the shore of the lake crossing the lake near Point aux Herbes.

Q. What was the original means of communication by railroad, so far as the road bed was concerned, along that southern shore of Lake Pontchartrain?

A. Two miles of the shore, on the north shore, and six miles of the lake and down to this curved point, it was original- all trestle, 21½ miles of trestle work, originally. The curved point is at People's Avenue canal as shown on the map.

Q. What is it now?

A. It is now all embankment except six miles across Lake Pontchartrain.

Q. How was it changed from trestle to embankment?

A. The two miles on the north shore of Lake Pontchartrain were filled by material hauled in there and dumped there.

Q. What about on the south shore of Lake Pontchartrain?

A. About 11 miles of the south shore beginning at Point aux Herbes and extending 11 miles along the shore to New Orleans, was filled by excavations, cutting out by dredges.

Q. In order to get this material, did you construct a canal running parallel and alongside of the trestle work?

A. Yes sir. The canal is about 11 miles long.

Q. And how wide?

A. 78 feet wide.

Q. And how deep?

A. It varies in depth, in places we dug a little deeper than others; the greatest depth the dredge would go would be about 13 feet. The dredge was so arranged it would lower and go back a second time and make a second cut in the same place, the places where we got very poor material; other places where we got better material we didn't have to go so deep.

Q. Was this dredging under your supervision?

A. Yes sir.

Q. Did you, in the course of your excavation of that canal, come across any cypress stumps?

A. That portion from where the road reaches the shore near Point aux Herbes, for a distance of about six miles towards New Orleans, was largely of cypress stumps and vegetable muck.

Q. How much below tide level did you find those cypress stumps?

A. That portion of the marsh is about a foot above Lake Pontchartrain at normal tide in the lake, and the first dredge was about—the machinery was set for about eight feet. There was no appearance on the surface of the ground, whatever of the stumps. I would say that, to the best of my recollection that the top of those stumps would be three or four feet below the surface of the marsh and say three feet below the normal surface of the lake.

Q. Three feet below tide level?

A. Yes sir, that would be the top of the stumps, and then from there down to the bottom would be five or six feet.

Q. What was the position of those stumps?

A. The way they came up with the dredge, showed they were about in the normal position of stumps in the ground with the trees cut off, that is, upright, that is, in an upright position.

Q. Were those stumps rooted into the ground?

A. The roots and all came up with the stumps; the material that they were—was a very soft, smooth slick blue mud.

Q. From your observation had those trees grown in the position in which you found them?

A. I would think they had from the upright position they were in as they were dredged out.

Q. Have you in any other work noticed any evidence of stumps or other surface formation below the present sea level?

A. Frequently through that same stretch along which we dredged. During the construction of the trestle the piles would hit obstructions and it was generally considered by all connected with the work that they struck stumps or logs; this would be in places from five to ten feet below the surface of the water; if you hit something it
436 displaces your pile one way or the other, and offers resistance to the pile penetrating, and we concluded it was logs or stumps.

Q. Was this verified when you subsequently dug the canal?

A. The dredging of the canal subsequently verified that supposition of the presence of stumps in the ground.

Q. Have you had any experience with the effect of storms on your railroad?

A. The New Orleans and Northeastern road bed, when the tres-le was driven, was located generally from three hundred to something over, feet, not less than 300 feet, from the shore line. That is, there was a general marsh ground extending from the center of the track at least 300 feet towards the shore of the lake; in a great many places, say for a distance of six miles, since 1882, the railroad company has driven pile protection located at a distance of 50 feet from the track, the shore line having eaten to that point in 20 years; in fact the shore line the south point, Point aux Herbes, has receded 1000 or more feet at the point, from what it was in 1882.

Q. What has produced this change and washing away of the shore line?

A. Constant lapping of the waves along the shore line and several severe storms like the storm of 1893 and the storm of August three years ago, that Cheniere Caminada storm did a great deal of damage.

Q. How did the storm affect the road?

A. We were cut in two for a week. The marsh land that was between the railroad embankment and the edge of the shore was taken out in a great many places; another embankment was cut through by the storm waves.

Q. Were you present during any period of these storms?

A. I was present in October 1893 and I was away in the August storm three years ago, but was back before all the repairs were made and saw the effect of both storms.

Q. What did you see during those storms, so far as the damaging effects of the storm were concerned?

A. In the two days or more that the storm prevailed we lost in an hour's time 50 feet or more of the marsh between the railroad and the lake, in other words it would eat the shore marsh between the railroad and the lake from 50 feet up, cut it right up, leave water where land used to be.

Q. What was the size of the waves?

A. They broke six or seven feet high, came right over the top of these pilings. Those storms that do the most damage are the northwest gales after the southeast gales blow the water in the lake.

. Is that the water that has been piled up by the east winds?
. Yes sir, the water from the east winds comes into the lake from sea and then after that, after the east gales blow for several days wind whips around to the northwest and that piles the water on south shore.
. Would that same effect be produced on the south shore of sissippi sound, by the influence of the north winds on the waters Mississippi sound?
. I assume that in the marsh below there are the same conditi- s of soil and affected by the same conditions of wind and waves, result would be the same. At this point on the map, at Point Herbes, some distance in from the shore line, exists what they the big lagoon. In 1882 there were several hundred feet of sh between the edge of the lagoon and the shore of the lake; y there is not 20 feet; in other words the lake has cut in here made the lagoon part of Lake Pontchartrain.
. Will you look at this sample of soil marked sample No. 1, and e whether it is similar to the soil along where you were constructing this canal?

A. Yes sir. We have soil similar to that and some like Mississippi sand, some gum-iness in it.

. When you sat Mississippi you mean Mississippi river?
. Yes sir, Mississippi River formation and some vegetable matter
.
. If the soil were of this character along the south shore of sissippi sound, do I understand it to be your opinion that the e results would be produced on the south shore of Mississippi d as were under your personal observation produced on the h shore of Lake Pontchartrain?
. Unquestionably, any such material as that, subjected to those ible storms and waves, would wholly disappear.

Cross-examination.

By Mr. McCLURG:

. Those storms would affect almost any kind of soil would they ?
. Yes sir; it would take very firm material to withstand them, ost of rock nature to thoroughly withstand them and that would d slightly.
. From your personal experience and observation and from all information you may have by tradition or otherwise, how long would you say that it has been since these cypress stumps and s stood erect above the surface of the earth?
. That would be based on the subsidence of the soil.
. I will make my question so you may answer it in your own . Of course you do not undertake to testify as a geologist?
. No sir. Only as to the conditions we found around there. As y subsidence I can't say a word as to whether that shore of

Lake Pontchartrain and this country in here has subsided any since 1882. But the fact does remain that we found those cypress stumps below the surface of the ground, the tops of them being several feet below the surface, and the balance would be several feet further down, upright in position. The roots would be in the bottom of the dredge, in the bottom of the bucket, the roots would be in the remainder of the stump, in the bottom of the bucket.

Q. How long they had been covered you have no idea?

A. I have no way of calculating that whatever. They were all decayed and a few weeks or a month or two exposed to the atmosphere, rot and disintegrate very fast.

Q. I am speaking of stumps; do I understand you to mean that they are cypress trees that have been cut away by human agencies?

A. I would not say how they were cut. They came up in that broken up condition; some of them were so big that we had to work at a stump and log, dredge and cut, two or three times.

Q. Could you tell whether the tops had been cut away or not?

A. No sir.

Q. You could discover the difference between cuts of large trees and what we usually term stumps?

A. Yes sir.

Q. You found logs?

A. We hit logs occasionally. They would lie obliquely across the canal. We also dredged three miles of canal from People's canal in an easterly direction along the Florida Walk canal and the same cypress stump conditions were there under the ground.

Q. If there had been a subsidence of the land in that section at the rate of four feet to the century, about how long would you estimate it to be since those trees stood high and dry on the earth?

A. Well, the tops of the stumps were about three feet under the surface, from the top of the stump to the bottom of it would be about four feet, that would make the roots about eight or ten feet below.

Q. I understood you to say there were some deeper down?

A. Yes sir; some stumps were lower down, as well as at that same depth; in other words all the stumps were not on the same level.

Q. Could you say whether those stumps were not on the same strata or not?

A. Yes sir; we evidently went through the strata in which
438 the trees grew which was a very slick, slime of blue clay; we cut through that and we hit firmer material more like the Mississippi River batture sand.

Q. Then you struck other stumps?

A. Then we were out of the stumps; in other words the excavations of the ground for a height of a foot or more was more or less of vegetable matter, then a foot below that we hit the tops of these stumps, and the roots of those stumps laid in that blue mud, and

when we got through that blue mud then we were free of the stumps, and that put the stumps eight or ten feet below the surface, the roots of the stumps.

Q. Eight or ten feet below——

A. Below the surface of the ground.

Q. Do I understand that from your observation that Lake Pontchartrain is growing larger?

A. It is widening its area undoubtedly, and we have that evidenced here, in a distance of 13 miles, we have proof of that theory that there is an increase of the area of the lake, for 13 miles of about 300 feet in width along the New Orleans and Northeastern road.

Q. Do you know how wide that lake is at its widest part?

A. It is 34 miles, I believe it is said to be in its widest part.

Q. The action of the wind on its surface is violent in the storm season?

A. Yes sir, there are very big waves out on that lake small as it is, in a blow.

Q. You answered awhile ago it would have the same effect in the Mississippi sound.

A. I did not intend to say that. I thought I was answering where the same marsh land was.

Q. You stated that the wind blowing in from the eastward and then it whipped around and started from the northward and drove the waters upon the south shore of the Lake Pontchartrain; of course there would be no southern shore of the sound——

A. No sir, I was referring to the southern shore of Lake Pontchartrain.

Q. There would be a difference between that and Mississippi sound?

A. Yes sir. Mississippi sound I believe would be subject to easterly gales principally.

Q. Can you say whether or not the easterly winds are the most disastrous along the Mississippi sound, Mississippi shore?

A. I would say yes, because the winds from the westerly direction would be more or less off land winds, and the winds that sweep the ocean would be those easterly gales, almost from any easterly point.

Redirect examination.

By Mr. DYMOND:

Q. Will you please look at this map and notice Malheureux point and then notice Isle à Pitre, with the shore line between the two. Do I understand you to say that there was no shore line on the south shore of Mississippi sound between those points?

A. No sir; I did not speak at all in reference to Mississippi sound; I was speaking entirely in reference to Lake Pontchartrain.

Q. Well, now, with a northwest wind on the waters of Mississippi sound which you see before you and which lie north of this shore

line between Malheureux point and Isle à Pitre, would there be a proportionate effect produced by——

A. There would. Northwest would lie about in that direction.

Q. Would that effect be proportioned in the erosion of that shore line on the south shore of Mississippi sound, the same conditions existing?

A. With the same soil conditions and the same wind conditions, I would look for it to be proportionate, in fact, it would be proportionate.

Q. If these southeast winds of which you have spoken as filling up Lake Pontchartrain existed would or would not that effect be the same in filling up the western end of Mississippi sound and the eastern end of Lake Borgne?

A. The eastern gales crowd the water through the passes from the Gulf into all these sounds, through all the passes into the
439 sounds and the effect of the northwest winds is to pile it up on the southern shore, the waves break against that shore with great violence and cut away the soil.

Q. On account of the more open entrance here would there not be more water accumulated in the west end of Mississippi sound and Lake Borgne than would be accumulated in Lake Pontchartrain having to pass through the Rigolets?

A. Into Mississippi sound and Lake Borgne, the incoming waters from the east gales have very much greater area to pass through than through the Rigolets in Lake Pontchartrain and the result would be more water in Lake Borgne and the sound than in Lake Pontchartrain from the same winds.

Q. Now, suppose that under those circumstances the wind shifted to the northwest, what would be the effect then on this Saint Bernard peninsula?

A. The effect of the wind from the northwest when the lake is filled would be to crowd the water against this south shore between Malheureux point and Isle à Pitre, and the same wind would give a current along that shore parallel with the shore and the waves would break on the shore and the current parallel with the shore carry the material away; it would cut out the material and carry it away.

At this stage of the proceedings, the hearing was adjourned by the commissioner until 2.15 for recess.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess the hearing was resumed at the same place and date at the hour of 2.15 p. m. All parties being present.

WM. K. M. DUKATE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. At Biloxi, Mississippi.
Q. What is your occupation?
A. Manufacturer of canned products.
Q. Do you can oysters?
A. Yes sir.
Q. How long have you been in that business?
A. About 24 years.
Q. Have you an establishment for the canning of oysters, in Biloxi?
A. Yes sir.
Q. Are you interested and a stockholder in the Louisiana Canning Company Limited, at the Rigolets?
A. Yes sir.
Q. Are you interested in the Neptune Canning Company at Neptune, Louisiana?
A. Yes sir.
Q. You are, in fact, one of the most extensive of southern handlers and packers of oysters?
440 A. I think so.
Q. Are you familiar with the area which is in dispute in this suit between the States of Louisiana and Mississippi?
A. I might say that I am in a general way.
Q. What gives that area its value?
A. By reason of its productiveness from an oyster standpoint.
Q. Are you from your experience in the handling of oysters and rom your knowledge of the cost of fishing oysters and from the rofits to be made from the canning of oysters, able to put any approximate estimate on the value of this area that is in dispute, an stimate based on the oyster value?
A. Well, now, if you will permit me to answer that in my own ay, perhaps it would serve you better than to answer the question rect. I should think if it was possible for either or both of the ates to dispose of this property by warranty deed, under proper lice protection, that its present value would be at least $2,000,000.

Q. You were quoted some time ago by the newspapers as stating that you would be willing to pay $200,000 a year for the exclusive privilege of the oyster product of that area, you to fish the oyster product at your own expense. Was that newspaper quotation correct?

A. In the main it was. That, of course would embrace absolute and full control of the oyster beds within the given area under proper police protection afforded by the State having it in charge.

Q. How much would you be willing to pay annually to the State for the exclusive product of that disputed area?

A. I think, upon a conservative basis, I think we would be willing to pay $200,000 per annum that is, with the understanding that we would have full and absolute control of the oysters within the given area to the exclusion of all others.

Q. Now, Mr. Dukate, do you own any land in the neighborhood of this disputed area?

Q. We own some land at or near Pirate point. I could locate the same perhaps by the map, I am not particularly familiar to show just where Pirate point is at.

(Witness shown map.)

A. This is the point at which we own some land, in here. I don't know whether it embraces this extreme point, but it is in this locality.

Q. Is that east of Nine Mile bayou?

A. Southeast.

Q. How much south is it?

A. I should judge, from the scale, that it would be—what is the scale of the map—perhaps four miles.

Q. We will just take and get the scale on this map. Look at this scale. Will you please say how far south the extreme point of Pirate point is below the extreme southern end of Nine Mile bayou?

A. You mean to take it as an air line or by navigable waters?

Q. I mean in an east and west line?

A. According to the scale it would be about two miles and a half.

Q. How much is this according to the scale?

A. It would be about two miles and a half.

Q. How much is this according to the scale?

A. It would be one mile.

Q. Well, now, what is this on the scale, that first mark? Do you now recognize this pencil to be on an east and west line just immediately south of Pirate point?

A. Yes sir.

Q. What then is the distance from the western end of this pencil north to the southern end of Nine Mile bayou, according to the scale?

A. About ½ of a mile.

Q. Will you now then state the distance from the shore line extending between Malheureux point and Isle à Pitre to the southern end of Pirate point?

A. Where is Malheureux point?

Q. I mean just this shore line, here is Malheureux point and here is Isle à Pitre. Now, taking this shore line, what is the distance from that shore line to the southern end of Isle à Pitre?

441 A. According to the scale it appears to be about four miles.

Q. Is this land within the area claimed by Mississippi under her 18 mile claim?

A. That I could not answer unless I determined the same by measurements from the map.

Q. Will you please look at this map No. 7 and state whether Pirate point is north of the red ink line marked on this map, 18 statute miles.

A. It is north.

Q. From whom did you buy this land?

A. From the State of Louisiana.

Q. Through any agency of the State?

A. I can't recall just who the land was brought from; the land commissioner or levee board of Saint Bernard parish, I don't recall how we came by it.

Q. Will you please look at this document, which is now submitted to you and which for the purposes of identification is to be marked Document No. 7?

A. I recognize this as a copy of the original deed that we now hold for the land in question.

Q. You say we, whom do you mean?

A. The firm of Lopez and Dukate.

Q. Of which you are a member?

A. Yes sir.

Q. Did you buy this land as stated, at the date stated, from the board of commissioners for the Lake Borgne Basin Levee district?

A. To the best of my recollection, we did.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the certified copy of the act of sale by the board of commissioners for the Lake Borgne Basin Levee district to Lazaro Lopez and W. M. K. Dukate, under date of March 14th, 1902, before James D. St. Alexandre a notary public for the parish of Saint Bernard, State of Louisiana, registered in the conveyance office of the parish of Saint Bernard, State of Louisiana, on the 15th day of March, 1902, in Conveyance Book No. 20, folio 77, together with the certificate of registration thereon, marked for identification, Document No. 7.

Q. Have you been paying taxes on this land since you bought it?

A. Yes sir.

Q. To whom and to what State have you been paying these taxes?

A. To the sheriff of Saint Bernard parish, State of Louisiana.

Q. Have you ever paid any taxes on these lands to the State of Mississippi?

A. No sir.

Q. Have you ever been asked by the State of Mississippi to pay any taxes on these lands?

A. No sir.

Q. Have you ever been asked by any county of the State of Mississippi to pay any taxes on these lands?

A. No sir.

Q. Now, there has been some evidence given by some witnesses concerning a boat by the name of the Josephine Lopez gathering oysters; do you know such a boat?

A. We have a schooner named the Josephine Lopez.

Q. Do you know of any other schooner or boat by that name?

A. No sir.

Q. Do you know where she carried oysters, to what point?

A. She is carrying oysters to Biloxi and perhaps to the Rigolets. I am not positive as to the latter.

Q. Can you state whether she did carry oysters to Biloxi at any time?

A. She is carrying oysters to Biloxi at this present time.

442 Q. No; but could you state whether or not she ever carried oysters to Biloxi from the Louisiana marshes, what is known as Saint Bernard parish, in 1898?

A. To the best of my knowledge it did not, unless in the capacity of a freighter, and I am not certain whether the boat was freighting oysters at that time, but to engage in fishing and catching oysters I am quite positive that the vessel or crew has never been engaged.

Q. There is no evidence about her tonging oysters, but there is some evidence as to her carrying oysters as a freighter to Biloxi?

A. It is possible that the vessel may have carried oysters as a freighter; but I do not think from the Louisiana marsh.

Q. If, Mr. Dukate, one of the witnesses who was on the original expedition sent out by the police jury of Saint Bernard parish, has testified that on this expedition which occurred in the month of January 1898, he had seen the Josephine Lopez freighting oysters from the mouth of Three Mile bayou and lying in Three Mile bayou at the time, taking on a cargo to be transmitted to Mississippi, would you be prepared to dispute the correctness of that witness's statement?

A. I should say that he is evidently mistaken as to the identity of the boat, and as to the place at which the oysters were intended for.

Q. Do you understand the question. You think you understood the question?

A. I believe that I did. I may not have understood it. I should say that if he identified the schooner Josephine Lopez anchored in Nine Mile bayou——

Q. Three Mile bayou?

A. Three Mile bayou, taking on a cargo of oysters intended for Biloxi Mississippi to be transported to Biloxi Mississippi that he was——

Q. In 1898?

A. In 1898.

Q. Yes?

A. Oh, I beg your pardon, I——

Q. In January, 1898?

A. That is six years ago?

Q. Yes?

A. I was thinking it was the past season you were talking about. I misunderstood you. How did you close your——

Q. I asked you, if this witness had testified that in the month of January 1898 which is over six years ago, if he said that he had seen the Josephine Lopez in the locality I have just mentioned, would you be prepared to dispute the correctness of his statement?

A. No sir; I believe he was correct.

Q. This Mr. Lazaro Lopez who purchased this property concerning which you have testified, jointly with you, is that the Lazaro Lopez who was your partner for many years?

A. Yes sir.

Q. Is that the gentleman who died last September?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. You have been examined as to your estimate of the value of this disputed territory and also as to your estimate of its annual rental value under proper police regulation with exclusive privileges, and also as to the purchase of Lazaro Lopez and W. M. K. Dukate of a parcel of land within 18 miles of the Mississippi shore, and the deed to you has been filed as testimony in this case on behalf of the State of Louisiana, and marked Document No. 7. Without asking any questions now as to the full value or rental value of the territory in dispute, I wish you would please state if you knew any other way by which you could become the owner of the land which you purchased at Pirate point and that mentioned in Document No. 7?

443 A. We have never made any efforts to determine whether there was any other way to purchase it or not, other than to apply to the Louisiana authorities for it.

Q. This deed seems to have been executed by Mr. John Dymond as president of the board of commissioners for the Lake Borgne Basin Levee district. Is it not true that you looked to that corporation to protect you in the possession and ownership of the land mentioned in that deed?

A. We would expect as much.

Q. In making that purchase was it your intention in any way to

settle or influence in any manner the true boundary line between the State of Louisiana and the State of Mississippi?

A. It was not.

Q. And that this property was within the 18 mile limit of the Mississippi shore the deed or act of purchase was not in any way to acknowledge on the part of Lopez and Dukate, or on the part of yourself, the right or title of Louisiana to that territory?

A. The matter and question of boundary was never considered, that is, between the two States, in making the purchase of the land.

Q. I show you a map which is marked Exhibit Map to Cross-Bill in Case State of Louisiana vs. State of Mississippi, Supreme Court of the United States, 1903, which I will ask you to examine and which I will have the commissioner mark Exhibit A and file as part of your answer to this interrogatory about which I will examine you further. The black line out of the mouth of Pearl river, to the eastward, as you will see, indicates what we understand to be Louisiana's claim of the deep water channel through the Mississippi sound into the Gulf. The red line marked on this map, as you will see, indicates Mississippi's claim to her six league limit, to the south of her shore. Say whether you so understand that map?

A. I understand the map from the lines as indicated by your explanation as being the territory that is claimed by Mississippi, this is supposed to be the line due south from Pearl river running here to a point, supposed to be the main land.

Q. I want to ask you first, this question, whether you and other persons interested in the oyster and fishing industry from Biloxi and other points on the Mississippi shore, have regarded the sovereignty and jurisdiction of the State of Mississippi as extending 18 miles from her shore as indicated by the red lines on this map, and if so how long you have so regarded the rights of the people of Mississippi and the jurisdiction and sovereignty of Mississippi to that extent?

A. We have always regarded the boundary of the State of Mississippi as reaching six leagues or 18 miles from the shore, including all islands as indicated by the boundaries as mentioned in the Code of Mississippi.

Q. And so regarding that limit, have you, and other Mississippians exercised the rights granted under the laws of that State within the territory indicated on the map as belonging to that State?

A. I believe that we have. Whenever the question has been brought up. I will state, however, that there has been never any molestation on the part of either State until I think the past two or three years.

Q. You have been interested in the oyster business at Biloxi about 24 years?

A. Yes sir.

Q. During those 24 years, have you, and I mean by you the firm of Lopez and Dukate, and I may say all other Mississippi factories and Mississippi people, so far as you may know, been taking oysters

and fish, and exercising the same rights down in what is indicated, and what you know to be the Louisiana marshes, as you have north of what is marked on these maps especially Exhibit A of Mississippi, to your deposition herein, as the deep water channel?

A. The same conditions have existed as to the taking and catching of oysters and fish north of this line indicated as have existed south of the line.

Q. What line do you mean?

441 A. Of the deep water channel, as they have south of the line of the deep water channel into what has been termed heretofore as the Louisiana marsh.

Q. Has there ever been any distinction, so far as your information goes, whether that information be from actual knowledge, actual interest, or from tradition, or any sort of information, has there ever been any distinction made between the rights of the people of the two States so far as the deep water channel is concerned in taking fish and oysters, before the bringing of this suit?

A. Not to my knowledge.

Q. You have never heard any controversy before this?

A. Never have.

Q. And the privileges which Mississippians have heretofore exercised north of this deep water channel, have extended as far down as this red line, to the south, about the Lake of the Mound and Southwest bayou?

A. Yes sir. I am answering that by saying it has extended this way an indefinite distance covering all this territory and much territory below it, until this controversy.

Redirect examination.

By Mr. ZACHARIE:

Q. Is that from your personal knowledge?

A. Not from my personal observation of it, but to the best of my knowledge and belief and information received. Of course, I am not present when these oysters are got; but I am satisfied they have been gotten within a given area or certain territory because I can recognize the oysters.

Recross-examination.

By Mr. MCCLURG:

Q. Is it not true that the firm of Lopez and Dukate, the Barrataria Company at Biloxi and others interested in the fish and oyster business along the Mississippi shore, have been gathering fish and oysters undisturbed, before the present contention arose, in what we are told now are the Louisiana marshes, and to the south of this deep water channel line just as the same as north of the deep water channel?

A. The same conditions applies as to taking and catching oysters,

as I stated a few minutes ago, north of the line as existed south of the line of the deep water channel.

Q. I wish you would state, of your own knowledge, how long the boats and crafts of Lopez and Dukate have been taking oysters along the north side of Isle à Pitre and along Turkey bayou, Three Mile bayou, and Nine Mile bayou, and to the south, and how far south they have exercised that privilege?

A. We have been receiving oysters from the territory mentioned, for the past 20 or 25 years. But for me to state from my personal knowledge as to just where those oysters came from I am not able to say other than the fishermen reported "I got my oysters in Nine Mile bayou, or Treasure bay, or Indian Mound bay, or Drum bay," they always have some point to designate from which the oysters came.

Q. And those conditions have existed for the last 25 years?

A. Yes sir.

Q. Is it not your information that those conditions have existed as to the Barrataria Company?

A. I believe they have.

Q. And with reference to other fishermen from the Mississippi side?

A. Yes sir, covering a period of from 15 to 25 years, some of them were engaged earlier and some later.

Q. Have you any knowledge of any threatened conflict with arms between the officers of Saint Bernard parish and the officers of Hancock county Mississippi or any other officers of the State of
445 Mississippi because of this oyster business?

A. Nothing only what I have been able to gather from newspaper reports, nothing authentic.

Q. About how many boats or employees has your firm had in that territory within the last five years?

A. I should say, ranging all the way from 75 to 200 people.

Q. And that includes all the territory within 18 miles of the Mississippi shore?

A. Yes sir; well, I was speaking of the past two years, since this controversy arose, I should say there have been from 200 to 300 engaged in fishing oysters, I was only speaking of this particular territory for the past two years.

Q. You are speaking of the arrangement made between the two oyster commissions?

A. Yes sir.

Q. Prior to that time, the conditions were the same around Half Moon island or Three Mile bayou or anywhere else in the sound?

A. The conditions were the same as regards fishing, oysters.

Q. And those same conditions extended down to Lake of the Mound?

A. Yes sir; they extended down, prior to this controversy, an indefinite distance all the way to this line and perhaps much further.

By Judge GUION:

Q. Further south you mean?
A. Further south and west.

By Mr. McCLURG:

Q. I will ask you to please keep your eye on that map Exhibit A, to your deposition herein, while I read to you from the concluding clause of Mississippi's cross-bill, and will ask you to say whether or not you and other Mississippians regard the line named, as a correct boundary line between the two States, "beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the gulf of Mexico"?

A. That is not shown on this map.

Q. We will have to take the map offered by the complainant in this case which Mr. Dymond will kindly let us have. It runs westwardly with the lines of the shore six leagues always therefrom until said line reaches and touches the real main land of Louisiana about two miles due west——

A. Touches the main land of Louisiana?

Q. Take this map now, Exhibit A of Mississippi. — of Indian Mound bay and Lake of the Mound and thence in a northward direction along and on high tide mark on said Louisiana main land to Mississippi sound, at or near Nine Mile bayou, thence further along said main land at high tide mark westerly to that point due south of the middle of the most southern or eastern junction of Pearl river with Lake Borgne. Has not that been considered the dividing — between the two States?

A. According to the descriptive laws governing the State of Mississippi that territory has always been considered as belonging to the State of Mississippi as I stated awhile ago, as indicated by the Code of the State of Mississippi, at the time that Mississippi was admitted into the Union, and formed a State. Does that answer your question?

Q. Yes. Then as I understand you, the people interested in that fish and oyster business have construed that authority under the code and the act of Congress to allow you privileges down to the southern part of Treasure bay?

A. 18 miles from the shore including all islands and we have always called this territory here as a group of islands.

Q. You never had any trouble about it until about two years ago?

A. Not that I know of.

Q. What has been the annual gross output of your factory within the last three years?

A. You mean in dollars and cents?

Q. Yes?

446 A. The finished product?

Q. Yes?

A. I judge, for the past three years—you are speaking now of th Mississippi canneries alone?

Q. Yes, I mean annually?

A. I should judge for the past three years that Mississippi ha averaged about $350,000 *dollars* per annum.

Q. About how many barrels of oysters, annually, during the la three years has your factory at Biloxi handled?

A. For the past three years, at Biloxi, we have packed in th neighborhood of 700,000 barrels of oysters.

Q. Are you speaking for the Barrataria Company?

A. I could not only in a general way.

Q. What would you say in a general way about that factory?

A. I should say they have packed within the past three year from 275,000 to 300,000 barrels of oysters.

Q. The two make something in the neighborhood of one millio barrels?

A. Yes sir.

Q. And since this agreement as to neutral territory the catch i Mississippi waters has been restricted has it not?

A. Materially so.

Q. And these oysters that you speak of, the million barrels, hav come out of Mississippi waters before the agreement and in respec of the agreement afterwards?

A. Yes sir. We packed prior to three years ago much more tha in the past three years.

Q. This deed to you that has been exhibited here, does not unde take to convey any land covered by water?

A. No sir.

Mr. McCLURG: The map Exhibit A. is here tendered with th deposition of Mr. Dukate on cross examination, as evidence.

Mr. DYMOND: Counsel for the State of Louisiana object to th offer and except to its introduction, on the ground first, that ther has been no evidence introduced whatever showing the correctnes of this map, by whom made, or by what authority; and for th second reason that it is inadmissible in evidence at this time durin the examination of witnesses and the introduction of evidence b the complainant; and third, that there is nothing in the agreemen already entered into between counsel for Mississippi and counsel fo Louisiana, justifying the admission of the same in evidence or o the tendering of the same to the commissioner for the purpose o being used as such.

By Mr. DYMOND:

Q. As I understood you a moment ago, you testified that you knew the act of Mississippi to provide that Mississippi was given al islands within six leagues or 18 miles of its shore?

A. Yes sir.

Q. Are you aware of the description of the State of Louisiana, a the time that it was created by the United States Congress?

A. I have read the description of the State.

Q. Are you aware that it was to receive islands within nine miles or three leagues of its coast?

A. Yes sir.

Q. At Malheureux point, is there a distance of nine miles from Malheureux point to the main land at the mouth of Pearl river?

A. I could not say. I should judge the distance to be between seven and nine miles, somewhere along there.

Q. Would you be prepared to say that any of your Missis-
447 sippi fishermen or any of your firm or any member of any oyster canning concern in Mississippi, would be able to go into the Louisiana marsh and state that that was the point 18 miles distant from the Mississippi mainland?

A. The distance could not be located only by buoys or natural measurements.

Q. Has any such effort ever been made by the State of Mississippi?

A. Not to my knowledge.

Q. This fishing of oysters you have spoken of as existing in the Louisiana marshes for the last 20 or 25 years, was that fishing of oysters restricted to the area within 18 miles from the Mississippi mainland?

A. I don't think that it was.

Q. Was, or was not as a matter of fact, that fishing of oysters extended indiscriminately down, in fact, into the parish of Plaquemines south of the Saint Bernard parish?

A. I so stated, that the distance is beyond the supposed boundaries of Mississippi indefinitely, it extended on into the parish of Plaquemines.

Q. Were not oysters gathered in American bay and taken to Mississippi?

A. To the best of my knowledge they were.

Q. Were not oysters gathered in California bay and taken to Mississippi?

A. To the best of my knowledge they were.

Q. Were they not gathered and taken to Mississippi with as great a frequency as oysters were from that territory which would be within 18 miles of the Mississippi shore?

A. I hardly think so, with the exception of one or two years immediately following the destruction of the oysters by the Nita cre-asse. The oysters in California and American bays were not destroyed, at that time, while those in all this disputed territory and far beyond the disputed territory in Louisiana were destroyed even as far down as Point Chico.

Q. In what parish are California and American bays?

A. I think they are in the parish of Plaquemines.

Q. Was any question raised at that time that you or other Mississippians were getting outside of their 18 mile limit?

A. Not to my knowledge. There was some talk, that is, I heard, at least there was some talk of preventing the Mississippi fishermen

from coming so far down to gather oysters although I don't think anything ever came of it.

Q. Was, or was not the fishing of oysters just as indiscriminate below the 18 mile limit as it was above the 18 mile limit?

A. I believe that it was just as indiscriminate; in other words, as I stated, a while ago, the same conditions prevailed above in the Mississippi waters north of the deep water channel as they did south for an indefinite distance to the mouth of the Mississippi river, prior to this controversy.

Q. Do you believe, as gathered from your answers made to the counsel for Mississippi, and would you be prepared to say that any of these fishermen on any of their expeditions within the past 25 years except within the last couple of years since this dispute has arisen, that any of these fishermen ever considered whether they were or not in one or the other State?

A. I don't believe they ever thought of the matter from a boundary standpoint.

Q. What were these marshes commonly called and what have they been called?

A. They have been known and designated as the Louisiana marsh.

Q. Has that been the case ever since you have known this section?

A. It has, generally speaking.

By Judge GUION:

Q. Did you instruct your fishermen to confine themselves to the 18 mile limit?

A. I never did.

Q. Then you don't know but that they fished oysters further south than the 18 mile limit?

A. I am satisfied that they did fish both north and south.

Q. You say they fished in Drum bay?

448 A. Yes sir. I have known them to fish there.

Q. And you say they fished in California bay and American bay, Lake of the Mound?

A. Lake of the Mound I am not sufficiently familiar with that place.

Q. Do you know anything about Live Oak bay?

A. It has been shown to me and pointed out to me in sailing by.

Q. Do you know whether they fished there?

A. No sir.

By Mr. DYMOND:

Q. Have they been fishing in Caraho bay?

A. Yes sir.

Q. All through that section?

A. Yes sir.

Q. When was it that you first had any idea about this line as indicated by the attorney for Mississippi, extending through this

marsh until it came to what Mississippi claimed to be Louisiana's mainland?

A. I will answer that by saying for several years past in fact I might say since the year 1890 or 1893, I am not positive which, at the time at which dredging was inaugurated in the State of Mississippi——

Q. Dredging of oysters you mean?

A. Yes. That controversy began to brew and there were reported rumors of discontent on the part of Louisiana authorities of Saint Bernard parish, and in that manner our attention was first called particularly to the question of boundary between the two States. Prior to that time I do not think we ever had occasion to consider or even think about it; but we have always felt as though there would eventually be an issue brought about between the two States in regard to these boundaries, and for that reason for several years past, why, the question of boundaries has been called to mind on more than one occasion, and within the past two years of course it has been brought to an issue. That is the best explanation I can give.

Q. When was the first time that you became aware of this particular line set forth by Mississippi?

A. I don't know that I would term it particular. I would only designate it as indicated by the Code and the act of Congress creating and forming the State of Mississippi, as embracing the territory six leagues or 18 miles from the shore including all islands, and naturally, from personal observation and the hearsay of others, we have always considered this part of the territory as a part of the islands embraced within this 18 miles, the same as we would consider Cat island, the same as we would consider Round island or any other island taking the island entirely surrounded by water and considering it as an island, in fact, just the same as Round or Cat island.

Q. How long have you put that interpretation on this territory down there?

A. Since my attention was called to this trouble which we felt certain would be brought about sooner or later, I might say as early as 1893, about the time that dredging was inaugurated in the State of Mississippi; it was then claimed by Louisiana or the authorities of Saint Bernard parish that these dredges had been seen within the marsh, that is, Grand pass, and other places, and dredging oysters.

Q. And the Louisiana laws prevented dredging?

A. Prevented the dredging of oysters, and as a matter of fact there were times when they went beyond Grand pass and dredged because there was not water in there sufficient to dredge in there.

Q. Then it was that the Mississippians originated this idea about this particular line, or, at least, they then for the first time set about to claim this was the line?

A. We never set up any claim at all. We were merely on the

defensive, and examined into the question of the boundary
449 from the fact that Louisiana would in time bring the matter up or draw it to the attention of the proper authorities and we wanted to be on the safe side.

By Mr. TAYLOR:

Q. Do you know of any instance where any of the authorities of Mississippi and I am not now speaking of mere citizens, that made any claim to this line that you have been testifying about as being the line of the division or boundary between Louisiana and Mississippi?

A. No action has ever been taken by the authorities of the State of Mississippi until this suit.

Q. As a defence to the suit?

A. As a defence to the suit.

By Mr. DYMOND:

Q. Have you ever sailed along the north shore of the Louisiana marsh from Petite pass to Isle à Pitre?

A. Quite frequently, yes sir.

Q. What is the character of that coast line; is it a well defined coast line or not?

A. It is broken by bayous and cut-offs and small lagoons, it is not continuous.

Q. Well, is it, as a coast line, distinct or not?

A. It is distinct as a coast line.

Q. What are the bayous that you speak of?

A. There are several.

Q. Will you please mention them?

A. There is Nine Mile.

Q. Nine Mile what?

A. Nine Mile bay I believe it is termed.

Q. Is that the pass or bay?

A. I am only speaking generally, because I am not navigator nor sufficiently posted. I only know them from the names that have been given to me by the captains in charge of vessels at different times and from the maps. I know of such a place as Nine Mile bay; I know of another as Johnson bayou and I know of another as Three Mile bayou, I know of another as Turkey bayou and I know of another as Grand pass, I know of another as Creole gap.

Q. What does Grand pass separate, what two bodies of land?

A. It separates a body of land lying between, if I am not mistaken, lying between Creole gap and Grand pass to the eastward; I don't think there is any bayou——

Q. What does Creole gap cross?

A. It separates the land lying between Isle à Pitre and Creole gap to the best of my recollection.

Q. Does Creole gap divide Isle à Pitre into two parts?

A. I am not prepared to say whether it does or not.

Q. Are you prepared to deny that the whole of that northeastern extremity of that peninsula is known as Isle à Pitre?

A. Am I prepared to deny it?

Q. Yes?

A. No sir.

Q. What other part of this area is known as an island other than Isle à Pitre, from your personal knowledge?

A. I know Sundow island.

Q. Where is that?

A. I believe that that is about southeast of Creole gap, if I am not mistaken.

Q. What other island, do you know another?

A. I know of no others that I can call by name.

Q. Are you prepared to state that this peninsula extending from Malheureux point to Isle à Pitre was or was not the original main land in 1812, or coast line?

A. I am not prepared to say.

Q. Do you know anything as to what effects there have been produced on this locality by storms for the last 100 years, or any
450 subsidence that may have occurred in the last 100 years?

A. I do not. My recollection only goes back to a period, say, covering 20 years.

Q. Is your knowledge of the locality sufficiently intimate to enable you to state what, if any, effects have been produced in that period of time from either of these causes?

A. I do not think it is.

By Judge GUION:

Q. This land in this act of sale, or rather copy of act of sale, passed on the 14th of March, 1902, from Mr. John Dymond president of the board of commissioner- for the Lake Borgne Basin Levee district purchased by William M. K. Dukate and Lazaro Lopez is described as being sections 26 and 21 and islands K, L, M and N, in township 12 south range 18 east, in the eastern district of Louisiana, 510 acres more or less. At that time, when you made this purchase were you aware where these lands were located?

A. I was aware of about the location. I had visited Pirate point prior to the purchase of this land and Mr. Lopez had the matter, really had the matter of purchase in hand and he informed me and pointed out on the map just about the location we had purchased and it has always been known and considered Pirate point.

Q. Did you consider that property to be in the State of Louisiana at that time?

A. We certainly did, or we would not have purchased it from the State of Louisiana.

Q. It was in the disputed area, was it not?

A. That never was thought of at the time. I see now that it is.

Q. Then at the time you purchased this territory from the Lake

Borgne Basin Levee district, you purchased what you considered at that time belonged to Louisiana?

A. Yes sir.

Q. Had you made any effort to acquire it from Mississippi?

A. No sir.

Q. For what reason?

A. We didn't suppose that it belonged to the State of Mississippi.

Q. Coming back simply to another point, if this property should be held by the Supreme Court of the United States to fall within the 18 mile limit and should be held to belong to Mississippi, you would expect to be refunded would you by the State of Louisiana the money you had paid for the land?

A. Oh, I don't know that we would fall out over that; the matter amounts to very little.

Q. You would consider you had a claim against the State of Louisiana?

A. We perhaps would have a claim, yes sir, but as to whether we would ever press it or not, that is something to be determined later.

By Mr. ZACHARIE:

Q. This land that you purchased from the State authorities of Louisiana, this levee board, is that within the boundaries of what you say you have considered as Mississippi territory since 1890?

A. I have noted from the maps and lines as indicated, that it is, I did not know at the time that it was purchased.

Q. Were you not pointed on the map where it was, by Mr. Lopez?

A. I stated awhile ago that the question of boundaries was never thought of nor considered. We just took it for granted that it belonged to the State of Louisiana and made the purchase accordingly.

Q. Then you did not believe, at that time, that this territory which you bought, this land that you bought, was in the State of Mississippi, did you?

A. I can't say that I gave it any thought at all, other than being in the State of Louisiana; I never anticipated that this controversy would ever come about.

By Mr. MCCLURG:

451 Q. I noticed from your deed that you bought two sections of land, sections 26 and section 21, and also four islands, for which the State of Louisiana gave you a quitclaim; did it expressly provide that she did not warrant the title to the land, and for all of which you paid $63.75. That is correct.

A. I believe in the main it is.

Q. Do you remember the steamer Sentinel?

A. I do.

Q. About what is her draft?

A. About six feet.

Mr. DYMOND: Counsel for the State of Louisiana object to any further examination, of the witness.

At this stage of the proceedings, the hearing was adjourned until April 9th, 1904, to be resumed at the same place and at the hour of 10.30 a. m.

Resumption of Proceedings.

APRIL 9TH, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed at the same place and at the date and hour above named.

Present: Frank H. Mortimer, Esq., commissioner.
Present: Hon. Walter Guion, att'y general for Louisiana.
Mess. John Dymond, Jr., and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.
Hon. Hannis Taylor, associate counsel for the State of Mississippi.

NOTE.—The following two witnesses not being able to speak or understand the English language, Mr. George H. Dunbar, was by consent of counsel for the State of Mississippi and the State of Louisiana, sworn in by the commissioner, as interpreter.

ADAM DUET, witness sworn and examined on behalf of the State of Louisiana, te*stitif*ed as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. Bayou Lafourche.
Q. Whereabouts on Bayou Lafourche?
A. Nine miles below Lockport.
Q. Where is Lockport?
A. In Bayou Lafourche.
452 Q. Is Lockport the last settlement on Bayou Lafourche towards the Gulf?
A. There is no settlement lower than Lockport.
Q. Is that towards the Gulf?
A. Yes sir, going towards the Gulf.
Q. How old are you?
A. Fifty nine years.
Q. How long have you been living there at Lockport, or nine miles below Lockport?
A. Since the storm of 1893.
Q. Where did you live before that?
A. At Cheniere Caminada.

Q. Where is that?

A. In Jefferson parish.

Q. Is not that near Grand island?

A. It is right opposite Grand island.

Q. How long did you live at Cheniere Caminada before you left to go to Lockport?

A. All my life; I was born there in Cheniere Caminada.

Q. While you were living at Cheniere Caminada and since you have lived on Bayou Lafourche, have you had occasion to go around by boat through that section of the country?

A. I never went around there, I never left the island since I left Cheniere Caminada, since I live in Lockport.

Q. What was your business when you were on Cheniere Caminada?

A. Oyster fishing.

Q. How many years were you oyster fishing on Cheniere Caminada?

A. About 40 years.

Q. Did you go about through the waters of that section and Jacko Campo, during those 40 years of fishing oysters?

A. I never have known anything about Jacko Campo although I have been all around the waters, I never have known anything about Jacko Campo.

Q. Where did you fish oysters?

A. On the westward of Bayou Lafourche, Lake Salvador.

Q. Do you know a canal that runs from Cheniere Caminada up to Bayou Lafourche at Lockport?

A. Yes sir, not at Lockport.

Q. Where is it?

A. That is what is called Saundres canal and it is called the Terrebonne Company.

Q. Does that canal extend westward beyond Bayou Lafourche?

A. It traverses Bayou Lafourche and goes across to the Timbalier and the eastern end goes to Cheniere Caminada.

Q. What is the name of the body of water at the western end of the canal on the western side of Bayou Lafourche?

A. It is called Bayou L'eau Bleu.

Q. Have you ever noticed any change in that section of the country produced by storms?

A. Yes sir. I noticed a great deal of change.

Q. What change, if any, have you noticed?

A. When I was young I used to fish oysters all through among the islands in Lake Timbalier. Now, there are no islands left, they have been eaten away by the storm.

Q. Has there been any change made on the main land or shore line?

A. Yes sir, that is going back always. At the end of the fork of the Bayou Lafourche there came a steamship during the night and went aground. I put a stage from the main land and went aboard

steamship; and today that same wreck is three miles out, and an iron hull and it is now three miles from shore in the sand.
Was the shore moved or has the steamer moved?
It is the coast that is being eaten away.
Have you noticed any other changes in the shore or in any ds in that locality?
There is an island in Timbalier bay, it was called Isle Longue, his island was four miles in length and about a mile in width, oday it does not exist at all. That is from 1855 I observed the island was there.

Q. Do you know what the character of the soil is down there?

It is prairie land.
Will you please look at this sample No. 1 and state whether and down there concerning which you are now speaking was ing like that? I mean the main land?
It is like this, a heavy sort of clay soil, mixed with sand.
Where this steamer was that you were speaking about, was and of a character similar to sample No. 1?
Yes sir; same soil where the steamship went aground.
Do you know where the Timbalier lighthouse is located?
Yes sir.
Is it located in the same place as it always was?
The lighthouse had been built in the lake about ¾ of a mile of the pass.
Is that where it is today?
It has fallen, it has given way.
What made it fall?
The storm of 1893 undermined it and it went over.
Is there a lighthouse there today?
On the coast there is a small lighthouse opposite.
When was the first time you saw the Timbalier lighthouse, the ne?
I saw the lighthouse for the first time in 1870.
How close was it to the shore, then?
The lighthouse was about ¾ of a mile from the coast.
Coast of what?
The coast of Timbalier.
Was it back of the coast line or out in the water?
It had been built inside of the coast in the water about ¾ of a rom the shore.
When you last saw it, was there any land between it and Tim- bay?
Yes sir, the Island Calumet.
Was that island there before?
Yes sir.

By Mr. ZACHARIE:

Do you remember when the lighthouse was first put up?

A. In 1857 the first lighthouse was put down there on Timbalier island.

Q. Do you remember anything that was done to that lighthouse to straighten it up after it had been put up?

A. No sir; they never done anything to it; it had been built on the edge of the coast.

Q. Do you remember a lighthouse having been built there since that went?

A. Two others.

Q. The second one, do you remember when that was built?

A. The second was built in 1869.

Q. Do you remember of anything that was done, and if so what, to straighten up that lighthouse when it was found it was leaning?

A. It was not straightened; but they built the other small lighthouse alongside of it.

Q. Do you not know that the second lighthouse at one time leaned and threatened to fall?

A. No sir; I have no knowledge of that.

Q. You have spoken of Timbalier lake. Do you mean the lake or sound or water between Timbalier and Caillou and also between Timbalier and the main land?

A. I call it by the name of Lake Timbalier; I don't know it by the name of Bay Timbalier.

Q. What you call the lake is the water between Timbalier and Caillou island and between Timbalier and the main land?

A. Yes sir; that is what I call Lake Timbalier.

By Mr. DYMOND:

Q. You said a moment ago that you did not know any
454 place by the name of Jacks Camp?

A. Yes sir, I know Jacks Camp.

Q. Isn't there where they fish oysters?

A. I didn't understand what was asked me just now by the name of Jacko Campo, but I know Jacks Camp very well, I have been fishing there all my life.

By Judge GUION:

Q. Did you ever know a place called Last island?

A. I never went that far; I don't know anything about Last island.

Q. Do you know anything about Caillou island?

A. Yes sir, I have been as far as that.

Q. Is it to your knowledge that Caillou island was ever inhabited?

A. Yes sir, I knew of a hotel there at one time.

Q. Did people go there in the summer time to that hotel?

A. Yes sir; people used to go there in the summer time to that hotel; they came from different parishes.

Q. Was not Caillou a resort in the summer time by people from the lower parishes of Louisiana?

A. Yes sir, they all came, they took it as a resort and came from different parishes there.

Q. When was that?

A. That was before the civil war.

Q. Up to what time did it continue?

A. Up to the storm of about 1867; after that everything fell and went to pieces during the storm, the hotel was washed away during the storm.

Q. Does anybody go there now?

A. I don't know.

Q. Do you know, as a fact, that the hotel was destroyed?

A. Yes sir.

Q. What month was that?

A. That was the 3rd of October 1867.

Q. How is the island now?

A. I don't know, I never returned there.

Q. When were you there last?

A. It has been about 15 years since I have been to that island.

Q. When you saw it last what condition was it as compared to what it was during the years previous?

A. It was very much different, it is nearly all eaten away.

Q. By what?

A. Bad water, bad weather.

Cross-examination.

By Mr. McCLURG:

Q. The Lafourche country is west of the Mississippi river?

A. Yes sir.

Q. How far northwest of the mouth of the Mississippi river is the mouth of Bayou Lafourche?

A. About 55 miles.

Q. How far are those lighthouses of which you have been speaking from New Orleans?

A. Not less than 80 miles in a straight line.

Q. Where is this island Caillou?

A. I think it is in Terrebonne parish.

Q. That is also to the west of the Mississippi river?

A. Yes sir.

Q. How far from the mouth of the Mississippi river is that island?

A. About 70 miles, in a straight line.

Q. Have you any personal knowledge or information as to the conformation of the islands east of Saint Bernard parish?

A. I have never been there.

Q. And you know nothing about that country there at all?

A. Nothing about the conformation of that land at all in the eastern part of Saint Bernard parish.

Q. Did you ever see Isle à Pitre?

455 A. No sir.

Q. Were you ever at Malheureux point?
A. No sir.
Q. Were you ever in Lake Borgne?
A. No sir, I don't know Lake Borgne.
Q. Do you know Treasure bay?
A. No sir.
Q. Do you know anything about that country over there at all?
A. I have never lived in that section at all, I have never been there in my life.

JOSEPH TOMESSI, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?
A. I live in Lafourche parish.
Q. In what part of the parish?
A. At the Cut-off.
Q. How far is that from the mouth of Bayou Lafourche?
A. It is about 45 miles from the mouth of the bayou.
Q. I mean the Gulf?
A. From the Gulf, it is 45 miles from the Gulf.
Q. Have you ever been engaged in oyster fishing business?
A. Yes sir.
Q. Have you ever done any of it yourself?
A. Yes sir. I tonged oysters myself, I am an oyster fisherman.
Q. How long have you been engaged in that kind of business?
A. Since 1853.
Q. Up to the present time?
A. Yes sir.
Q. How old are you?
A. I am 67 years old.
Q. Does your business as an oyster fisherman ever take you out of the mouth of the bayou into the Gulf?
A. Oh, yes.
Q. Did you go to the east or west of Bayou Lafourche?
A. Both sides east and west.
Q. To what place did you go in order to catch these oysters?
A. Southwest pass of the Mississippi river, as far west as the Atchafalaya.
Q. Did you ever go west of the Atchafalaya?
A. No sir, I have never been further west than the Atchafalaya, I have been there with the boat but not to fish oysters.
Q. Have you noticed any changes in the configuration of that country from Southwest pass to the Atchafalaya river during the time you have been engaged in the oyster business?
A. Since 1862 I was at Southwest pass, and I never returned to

Southwest since that time; since then I have been fishing in Barrataria bay; then I returned to Timbalier after fishing in Barrataria bay.

Q. Where did you fish from the time you first began, up to the time that you left that place between the mouth of Bayou Lafourche and Southwest pass, where was it you fished during that time?

A. In Barrataria bay and in Timbalier.

Q. Is Timbalier between Bayou Lafourche and Southwest pass?

A. Timbalier is on the west of Bayou Lafourche and Barrataria to the eastward of it.

Q. What place was it you fished between Southwest pass and Bayou Lafourche?

A. Barrataria bay.

Q. When did you commence fishing there?

A. In 1870 and 1872.

Q. Have you noticed any change in that part of the coun-
456 try during the time that you were fishing there?

A. Yes sir.

Q. What changes did you notice?

A. I saw islands being eaten away.

Q. You know this marsh along the coast of Louisiana between the mouth of Bayou Lafourche and Southwest pass?

A. Yes sir.

Q. How far inland does that marsh extend?

A. It varies; some parts a quarter of a mile, some parts two miles, where the marsh goes inland.

Q. In addition to the disappearance of islands have you noticed any changes in the marsh along that coast?

A. Certainly, I know of an island where they had a certain mark, island mark to go to a certain point, and today the island has disappeared.

Q. Along that coast have there been any bayous or inlets cut into the marsh?

A. There are some that have been formed and others have disappeared.

Q. Have there been in the interior of that marsh any lagoon or lakes or openings formed?

A. It had formed into islands.

Q. Were there any lakes, large or small, formed in this marsh during the time you speak of?

A. No sir; no lakes or lagoons that are formed.

Q. Was this marsh solid marsh when you first knew it?

A. No sir.

Q. What kind of marsh was it?

A. When the tide is low, the marsh is dry and when it rises there is a certain amount of water that covers it.

Q. Was that marsh broken by lagoons or bays or bayous when you first know it?

A. Yes sir.

Q. Was it to the same extent as of late?

A. No, no.

Q. In what is there a difference?

A. There are islands that have been eaten away; other parts the main land has been eaten away, eaten through and bayous have been cut in through and formed islands; in other words where the islands were eaten away the water has gone into certain parts and cut in through there, and formed gaps and left islands there.

Q. What was the cause of that?

A. The sea, when the tide was high and the wind and current, the land would be eaten away.

Q. Was it the wind, and the tide brought in by the wind, that caused it?

A. Yes sir.

Q. When did you leave that section of the country fishing oysters between Southwest pass and Bayou Lafourche?

A. I can't say exactly the year.

Q. About what year?

A. About in 1882 or 1883.

Q. Where did you go?

A. I went to Timbalier.

Q. West of Bayou Lafourche?

A. Yes sir.

Q. How far west?

A. On pleasure, about 15 miles.

Q. How long did you fish oysters at that place?

A. I fished oysters there up to 1890.

Q. Have you been back to that country since you quit fishing oysters in 1890?

A. Oh, yes, I have been there.

Q. When was the last time you were there?

A. The month of December 1903.

Q. During the time that you first went there in 1882 up to December 1903, have there been any changes in the configuration of that country?

A. A good many.

Q. In what respect?

A. I found changes this way, that there were islands when I used to go there on which I could build a hut, and when I went
457 back the islands were not there and didn't exist.

Q Have they disappeared?

A. They have not disappeared but they have been eaten away. They have gotten so small you could not put a hut on them.

Q. Can you name any of the islands, if they had any names?

A. Yes sir.

Q. Name them?

A. Isle à Pelican; there was a camp there and a cabin built on that island, the island was about ¾ of a mile long by about an acre wide.

Q. Is that the only island you refer to?
A. No; I know of others.
Q. Give the names of them?
A. There was another island which was called Isle Longue.
Q. How large was that?
A. I knew that island in 1853; I knew about it afterwards also.
Q. When you first knew it, how large was it?
A. That island had about four miles in length when I first knew it, and about three acres wide.
Q. Is that island in existence now?
A. Yes sir.
Q. What size is it now?
A. It is nearly round and about 80 feet in circumference.
Q. Are there any other islands you remember of, that have changed?
A. There are islands in what is called Island bay where was still some left, but many others have been washed away and one must be very careful going through there with boats not to run aground.
Q. Is that all you remember?
A. I know plenty more.
Q. Are there any others that have disappeared?
A. There are many that have disappeared, and others that were very large that are very small today.
Q. Did you know Last island?
A. Yes sir.
Q. Did you ever know it to be a summer resort?
A. Yes sir.
Q. Was there a hotel built there?
A. Yes sir.
Q. Were there cottages there?
A. Yes sir.
Q. Do you remember the storm that took place that washed that hotel and cottages away?
A. Yes sir.
Q. Do you remember the year?
A. Yes sir.
Q. What year was it?
A. 1856.
Q. Is that island any longer inhabitable?
A. Yes sir, the island is habitable, it is inhabited by a few colored people raising cattle there.
Q. How large is it now?
A. It has been a long time since I went ashore there.
Q. Is it as large as it was in 1856?
A. It is not as large.
Q. Can you state about the difference in size?
A. Not for several years have I gone ashore there.
Q. Is it used for a summer resort?
A. No sir.

Q. Do you know Caillou island.
A. Yes sir.
Q. Did you ever know Caillou island to be a pleasure resort?
A. Yes sir.
Q. How large was it then?
A. The island was about three miles long and about 15 acres wide.
Q. When was that when you knew it to be 3 miles long and 15 acres wide?
A. In 1853.
Q. How large is it now?
A. I could not say; it has been a long time since I have
458 been ashore there.
Q. How large was it when you were last there?
A. A good deal had been eaten away since the last time I was there. I calculate it was about from six to eight acres wide.
Q. How long?
A. For the length there was not much difference.
Q. Can you tell us what year that was that you were there last that you discovered this difference?
A. In 1896 was the last time I was there.
Q. Have you noticed any change in the coast line during the period of time that you have been testifying about?
A. Yes sir, a great deal.
Q. Please to tell us what changes you noticed along the coast?
A. I went into a bayou inside of the gulf fishing oysters, it has been four years ago, and in the month of July last I went in again to fish oysters, but the sand had filled in that bayou.
Q. Did you find any places along the coast where there were any cuts made by bayous formed, that did not exist when you first knew the country?
A. No sir, I did not find anything of that kind.
Q. Did you ever fish oysters in the marshes of south Louisiana?
A. Yes sir.
Q. Whereabouts?
A. Sometimes in the northern part, sometimes in the southern, wherever I could get the oysters in the marsh.
Q. Was that condition that you have been testifying about concerning the disappearance of islands along the coast as far west as Timbalier bay noticeable by you, further west than Timbalier bay?
A. The conditions were the same on the east as they were on the west of Timbalier bay.
Q. Did I understand you to say just now that you fished oysters as far west as Atchafalaya river where it empties into the Gulf?
A. Yes sir; in Four League bay.
Q. How far is that from Atchafalaya river?
A. About 15 or 18 miles west of Atchafalaya river.
Q. Did you find along that coast from Timbalier bay to that point any islands that had disappeared or washed away?

A. I did not take any notice of whether there was any islands ashed away. I have not been there often enough for some years take any notice of it.

Cross-examination.

By Mr. McCLURG:

Q. From what direction would the storms come, that would wash ray these islands?
A. Principally from the east.
Q. Is it not true that the most destructive winds to the coast line me from the east?
A. Yes sir, northeast and east.
Q. Do you know anything about Isle à Pitre?
A. No sir.
Q. Or Lake Borgne?
A. No sir.
Q. Have you ever visited that section?
A. No sir. I have gone across Lake Pontchartrain for pleasure d been to Mandeville.
Q. But you have never been in Lake Borgne?
A. No sir.
Q. You know nothing of the conditions over there?
A. No sir.

ADAM DUET, recalled for further cross-examination.

By Mr. McCLURG:

Q. From what direction did the storm of 1867 and 1893 come?
A. They came from the east, the storm of 1867.
Q. Well, how about the storm of 1893?
A. It began from the east and finished with the west, I was in it d stood it all.
Q. Is it not true that the east winds are the most destructive to e shore generally?
A. Yes sir, those are the worst winds.

By Mr. ZACHARIE:

Q. In these storms in the Gulf, from what direction do the winds mmence to blow?
A. Always from the northeast they begin, they come from the rtheast.
Q. Does the wind change around later?
A. Sometimes there is a counter storm.
Q. Coming from what direction?
A. From the west, northwest.
Q. What is the effect of the first winds coming from the east, in

regard to the waters in the sound. Does it fill up or diminish the water?

A. It begins to swell always in the beginning.

Q. In the sound?

A. In the bayous or in the Gulf?

Q. And when the wind changes to the north or northwest, what is the effect of this water accumulated in this sound in getting out into the Gulf?

A. It returns in the Gulf.

Q. How does it return to the Gulf?

A. After it has been over the ground it diverts its way into the canals and bayous and different streams and finds it- way to the Gulf.

Q. These bayous through which it escapes, are they narrow or broad?

A. There are some that are narrow and others that are large. I don't know how many bayous, except Cheniere pass and Grand Terre pass.

Q. With this north or northwest wind blowing, what is the effect upon the southern shore of these islands or land?

A. Part of the island and part of the earth go along with the water that recedes.

JULIEN LABAT, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?

A. In the parish of Terrebonne.

Q. How old are you?

A. I am 44 years old.

Q. How long have you lived in Terrebonne parish?

A. All my life.

Q. How far from the gulf of Mexico do you live?

A. 25 miles.

Q. Have you ever had occasion to go down into the southern part of Terrebonne parish?

A. Yes sir.

Q. To the Gulf?

A. Yes sir.

Q. Have you been down there frequently?

A. Well, I have been down there pretty often.

Q. How long have you been in the habit of visiting the lower Gulf coast of Terrebonne parish?

A. For 20 years.

Q. During that period of time have you noticed any change
460 in the conformation of that country?

A. Yes sir.

Q. What change have you noticed?

A. I know several places that have washed away, that used to be islands, and have disappeared.

Q. Can you name some of them, or did they have any names?

A. I know what was called Shark island that has entirely disappeared, there is no more of it there.

Q. How large was it when you knew it?

A. When I knew it it was about, I suppose two or three acres in circumference.

Q. Do you know of any others that you can recall right now?

A. Well, there is one island we call Coon island, that was pretty large—there is a little of it left, but a good deal of it has been washed away.

Q. That condition of things has reference to islands you speak of?

A. Yes sir.

Q. Have you noticed any change or changes in the marsh along the southern coast of Terrebonne parish?

A. Yes sir.

Q. What changes have you noticed?

A. Well, on Bayou Terrebonne, right where I live, it was at one time marsh, you know, prairie, but marsh, and that storm we had in 1888 it cut out bays and bayous and the marsh has entirely disappeared and left bays and bayous in its place.

Q. Bays leading from what into what?

A. Leads, the bays that were formed lead into Lake Bare and from *the* there out to the Gulf.

Q. You live on the banks of Bayou Terrebonne?

A. Yes sir.

Q. How wide is the ground there from the bayou back to the marsh?

A. Where I live right now, we have a space about one acre of solid ground that is cultivated land, the balance is all marsh.

Q. You have about an acre in width of cultivated land?

A. Yes sir.

Q. Where your residence is?

A. Yes sir.

Q. Do you remember at any time that there was greater in width of soil?

A. Yes sir; I remember when we used to cultivate two acres at least; it was high enough to cultivate two acres deep, but it has gone down and getting too low to cultivate; that was, well, several years ago.

Q. How far is the marsh now from the bayou proper?

A. The marsh from the bayou is about—the low land you mean?

Q. Yes?

A. It is about, I suppose, two acres.

Q. And you say there was a time when you could cultivate two acres?

A. Yes sir.

Q. From the bayou?

A. Yes sir.

Q. And now?

A. That is, from the public road.

Q. And now you can cultivate only one acre?

A. That is all.

Q. And that is owing to what?

A. Well, storms and currents, etc., destroying the land; it looks as if it is being washed away; it is getting lower and lower every year.

Q. Is the water coming closer to you than it was?

A. Yes sir.

Q. How is that water brought there?

A. Generally by storms.

Q. I mean as a permanent thing, how is it brought there from the Gulf?

A. Whenever we have any bad weather, the least little bad weather excites the current and it runs up and overflows by the Gulf water.

Q. Comes in how, by bayous?

A. Yes sir.

Q. Were those bayous there when you first knew the country?

A. Bayou Terrebonne was.

461 *A.* I am not speaking of Bayou Terrebonne. I am speaking of these bayous that lead the water from the Gulf into that marsh?

A. When I first knew it there were not as many bayous as there are today.

Q. Do you know of any particular point or spot where there was marsh, to your recollection, and which is not marsh now, in the interior of the marshes?

A. Yes sir.

Q. What is there now instead of marsh?

A. Bays and bayous.

Q. What has become of the marsh soil that was there?

A. I couldn't say; it disappeared; I don't know where it went to; it washed away.

Cross-examination.

By Mr. McCLURG:

Q. You are not familiar with the shore line over to the east of this State in Saint Bernard Parish country?

A. No sir.

Q. And this Lake Borgne country?

A. No sir.

Q. You know nothing about what conditions exist over there?
A. No sir.
Q. Did you ever notice the formation of any land by the action of the waters in your section?
A. No sir.
Q. It all disappeared?
A. Yes sir.

E. L. LECOMPTE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. How old are you?
A. I am 36.
Q. Where do you reside?
A. In the parish of Terrebonne on Little Caillou.
Q. About how far from the gulf of Mexico?
A. Between 20 and 25 miles.
Q. What is your occupation?
A. I am in the store business right now.
Q. How long have you been engaged in keeping store?
A. Six years.
Q. What did you do before that?
A. Before that I was interested in oyster fishing.
Q. Have you ever fished oysters yourself?
A. Yes sir.
Q. For how long?
A. Sixteen years I followed the trade.
Q. Down in what part of the country?
A. In the parish of Terrebonne.
Q. Out near what places and in what bays and bayous?
A. In Coon Island lake.
Q. Anywhere around Timbalier?
A. On Timbalier; Lake Pelteau.
Q. During the time that you first began fishing oysters and the time that you stopped, did you notice any change at all in the configuration of that country?
A. Yes sir, I found some little change.
Q. In what respect?
A. A few islands have disappeared, but I don't know the names of them except one; and furthermore bayous and
462 bays you know that got bigger than what they were when I first knew them.
Q. Do you know of any that you can name, that have gotten larger?
A. I couldn't exactly tell you the names of the bays.

Q. You know some that have gotten larger?

A. Yes sir.

Q. Is that in the marsh you speak of?

A. Well, yes, it is inside of the marsh, between the lakes you know, in the prairie, soft prairie.

Q. Do you know of any change whatever in the marsh along the coast of Terrebonne parish?

A. Yes sir. On the east side of Little Caillou I found some changes there.

Q. In what respect?

A. That storm of 1888 we had some of this marsh drift away and forms bays for a distance, one from another, and forming little streams, little bayous and connecting those bays together.

Q. In other words do you mean that bays have been formed in the marsh which was solid marsh previous to the storm of 1888?

A. Yes sir, formed by the action of the storm.

Q. Which was not water at the time previous to the storm, bays that have formed in the marsh?

A. Yes sir.

Q. Where these bays are now, since the storm of 1888, what was there previous to the storm where the bays are now?

A. You mean where they are now?

Q. Where these bays are now what was there previous to the storm of 1888, was it marsh or——

A. Yes sir, it was marsh surrounded by soft prairies.

Q. And connected with the Gulf by what?

A. Well, it is connected, those bays, by small streams connect the bays together.

Q. Were those streams there before the storm of 1888?

A. Some of them were, some small streams, and some were not, there were some made by the storm.

Q. And others became larger you say?

A. Yes sir.

Q. By what cause?

A. I suppose by the action of that storm, made them larger, by the heavy current running in there.

Cross-examination.

By Mr. McCLURG:

Q. You say you live in Terrebonne parish?

A. Yes sir.

Q. How far from the mouth of the Mississippi river do you live?

A. I couldn't tell you, I don't know anything about the Mississippi river.

Q. Do you know how far it is from the mouth of the Sabine river?

A. No sir.

Q. Do you know anything about the conditions in the Lake Borgne country on the eastern portion of this State?
A. No sir.
Q. Were you ever on Isle à Pitre?
A. No sir.
Q. Do you know anything about Nine Mile bayou or Turkey bayou, any of those places over there?
A. No sir.
Q. You know nothing about the contour of the eastern shore at all?
A. No sir.
Q. Your country is sinking, I understand, washing away?
A. Yes sir.
Q. The water is encroaching upon you?
A. That is what I understand about it.
Q. How far are you west of the Mississippi river?
A. I don't know, I couldn't tell you.

463 JOHN MCGRAW, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. Where do you live?
A. 1328 Webster street, New Orleans.
Q. How old are you?
A. I am forty nine years old.
Q. You know this territory or area in dispute between the States of Louisiana and Mississippi?
A. I am acquainted with it to a certain extent.
Q. You know the location of it?
A. Yes sir.
Q. Are you the owner or part owner of any land in that part of the country?
A. Yes sir.
Q. With whom?
A. With Charles Sanger, A. L. Hunt, and Charles F. Forsyth.
Q. Would you be able, you think, to locate that part of the ground that you purchased, by examining this map marked Document No. 7?
A. I think so, yes.
Q. Will you please examine this map, then, and indicate on it where your land is located?
A. This is supposed to be the area, I suppose?
Q. Yes?
A. My land is about from this point, here.
Q. You will have to name that because——

A. Well, I will take on the east it is bounded by Jones bayou, there are two Jones bayous, you will notice that is commonly known as Little Jones.

Q. State in what section?

A. On the west boundary, section 21, on the south boundary, section 22; of course on the north boundary, Lake Borgne.

Q. What township is that land in?

A. I can't tell you unless there is anything indicating it here.

Q. Examine the map thoroughly, look at the top of the map, and see if you can't see what township it is in.

A. It is in township 11, south, range east.

Q. Whom did you purchase that land from?

A. From the levee board of the parish of Saint Bernard, I don't know exactly the name of the levee board; Mr. John Dymond is president of it.

Q. How long since you have known that country down there?

A. You mean that section of the country?

Q. Yes, that part of it.

A. Since 1866.

Q. Have you been in the habit, or had occasion to visit that section of that country, frequently or infrequently?

A. Very frequently.

Q. Up to what time?

A. Up until last Sunday.

Q. Since 1866?

A. Yes sir, from time to time.

Q. I mean during the time ranging from 1866 up to the present time?

A. Yes sir.

Q. Have you noticed any changes in the shore or coast line along that section of country during the period you have just mentioned?

A. Yes sir.

Q. What changes have you noticed?

A. Why, the disappearance of islands and the disappearing of the coast in general.

Q. Do you know of any islands that you can name or had they any names?

A. Yes sir, a very prominent island, Saint Joe island, for instance.

Q. Do you know whether Saint Joseph island is in the
464 disputed territory or not?

A. I think it is; that is my recollection. It is adjacent to Half Moon island in the disputed territory, that is within about two miles of Half Moon island.

Q. Any other islands you have noticed that have disappeared?

A. Well, no, particular island, no sir, nothing except the coast, I have noticed the coast has disappeared and has changed its conformation.

Q. The coast line?
A. Yes sir.
Q. In regard to what?
A. Washing away.
Q. Do you know where the 16th section is which under the law belongs to the public schools, or the proceeds of which are to be devoted to public school purposes?
A. Yes sir, that is at the mouth of Bayou Johnson, commonly known as Turkey bayou; here it is, 16 section.
Q. Marked on this Document No. 7 as being near what bayou?
A. Bayou Jones.
Q. Which Bayou Jones, the one to the east or west, there are two Bayou Jones described on this map?
A. West Bayou Jones.
Q. When you first knew this 16 section, did you have any desire to acquire it?
A. We did, but we could not get it because it was set aside for school land which could not be sold by the levee board.
Q. How much of that 16 section was there, if you are able to state, at the time you wanted to purchase it?
A. There was a portion of it, about probably 50 or 75 feet may be more than that; there was a shell bank there, that was the reason we wanted to buy it.
Q. How much of it is there now?
A. None.
Q. Where is it?
A. It is washed away.
Q. Gone into what?
A. Into the sea or Lake Borgne.
Q. You say that was about how much?
A. About 75 feet of it.
Q. 75 feet in area?
A. Well, in width.
Q. You mean from the Gulf extending back in towards the marsh?
A. Yes, into the marsh.
Q. Are you able to state that there has been a washing away of 75 feet at that point?
A. Yes sir.
Q. Within what period of time?
A. About four years, five years at the outside. I can state why I know that.
Q. State your reasons?
A. We had a stake on the point, put there by the surveyor.
Q. What point, if you are able to indicate it on this map, designate the point?
A. In the point of the 16 section and the 21 section, what may be known as the north point of 21 section, right in here.
Q. Was it in Bayou Jones?

A. Yes sir, on the bank of Bayou Jones.
Q. West Bayou Jones?
A. On the east bank of West Bayou Jones.
Q. You did what?
A. We had a stake there with a sign on it to notify the public general that we had bought the land on that bayou; that stake w about 10 or 15 feet inside of the shore of Bayou Jones at the mout today that is in the water about 20 feet.
Q. The same stake?
A. Yes sir. In other words we planted a stake here and here the bayou, the point came around here and the point is this wa now.
Q. Have you noticed any other changes along the coast in an other part of the land you purchased?
A. Yes sir I can remember the time when there was a good siz mud lump in Grand pass on which trees were on; today that don't exist.
465 Q. Is that any part of your purchase?
A. No sir; that is to the east of my purchase.
Q. You say at Grand pass there were trees?
A. On the bank at Grand pass, on the east bank of Grand pass there were some oak trees.
Q. Large or small.
A. Scrub oak, good size trees, about 20 feet high.
Q. Where are they now?
A. They are washed into the pass.
Q. By the widening of the pass?
A. Yes sir.
Q. Caused by what?
A. By the action of the water. I can remember the time when you could throw a line across the Creole gap. You could stand on one bank and toss a line on the other shore; you can't do it today.
Q. How wide is it now?
A. It is a half or a quarter of a mile wide.
Q. How wide was it at that time?
A. Probably 75, or 100 feet at the outside.
Q. Have you noticed any change in other bays or openings, outside of Creole gap?
A. Right near Isle à Pitre the shore is washed considerably; it is not as level and trim, the mud flats are all in the water now; formerly there used to be a ridge before you reached the mud flat, between the mud flats and the water.
Q. Have you noticed any change in Three Mile bayou?
A. Yes sir; it has widened considerably, I can't say how much to the foot but it has widened considerably; I know Petite pass is also wider than it was, further to the westward of Three Mile bayou, which is in the disputed territory.

Cross-examination.

By Mr. McCLURG:

Q. How long, to your knowledge, have the changes of which you have spoken, been going on?

A. Between 1866 and the present time.

Q. At the same rate you think?

A. According to the action of the water, the degree of the storm, if one storm is greater than another of course the washing away would be greater.

Q. At that rate, your land and others, would be largely under water within the next ten or 11 years?

A. Yes sir; that is one of the reasons that we bought as much of the land we did, so as to have sufficient.

Q. You bought it from the Lake Borgne Levee board?

A. Yes sir.

Q. How many acres did you buy?

A. About 4500 acres.

Q. How much did you pay?

A. I think it was 15 cents an acre, either 15 or 12½.

Q. And got a quit claim deed?

A. Yes sir.

Q. The board never undertook to warrant you a title to that land?

A. The title would speak for itself.

Q. I notice this map from which you have testified, No. 7, is marked to the northward from the lands about which you have testified, "Mexican gulf or Grand pass," and out to the westward on the margin is Lake Borgne. What is that water that is marked "Mexican gulf or Grand pass" called now?

A. It is commonly known as the Mississippi sound.

Q. Is this territory in which your land is located, between Petite pass and Isle à Pitre?

A. Yes sir, it is along there, just half way.

Q. On the northern portion——

A. On the southern shore of what is called Mississippi sound.

Q. Do you know or can you approximate about how far it is from your land, due north to the Mississippi shore across the sound?

466 A. It is commonly known to be about 22 miles, I think that is the general—of course I am only giving you what the local navigators of that coast claim, they claim it to be 22 miles.

Q. Then you understand, do you not, that your lands, or that portion of the country immediately surrounding your purchase, is not in the disputed territory?

A. I do understand it is not.

Q. Yes?

A. I do understand that it is.

Q. Mississippi has never claimed to run any further south than 18 miles from her shore?

A. From all the maps that I saw exhibited yesterday, that land is in that area.

Q. What map was that, do you remember?

A. I think you called it map No. 6, some map with red lines on it, I don't remember the number.

By Judge GUION:

Q. You mean that map that the Mississippi counsel had?

A. Yes, used in Mr. Dukate's testimony.

By Mr. MCCLURG:

Q. Do you know where Mr. Dukate's purchase is?

A. Pirate point.

Q. Yes?

A. Yes sir.

Q. What direction is that from your purchase?

A. From the mouth of Bayou Johnson it would be about due south, I should imagine.

Q. About how far?

A. About five or six miles.

Q. And the map that you examined yesterday indicated that his purchase was within the disputed territory?

A. Yes sir, I so understood.

Q. Then it must be less than 18 miles.

A. I made that proviso when I said that was the local claim, the estimate of the local navigators along that coast.

Q. Do you know when that country down there was laid off into townships and ranges?

A. No sir.

Q. Is it not true that it has been within the last few years?

A. I do not think so.

Q. You have no personal information as to when it was done?

A. No sir. There is a map there that shows the townships, there is a date to it?

Q. It shows it was surveyed in 1847.

A. That shows townships, and that survey was made in 1847 according to that map.

Q. Did you have an abstract of the title to this land when you purchased it?

A. I do not think we did, I can't say positively about it.

Redirect examination.

By Judge GUION:

Q. You bought that land for the purpose of cultivating what?

A. Oysters.

Q. Then you did not buy it for the soil?

A. No sir.
Q. But for the water?
A. Yes sir.
Q. That you think you acquired by reason of the purchase of the surrounding land?
A. Yes sir.
Q. Did I understand you to say that you had been along that coast from Petite pass, as far as Isle à Pitre?
467 A. I have been on that coast, I have been all along the coast from Lake Maurepas to Sand island in——
Q. I don't care about the whole of that. But I want to know if you have visited and followed the coast from Petite pass or Malheureux point to Isle à Pitre?
A. Yes sir.
Q. Is there a shore line well defined along there?
A. With broken lagoon and bayous.
Q. What is the distance, do you know, from Petite pass, for instance, to Isle à Pitre; have you any idea?
A. I imagine it is about 18 or 20 miles.
Q. And there is a shore line there well defined?
A. Yes sir.
Q. Broken by what?
A. Broken by such as Nine Mile bayou, Three Mile bayou, Bayou Johnson.
Q. And other bayous?
A. Little Bayou Johnson, Grand pass, and Creole gap.
Q. And others?
A. And others smaller.
Q. Do you know anything about Creole gap, how it was made?
A. Only from hearsay; only from the talk among the old time fishermen.
Q. Are there any living witnesses who can testify to it?
A. I don't know of any particularly.
Q. Go ahead and state what you heard, as counsel for Mississippi has no objection, and state what information you have concerning this Creole gap?
A. I heard it talked about among these local fishermen that it was dug by some man for a convenient cut off from what is known as Lake Borgne side over into the Gulf so as to save the time of going around through Grand pass or going around Isle à Pitre.

Recross-examination.

By Mr. McClurg:

Q. How far is it from Grand pass?
A. About three miles.
Q. There was a way through Grand pass?
A. Yes sir.

By Judge GUION:

Q. You say that you have been told this by old fishermen?
A. Yes sir.
Q. Were you told how long ago this had been done?
A. No sir, it was just in ordinary conversation.
Q. That it had been dug out?
A. Yes sir.
Q. How wide is it now?
A. It is from a half to ¾ of a mile wide now.
Q. Have you any idea as to its depth?
A. There is nine or ten feet of water running through it.

By Mr. MCCLURG:

Q. Nine Mile bayou has been there always, to your knowledge?
A. Yes sir. Johnson bayou on the United States survey is known as Turkey bayou, but the local term for it is Johnson bayou or Jones bayou.
Q. How deep is Jones bayou?
A. Well, as it shows there, shows on this map, here, you see there are two here, there is West Jones and East Jones, and this area here is about all washed away, the West Bayou Jones is all washed away, there is nothing there except an open gap now.
A. I don't understand how you can wash a bayou away?
A. The bank has washed away and consequently the bayou goes to-.
Q. There is no bayou there?
A. No sir, except a little bayou.
Q. How deep is East Jones bayou?
A. In high tide it may be four feet of water in there.
468 Q. Connects Mississippi sound with what?
A. It goes back into Jack Williams bay in here.
Q. That is a large body of water?
A. Yes sir. It is only navigated by very light draft boats, it is all full of mud flats, it is hardly navigable.
Q. I want to know what it enters into the back here?
A. I think Jack Williams bay.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, to be resumed at the same place on the same date, at the hour of 2.15 p. m.

Resumption of Proceedings.

Pursuant to adjournment, the hearing was resumed by the commissioner at the same place and date, at the appointed hour of 2.15 p. m. All parties being present.

FRANK HASTINGS MORTIMER,
Commissioner.

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Volume II.

470 Frank H. Mortimer, Commissioner.

J. B. Baylor, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. Dymond:

Q. Where do you reside?

A. Virginia is my home.

Q. Where are you generally located?

A. That I can't tell; I have been in the Coast Survey service since 1873 and I go wherever I am ordered. I have been in Washington a great deal.

Q. What Coast Survey?

A. The United States Coast and Geodetic Survey.

Q. How long have you been connected with that Coast and Geodetic Survey?

A. It has been so long—I may say since 1873, I took the scientific and engineering degrees at the University of Virginia and got in the Coast Survey by competitive examination in 1873 and I have been there ever since.

Q. You say you graduated from the University of Virginia?

A. I took my engineering and scientific degrees there.

Q. Have you been continuously in the Coast Survey since that time?

A. Yes sir. Sometimes I have been detailed for special work. For instance, I made the sea survey of the State of Virginia;
471 I was for two or three years on the Commission of the United States Supreme Court in connection with the Tennessee and Virginia boundary.

Q. Have you ever had any other official duties in the line of boundaries between States beyond the case of Tennessee *vs.* Virginia or Virginia *vs.* Tennessee?

A. I was one of the engineers to re-establish the boundary between New York and Pennsylvania, and also between Maryland and Virginia.

Q. Did you visit Louisiana last year?

A. Yes sir.

Q. For what purpose?

A. I came down here under the instructions from my chief, superintendent of the United States Coast and Geodetic Survey at the request of the Commissioner of Fish and Fisheries, to take up certain work in connection with your oyster department, certain points as to sea survey.

Q. Do you know whether the Commissioner of Fish and Fisheries had received a request from any official body in this State for this survey, and if so what body?

A. Yes sir; I saw a letter from the Oyster Commission of Louisiana to the Commissioner of Fish and Fisheries.

Q. Was that the official body that you speak of as having requested you to come here, the Oyster Commission of Louisiana?

A. Indirectly, I suppose you did, you were anxious you should get national assistance in surveying your oyster grounds.

Q. And it was for that purpose that you made your trip last year?

A. Yes sir.

Q. In what part of the country was your scene of action or labors extended?

A. Primarily, I believe these surveys cannot be made accurately unless you have them tried by a system of triangulation to well established points. On that account I went back as far as the lighthouse at Biloxi and the lighthouse at Ship island.

Q. Biloxi, what State?

A. State of Mississippi, and Ship island in the State of Mississippi. I had to go back there because the old points, I couldn't recover any of the old points, and had to go back there to be certain of my position.

Q. When you say, old points you could not recover, what points do you mean?

A. I mean the trigonometrical points that were established in the survey of the coast, along the coast line from Malheureux point to Isle à Pitre.

Q. Did you make a survey of any of those points, before you went back to the Biloxi and Ship Island lighthouses?

A. Yes sir.

Q. Were you able to find any of the old Coast Survey points?

A. No sir; I was not able to find them.

Q. In this survey work you did, I understand you started from what you recognized to be well established points?

A. Yes sir.

Q. When were those points established?

A. Well, the Biloxi light house was established way back, somewhere I suppose in the '50's, the new lighthouse at Ship island has been recently established, but it was connected rigorously
472 with the old lighthouse at Ship island which had been washed away.

Q. Will you kindly look at this map and state what it is?

A. Well, this is what we call one of our regular Coast Survey charts published for the use of mariners.

Q. When was this chart published?

A. It was published in March 1904.

Q. By whom?

A. By the superintendent of the United States Coast and Geodetic Survey.

Q. Would that chart contain the very oldest information of the department in regard to the area of which it speaks or shows?

A. It would not contain all the information in hand. It does not mean that there has been a complete re-survey of all this territory at the time this chart was published; but it contains all the information that was available at that time.

Q. Will you please look at this map which we will now for the purpose of identification mark map No. 17, and state whether you recognize upon it any of the points established by you in your recent survey concerning which you have been testifying?

A. Yes sir; I see the marks.

Q. Will you please designate now, so that the stenographer can get it, where these points were established by you?

A. Not only were the points established, but signal, observing towers were built over every one of them.

Q. Will you please designate by word, where they were, beginning at the Malheureux point?

A. By the adoption of a name, which is usual, to try and indicate in a certain way their connection with well known points. The first point that I established to the westward, that is, nearest Malheureux point, I called Bayou point.

Q. Near what bayou is that?

A. Near the bayou that has no recognized name on our chart.

Q. What was the next one you established?

A. It is—shall I give you the distance, how far it is from Blind pass?

Q. Yes. Give us the distance from Blind pass?

A. Yes sir, that is a well known point, marked with terra cotta pipes, and the signal tower built over it, between 30 and 40 feet high; it is about a mile and a half west of what they call Blind pass; that seems to be a well known point all along the coast.

Q. Where is the next point you established?

A. The next point I established west of Three Mile bayou, just west of Three Mile bayou.

Q. Where is the point you established?

A. That point is called Three Mile, just to give a short name because it has to be written very frequently in the records. The point I established was Turkey bayou.

Q. Was that close to Turkey bayou?

A. I can give you the exact distance, not the exact but very close. It is about ⅛ of a mile west of Turkey bayou.

Q. Where was the next point you established?

A. The next point was established just west of Grand pass.

473 Q. Were there any other points established by you on that coast line from Malheureux point to Isle à Pitre?

A. Yes sir. There was another point which I called Cabbage.

Q. Where was that established?

A. Cabbage reef that was the name, there is a place called Cabbage reef, it is on a point of land about two miles and a quarter west of the end of Isle à Pitre.

Q. West of which end.

A. Of the eastern end.

Q. Did you establish any other points on that coast between Malheureux point and Isle à Pitre?

A. I determined accurately, for the first time since it was built, Merrill Shoal Bank light; when I say accurately, I determined it by trigonometrical methods or geodetic methods; I determined accurately for the first time since it was rebuilt, by trigonometrical methods, Cat Island light.

Q. Is Cat Island light on the western end——

A. No sir, it has washed away; it stands out in the water on piles a portion of the island is washed away.

Q. How much of the island is washed away from the light house?

A. Not more than—I don't recollect with certainty, but I should not say more than two or three hundred feet, about 300 feet. I also determined Saint Joseph beacon, for the first time accurately, since it was rebuilt. I also determined accurately for the first time since it was rebuilt Lake Borgne light. I also built a signal and marked it with terra cotta pipes, on Grand island, what is known as Grand island on our chart.

Q. Is that island known by the name of Half Moon island in the locality in which it is situated, among the people?

A. Yes sir; I think it is sometimes called Half Moon island.

Q. Were there any other points located by you in this immediate locality?

A. None with trigonometrical precision.

Q. All of these——

A. Let me see. I must modify that. I also built a signal up here by Pitcher point, and determined that accurately, on the main land of Mississippi.

Q. How far east from Henderson point at the mouth of Bay St. Louis?

A. I will have to measure that. Henderson point is a well deter-

mined point; that Pitcher point is very well known all along the coast, it is about seven statute miles east of Henderson point.

Q. Now, what relations, if any, have these points established by you on the coast between Malheureux point and Isle à Pitre, to the original points; have you any data?

A. Yes sir, I have data. Those old points, most of them are gone, in my opinion, from the way in which they were marked. They were marked with granite stones, many of them were, and these grainte stones are just about the right size and weight for the fishermen to use as ballast, and I think they have largely been taken up bodily and carried away by these fishermen.

Q. Have you any reason to suppose that they were not carried away by storms?

A. No sir. But we have discovered, where our stations have been marked all along the Atlantic coast with stones that can be handled or taken up, that the fishermen will take them not knowing
474 the necessity that the points should be preserved, they will take them as ballast, especially in a land where there is no rock; they don't do it so much on the rock bound coast of New England because they have so much other rock.

Q. Did you, on any of the expeditions you were making in connection with this survey, see any boat with that character of ballast?

A. No sir.

Q. Therefore, as I understand, it is a pure conjecture on your part?

A. Purely a conjecture; except, as I stated before, we have seen boats with our stones in them but not in this locality.

Q. Did you take any steps by trigonometrical methods, to locate any of these points which had been established by the prior survey made in this locality?

A. Yes sir; I took angles and examined that marsh to try and fi l them.

Q. Do you know, or have you any data, as to how far back from the coast line these stones were placed at the time they were originally located by the surveyors that were then doing this work?

A. You mean the coast line between Malheureux point and Isle à Pitre?

A. Yes sir.

Q. Yes sir; their stations were fully examined, giving their distance from the shore line, I had that description with me.

Q. Did you determine by any trigonometrical method where this point should be in any one instance?

A. I determined within a few yards or feet, something like that.

Q. How did that point compare as to its distance from the shore line, with the records which you had showing the original distance from that point to the shore line?

A. Well, as a rule, there has been no very marked change in the last 50 years.

Q. Has there been any change?

A. Yes sir, there have been changes; in some places the shore has washed away, but to no great extent.

Q. What would you call a great change?

A. I believe a great change would be say 300 or 400 feet.

Q. What is the maximum change that you noticed in these points established by you?

A. Well, I did not go into that question very closely; but I should not think, I could safely say I did not find any change of over 300 feet in 50 years.

Q. Would that apply to the coast line generally, from Malheureux point to Isle à Pitre?

A. Yes sir, generally; there may be instances where it is washed away more than that; but, as a general proposition, my work showed conclusively to my mind, that there has been no marked change in regard to the washing away of that coast in 50 years. We have accurate work on trigonometrical methods running back to about 1848; most of those points were established in 1855, that I examined there.

Q. Did any of your excursions carry you into the interior south of this line extending from Malheureux point to Isle à Pitre?

A. No sir; I did not have an opportunity to go south of that coast at all.

Q. Would you be prepared to state, or consider yourself in a position to state, whether any changes had or had not occurred in that section, during the past 50 years?

A. Most certainly changes have occurred.

Q. But are you able to state with definiteness any particular change?

A. No, I cannot specify any particular change.

Q. Now, Mr. Baylor, referring to this map marked map No.
475 17, will you please give the length of the coast line from Malheureux point to Isle à Pitre?

A. I will have to measure it from the chart itself.

Q. I desire you to do that?

A. That is following the coast line; it is 17 miles to Grand pass.

Q. Does Grand pass separate Isle à Pitre from the balance of that territory?

A. So I have always considered it, yes sir.

Q. How long is Isle à Pitre?

A. It is not quite six miles long, that is statute miles.

Q. So, that, from Malheureux point to the most eastern extremity of Isle à Pitre, would be 23 miles?

A. About 23 statute miles.

Q. What considerable bayous, if any, intersect or pass or cut that coast line?

A. When you say considerable bayous, *do* you mean bayous that go into the interior bays, do you not?

Q. Yes.

A. Well, you have Nine Mile bayou, Three Mile bayou, Johnson bayou, Turkey bayou, Drum bayou, Grand pass which might be called a bayou, Bayou Pierre, Elephant bayou, Creole gap. Those are all the principal bayous. There are nine bayous that go into the interior waters.

Q. Have you made a trip from Malheureux point to Grand pass which separates Isle à Pitre from the balance of this land?

A. How do you mean?

Q. Have you gone along that coast line?

A. Yes sir; I have been all along it in boats and landed too at various places all along that coast.

Q. Is there, or not, a distinct and well defined coast line between Malheureux point and Grand pass?

A. Well, it is as well defined as any of your coast line in this region, near the mouth of the Mississippi river, it is a hard ridge next the outer beach composed,—due to the sand and shells that are washed up and then behind that you have a soft boggy marsh.

Q. Can this coast line be seen distinctly from a vessel coursing that stretch——

A. Yes sir, if you coast close enough.

Q. How close need you be in order——

A. In favorable weather?

Q. Yes to determine that line?

A. I think two miles, I would say two miles a person might see it without any difficulty.

Q. Is this area grown up with sea grass?

A. Yes sir, sea grass.

Q. To what height does that grass rise?

A. I should not think it was quite six or eight feet, in some places six and eight feet, with the weeds and grass combined, in some places there are weeds.

Q. What is the distance from the mouth of Blind pass, north to Moon island or Grand island?

A. About 5½ miles.

Q. To what portion of Grand island?

A. To the southern portion, 5½ statute miles.

Q. Will you please now make as accurate as you can, a calculation showing the distance from your beacon marked bayou, to the southern line of Grand island?

A. About 4½ statute miles.

Q. Will you please look at this map which is marked Exhibit A and take the scale on it and start from a point corresponding to your bayou beacon and ascertain the distance to the southern portion of Grand island?

A. About 4½ miles.

Q. What is the distance from Malheureux point to Lake Borgne house at the southern extremity of lower Point Clear?

A. ¼ miles.

Q. I understand the last measurement taken by you was made from the composite chart which we have called map No. 17?

A. Yes sir.

Q. Will you please look at this map which is marked Exhibit A being part of the evidence for the State of Mississippi and state the distance from Malheureux point to the mouth of Pearl river as shown on this map?

A. I would say it was seven miles, what I would call the mouth.

Q. What is the distance on this chart, map No. 17, from Malheureux point to the mouth of Pearl river?

A. Six and a half miles, what I would call the mouth.

Q. Have you had occasion, in the examinations which you have made or from the data which you have as a member of this United States Coast and Geodetic Survey, that would enable you to state where the deep water channel is which runs out of the mouth of Pearl river and finds its way between Cat island and Isle à Pitre?

A. Yes sir, we have it laid down on this chart for the benefit of mariners with courses given.

Q. Will you please indicate by the letters C C and place thereon with a pencil the line which is the deep water channel concerning which you have just spoken? (Witness indicates.)

Q. Is there a well defined deep water channel between the mouth of Pearl river and the gulf of Mexico?

A. Yes sir; I should say there was.

Q. Do you know of any other deep water channel by which the waters of Pearl river would reach the gulf of Mexico?

A. No, I don't know of a channel sufficiently deep for what we call seafaring vessels to go.

Q. Is there any channel that would extend down through the Louisiana marshes, of a character to be recognized as a channel?

A. No sir, none that I know of.

Q. Have you ever heard of there being any such channel?

A. None sufficiently deep for seagoing vessels.

Q. Have you any interest at all in this controversy pending between the State of Louisiana and the State of Mississippi?

A. Not the remotest, except as a citizen of the United States I would be glad to see the matter settled; that is all the interest I have in the matter.

Q. In your position as a boundary commissioner between the States of Virginia and Tennessee, in which State were you born?

A. I was born in Virginia. And the decree under which I was appointed named me as a Virginian, I was from Virginia.

Q. In whose favor did you decide that controversy?

A. I decided against my own State on the main points at issue.

Q. Was that because your examination of the matter showed, or your opinion, that your final conclusion was a correct one?

A. I decided that way although the regular boundary of my State gave an entirely different boundary, because the decree of the Supreme Court clearly ordered me, instructed me to restore the bound-

ary marked in a certain way 100 years ago, it was clearly stated and after an extensive examination of the marks and readings, I was compelled by the facts, as I found them, to go against my own State.

Q. Are you at all familiar with this controversy between the State of Mississippi and the State of Louisiana?

477 A. Not at all except in what I have heard of it since I have been here and reading a report since I was down here, made by Mr. Hodgkins, of the Coast Survey in which he made certain examinations and made certain reports. What little I know about it was by reading that report.

Q. Do you know Mr. Hodgkins?

A. Yes sir, he was associated with me; I have known him for years. I had met the attorney general of Virginia and the governor of the State and they were kind enough to ask me to suggest a Coast Survey man whom I thought was a fair minded man, who was not a resident of either State, and I suggested Mr. Hodgkins, he was associated with me in the boundary dispute between Virginia and Maryland. He made an impression upon me as being a fair minded man.

Mr. TAYLOR: I except to this testimony as being irrelevant, all testimony as to Mr. Baylor's opinion of Mr. Hodgkins, and Mr. Baylor's reasons for deciding another case which has no connection with this excepted to as irrelevant.

Q. I understand that Mr. Hodgkins was associated with you in his Virginia Tennessee boundary dispute?

A. He was chairman of the commission.

Q. Do you know of any other boundary controversy with which Mr. Hodgkins has been identified?

A. Yes sir, I know quite a number.

Q. Would you mention them?

A. Missouri and Iowa, Maryland and Virginia. He has been recently employed in restoring the Mason and Dixon line between Maryland and Pennsylvania. He had charge of the charts in the boundary dispute between Canada and the United States, the Alaskan boundary dispute.

Q. Was he in charge of the charts that were used or prepared by the United States Government, by the United States Coast and Geodetic Survey, or were the charts prepared by that department in this matter?

A. Yes sir, the charts were prepared, made out, not under his own charge because the superintendent was in charge, but he had general supervision of them under the instructions of the Assistant Secretary of State as I take it. Of course that is all a matter of official record.

Q. Do you consider that you are an expert on boundaries between States?

A. No; I do not. I have devoted some attention to it; I have been employed on the three cases that I told you of, one between

Pennsylvania and New York, Maryland and Virginia, then I had the honor to represent the Supreme Court as a commissioner on this Tennessee and Virginia boundary.

Q. In order to come to any conclusion of a fact of that character would it be necessary for you to familiarize yourself thoroughly with the facts and the laws etc. bearing on the subject?

A. Before I came to any decision, if I had a judicial decision to give; surely it is necessary.

Q. And before you could form any opinion would you consider it would be necessary——

A. It would depend entirely on what I had to base my opinion as an expert, what phases of boundary, there are a great many phases of a boundary question, almost as many phases as there are shades of light.

478 Q. Would you consider yourself familiar enough with the facts of this case pending as it is between the States of Louisiana and Mississippi to express an opinion as expert on the subject of the proper boundary between the two States?

Mr. Taylor: Exception is urged to that question as incompetent and irrelevant.

A. I don't think I have studied the subject sufficiently deeply to place an absolute opinion.

Q. Mr. Baylor, have you had occasion to notice the character of the soil forming the land which composes the shore line from Malheureux point to Isle à Pitre?

A. Yes, sir; I have. I walked over a good deal of it and ought to know it.

Q. Will you please look at this sample of earth or soil which is marked sample No. 1 and state whether you recognize that to be similar to the soil you have seen along the shore——

A. Very similar to the soil between Malheureux point and Isle à Pitre.

Q. Have you ever noticed the character of the soil composing the western end of Cat island?

A. Yes sir.

Q. Will you please look at this sample marked sample No. 2 and state whether you recognize it to be of a character of soil similar to the soil at the western end of Cat island?

A. It seems to be the same.

Q. Are you sufficiently acquainted with the characters of soil to state whether there is any difference between these two samples which have been shown you?

A. There is a radical difference it seems to me.

Q. Do they belong to the same or different geological formations?

A. I should say different. I am not an expert geologist, although I graduated as a geologist from the University of Virginia I have not kept up with the science since leaving college.

Q. Please look at this map marked map No. 17 concerning which you have testified and state the distance across the channel from the eastern end of Isle à Pitre to the western point of South spit on Cat island.

A. How far is it across that channel; is that what you want?

Q. Yes?

A. About 3½ statute miles.

Q. Have you had occasion to notice the character of soil on Ship island?

A. I have been over all the western end of Ship island.

Q. Have you ever noticed the character of soil on Horn island?

A. What do you call Horn island?

A. The next large island east of Ship island?

A. I have never been there; I have been on Ship island and Cat island.

Q. Have you ever noticed the character of soil on Deer island just south of Biloxi?

A. No, sir; I have only been on Ship island and Cat island, those are the only two islands I have been on.

A. How does the soil of Cat island and Ship island compare with these two samples Nos. 1 and 2, with which sample is it the most similar?

A. It is the most similar to sample No. 2.

479 Cross-examination.

By Mr. TAYLOR:

Q. What is the usual definition given by geographers to an island. What is an island from the standpoint of physical geography?

A. An island is a body of land surrounded by water.

Q. Well, now, let us begin from Nine Mile bayou and take the piece of land that is bounded on the west by Nine Mile bayou and on the east by Three Mile bayou and on the north by Mississippi sound and on the south by Nine Mile bay. Under the ordinary definition of physical geography, isn't that an island, a piece of land surrounded by water?

A. Yes sir, that is an island.

Q. Isn't it a piece of land surrounded by water?

A. Yes sir, but, then, as far as that is concerned I think a good many things might be called islands.

Q. I am going under the accepted and ordinary definition of an island as given by physical geography, a piece of land surrounded by water. Can't a craft sail all around that piece of land, a craft of moderate draft?

A. Well, a craft can sail around a good deal of that portion of Louisiana.

Q. I ask you this particular question; can't a craft sail all around

483 By Mr. TAYLOR:

Q. And that would say what actual change had taken place?

A. Every time a new survey was made. That would give us the data of the facts and give us the advantage of each subsequent one combined. We have them on file there.

By Mr. DYMOND:

Q. In order for this data to be obtained in the way you suggest, wouldn't it be necessary to know today the points at which the original measurements were taken in order to figure to day and calculate the present distance between those two same points?

A. Yes sir, you would have to have surveys made covering that territory if you want to compare the present actual conditions with the old conditions.

Q. Has any work that you have done been of such a definite character as to show the changes that have taken place?

A. Only along the north coast line.

Q. Have you had any of these points re-established, the points as they existed from 1847 to 1853?

A. I re-established them very closely in connection with my triangulation.

Q. Did you put up your new beacons on exactly the same points where the old beacons were?

A. No sir.

Q. What is there by which any one would know the location of old beacons with sufficient certainty to calculate the present distance from that old beacon to any definite point to show the erosion?

A. I can tell within a fraction of a yard just how far every old beacon was from the present beacon. I have sufficient data.

Q. Could you locate where an old beacon was and then calculate the distance from that old beacon in a north line to the shore line as it exists to day?

A. Yes sir; I believe I can do that.

Q. Did you do that in any instance?

A. Only in a general way.

Q. Did you do it in any particular instance, and figure that the old beacon was put a definite number of feet from the shore line?

A. No; I did not; except within a—in a general way I did.

Q. But in a particular way, to determine in exact feet the distance of the location of any old beacon?

A. I carried descriptions of these old stations, how far they were within a few feet of the shore line.

Q. No; see if you understand me; let us suppose that by the data which you had, you located the exact spot or within three or four feet of the exact spot, where the beacon was placed by the surveying party way back in 1855, did you take the distance from that spot by measurement or by triangulation to the east shore or the——

A. I couldn't find the old beacons, they were not there to find, but their position with reference to my new points——

484 Q. You knew where they ought to be?

A. With reference to my new points.

Q. But did you, in any instance, measure the distance from the place where the beacon ought to be, to the present north shore line of the Louisiana marsh?

A. I didn't have occasion to do it; I had the data computed and didn't have occasion to do it.

Q. Therefore you have never figured out in any instance, the amount of erosion that has taken place on the shore line?

A. I have never figured it out absolutely; I know approximately from the general trend of the coast and the general present condition of the coast line and the distance between my beacons and the old beacons.

Q. Was I correct in understanding you to say that there might have occurred erosion on this shore line at points, to the extent of not exceeding 300 feet?

A. I think, as a general rule that the charts here seem to indicate there has not been erosion over 300 feet.

Q. You would not be prepared to say that there had been no erosion?

A. No sir; I have no doubt there has been erosion in some places and the shore has been washed in other places, but there has been no marked changes.

Q. Are you familiar with the geological formation of this section of the country?

A. Yes sir; I am familiar with it.

Q. Do you know how it was formed?

A. I don't know how it was formed, but I believe it was formed by the sediment from the Mississippi river.

Q. What is the tendency of this sediment when it is deposited by the river or by the water coming from the river, is the tendency to solidify or to expand?

A. I am not prepared to say on that point. I should think it would be in time solidified.

Q. Would you be prepared to say whether there had or had not been any subsidence in this area concerning which you have been examined a moment ago by counsel for Mississippi?

A. I had no occasion to go into the question of subsidence. I have no doubt that that whole coast has sunk to a certain extent; the evidence of it is, the fact that you find stumps of trees and things down below the surface. I did not find any there because I made no examination on that line.

Q. Would you be prepared to say, in detail, what effect that had had upon the topography of this country since 1812?

A. No I would not say what effect it had.

Q. You were examined in regard to map Exhibit A, by counsel for the State of Mississippi a moment ago, with I understand, a

knowledge on your part of the effect produced by storms and the effect that would be produced by subsidence. Are you prepared to say that the red ink line which counsel showed you, represents the conditions as they existed in 1812?

A. No, I wouldn't be prepared to say that, because I don't know.

Mr. DYMOND: Counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence in connection with the testimony of the witness the said United States Coast and Geodetic Survey chart the same to be map No. 17, together with the certificate of the Secretary of the Department of Commerce and
485 Labor of the United States Government, and tenders a copy of the said map to counsel for the State of Mississippi.

Q. Will you please look at this geological map of that section and state whether it covers in a better degree the territory south and west of Malheureux point, than the map No. 17 concerning which you testified a moment ago and which has just been offered in evidence?

A. I can say I have reason to believe this map of the Geological Survey is prepared from the Coast Survey data; it covers a more extensive area than the chart you have filed as Coast Survey chart No. 17.

Q. Counsel for the State of Mississippi was examining you a moment ago in regard to the topography of the country east of Malheureux point. Do you notice any special difference between the topography of the country east of Malheureux point and that southwest and south of Malhereux point, as far south as Grand bayou?

A. It is broken by bayous, into land surrounded by water around which a boat can navigate.

Q. Would you consider this section south and southwest of Malheureux point, or would you not consider it, as much of a character of islands as the areas that counsel for the State of Mississippi particularly specified in his cross-examination of you?

A. I think it is all an insular formation, apparently an insular formation.

Q. If you were to start at the mouth of the Mississippi river and ascend it to the Illinois canal at the northern end of the Mississippi river and go into Lake Michigan and up to Mackinac point and then down through Lake Huron into Lake Erie and around through the Candian canal into the St. Lawrence river and down to the Atlantic ocean to the gulf of Mexico and around Florida to the mouth of the Mississippi; can you make that trip in a boat?

A. Yes, I could.

Q. Would that be a body of land surrounded by water?

A. Yes sir, I suppose it would.

Q. Would that be an island according to your definition?

A. I have not given any definition of an island.

Q. Is that the character of island that you meant when you spoke of the section of country between Malheureux point and Isle à Pitre?

A. They are much smaller bodies of land.
Q. In your opinion, as a member of the United States Coast and eodetic Survey, which, in your work would require you to give ames to various localities, would you give this stretch of country xtending from Malheureux point down east to Isle à Pitre, would ou give that section of the country the name of an island, or would ou consider that a part of the coast line of Saint Bernard parish?
A. I would have to follow the instructions of the Coast Survey, our nstructions are that we follow local usages, I would be instructed o do that.
Q. Are you at all familiar with the local usage in regard to this particular stretch of coast line?
A. The only thing that I—to be perfectly frank with you—the only thing I know about it, it is usually spoken of along the
486 coast as the Louisiana marshes.
Q. Have you ever heard it called Louisiana islands?
A. I never have.
Q. How was that section denominated by the people in Mississippi with whom you spoke concerning this area?
A. I devoted considerable time at Bay St. Louis and I always heard it spoken of as the Louisiana marshes.
Q. Will you please look at the map marked map No. 17 and state whether any of these areas which were described in detail by counsel for the State of Mississippi, whether any of those forming this coast line between Malheureux point and Isle à Pitre, are called islands on the United States Coast and Geodetic chart. I refer to the bodies of land concerning which he examined you; other than Isle à Pitre?
A. There are certain outlying things here, for instance——
Q. Did he examine you about that. I ask you about what he examined you?
A. Let me look over the chart and see for myself whether any of them are called islands. None of those are called islands around where he examined me and asked me whether a boat could go, none of them are called islands on this chart, except Isle à Pitre.
Q. Will you please look at this map which is now for the purpose of identification to be marked No. 18, and state whether or not on this map any of those bodies of land other than Isle à Pitre are described as islands?
A. None of them are called islands apparently.

By Mr. TAYLOR:

Q. There are no names given to them at all, are there?
A. They have no names given to them on the geological chart No. 18. They have no names given to them on the Coast and Geodetic Survey chart No. 17.

By Mr. DYMOND:

Q. Will you please look at this map No. 18 and state whether this

area bounded on the north by the Mississippi sound and Lake Borgne, bounded on the west by Lake Borgne, bounded on the south by Grand bayou and bounded on the east by Nine Mile bayou and the lake south of it; will you state whether or not it would be under your definition, just as much of an island as these pieces of land on the coast line concerning which counsel for the State of Mississippi has examined you?

A. If you designate as an island a body of land surrounded by water around which a boat will go, it is as much an island.

Q. Is that land west of the red ink line which counsel for the State of Mississippi has caused to be placed on their map Exhibit A?

A. Yes sir.

Q. If this red ink line is taken to indicate the claim of the State of Mississippi in regard to its boundary, would I then understand you to say that there was an island west of Nine Mile bayou which Mississippi had not claimed?

A. There is a body of land surrounded by water around which a vessel may navigate west of that red line.

Q. West of Nine Mile bayou?

A. Yes sir, judging from the charts. I have not examined it personally myself.

487 Q. Judging from this chart marked Exhibit A?

A. Yes sir, the chart marked Exhibit A.

Mr. DYMOND: Counsel for the State of Louisiana now offer in evidence in connection with the testimony of the witness the geological map of this portion of the parish of Saint Bernard, for identification, to be marked map No. 18, of which a copy will be furnished to counsel for the State of Mississippi.

By Mr. McCLURG:

Q. Please look at the map Exhibit E, filed and produced in evidence by the State of Louisiana, and tell us how far it is from the red line which indicates the deep water channel out of the mouth of Pearl river to the Mississippi shore at Point Clear?

A. I will have to measure it on the chart. About ⅞ of a statute mile.

Q. Where is the first point that that deep water channel is 18 miles from the Mississippi shore to the east of Pearl river?

A. I will have to measure that. This channel line is less than 18 miles from the Mississippi coast everywhere as far east as Ship island.

Q. Do not these maps that have been shown to you and from which you have been testifying, show several islands within 18 miles of the Mississippi shore besides Isle à Pitre and these unnamed islands that we have been designating. Crooked island Mink island Raccoon island, Wild Goose island?

A. Yes sir, it does.

Q. And a great many islands within 18 miles of the Mississipp shore?

A. It shows a considerable number of what you call on the chart islands.

Q. And they are really what you have been designating as the Louisiana marshes?

A. Yes sir.

Q. There are a great many islands in that section within 18 miles of the Mississippi shore?

A. I would say a good many.

By Judge GUION:

Q. Will you please look at this map marked Exhibit E just west of Nine Mile bayou and give us the islands, if any, within nine miles north of that point?

A. You mean nine miles north?

Q. Of the point of land immediately west of Nine Mile bayou?

A. There is Petite Pass island, there is Grand island, Round island there is Grassy island and Saint Joseph island which has been washed away since the original charts were published.

Q. What is the distance from Malheureux point to lower Point Clear?

A. I measured that once; it is 6¼ miles.

488 Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned, by consent of counsel for the States of Louisiana and Mississippi, until April 13th, 1904, at 10:30 a. m.

Resumption of Proceedings.

APRIL 13TH, 1904—10:30 a. m.

The hearing was resumed pursuant to adjournment.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y general for the State of Louisiana.
Mess. John Dymond, Jr., and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. William Williams, att'y general for the State of Mississippi.
Joseph N. Flowers, Esq., assistant attorney general for the State of Mississippi.

J. B. BAYLOR, witness, recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. You have before you a chart which is described as map No. 17?

A. Yes sir.

Q. And which has already been offered in evidence by the State of Louisiana. I understood — in your testimony on Saturday, to say that in your opinion there had been no radical change in the coast line from Malheureux point to Isle à Pitre?

A. To the eastern end.

Q. To the eastern end of Isle à Pitre?

A. Yes sir.

Q. Did you testify concerning the interior of what is known as the Louisiana marshes?

A. No sir, I did not. I never made any examination of it at all.

Q. Your testimony, then, as I understand it, was confined to the coast line extending from Malheureux point to the east end of Isle à Pitre?

A. Yes sir.

Q. Would you——

A. And that inference is drawn from a few well determined points along the coast line.

Q. Would you be prepared to state whether or not the interior of what is known as the Louisiana marshes, is of a harder substance or of a softer character than the coast line from Malheureux point to Isle à Pitre?

A. I would be prepared to say from my limited observations, as far back as I went, it is very much softer.

Q. Are you prepared to state that the bayous concerning which you testified, starting with Nine Mile bayou and extending east as far as Grand pass, have been widened within the last fifty years?

489 A. No sir, I am not prepared to say that. I only say this, that we have accurate surveys running back to 50 years ago, hydrographic and topographic sheets and if it is a vital matter that question can be determined, compared to what it was 50 years ago.

Q. What I am getting at now is your personal knowledge?

A. My personal knowledge is not sufficiently definite to give a definite opinion.

Q. Then you did not mean to say in your evidence given on Saturday, did you, that there had been no changes whatever in the width of the bayous leading into this country called the Louisiana marshes?

A. No sir, on the contrary I think there have been changes; the only thing I do not think those changes have been very radical, that is my opinion, from my examination that I have made in regard to certain well determined points which indicated how much the coast has washed.

Q. In what respect have these changes occurred that you have been testifying about?

A. As to the shore line?

A. Yes, and the bayous?

A. Well, on the w[illegible] observation went; I would say there has been some [illegible]

Q. You have said as I understood you to say just now, that positive information might be had that would show or tend to show the exact changes that have occurred in that country in the last 50 years on the coast line or shore line?

A. Yes sir.

Q. Where is this information to be had, Mr. Baylor?

A. Well, I have learned from my associate, Mr. Hodgkins, since he came here, that no complete topographical surveys of that region have been made since our original charts were published. The original charts are on file; the original hydrographic and topographic sheets are on file in our archives in Washington.

Q. Projections you mean?

A. Yes sir. And if it is desirable to know just what changes have taken place, in order to be certain what those changes are up to date, a re-survey of that whole region will be necessary.

Q. Couldn't we derive that information by having copies of these tracings?

A. All of these tracings you will have only what was the condition of that territory at the time these surveys were made; but to be certain about the condition of that territory at the present time, a re-survey of it would have to be made.

Q. Then you could not state from an examination of this chart described as map No. 17, what the changes are that have taken place?

A. The only thing that I feel justified in saying is, that at the points I have established, that at those particular points the changes have not been radical.

Q. Along what?

A. Along the shore line from Malheureux point to the eastern end of Isle à Pitre.

Q. What do you mean by a radical change?

A. Well I consider a radical change, a change of the washing away of a quarter of a mile of the coast or half a mile of the coast, a quarter of a mile I would say.

490 Q. And the depth that would accompany that washing away, what would you call a radical change in depth?

A. I would say six or seven feet, for instance, in mean low water.

Q. Now Mr. Baylor, could you state, or, are you prepared to state what changes have taken place in these bayous?

A. No sir; I am not prepared to say absolutely what changes have taken place, and I do not think anybody could say it with certainty unless a special re-survey was made of it.

Q. You don't know what the width of these various bayous was 50 years ago as compared with the present width?

A. No sir, except in a general way.

Q. Is there any way of establishing that fact by the examination of this map No. 17?

this piece of land, a craft of moderate draft, this piece of land I have named?

A. Yes sir, moderate draft.

Q. Let us go to the next piece of land, bounded on the west by Three Mile bayou and on the east by Johnson bay and the neck of water connecting it with Mississippi sound, on the north by Mississippi sound and on the south by the body of water around Nigger point; is that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. Now, let us take the next piece bounded on the east by Turkey bayou, bounded on the north by Mississippi sound, bounded on the west by Johnson bay and the bayou connecting Johnson bay with Mississippi sound; isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. Now, let us take the next piece bounded on the west by Turkey bayou on the north by Mississippi sound, on the east by Grand pass and the bayou connecting Grand pass with east Karako bay; isn't that a body of land surrounded by water around which a craft of moderate — can sail?

A. I want to look at this chart here. Yes, that is true; a craft of moderate draft can sail around that body of land.

Q. Let us take the next one, Isle à Pitre, isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

A. Yes sir.

Q. So, then, is it not true that what you have spoken of as the coast line between Nine Mile bayou on the west and Isle à Pitre on the east, is it not composed of a string of islands such as you have described, bodies of land surrounded by water around which a craft of moderate draft can sail?

480 A. You expect me to give you my honest frank opinion?

Q. Yes?

A. I think it is, but no more than a great deal of the Mississippi delta.

Q. That you see is purely argument. That may be so; they can argue you that. But I am just trying to get at the facts.

A. They are certainly bodies of land around which vessels of moderate draft can sail.

Q. If then it be true that what has been called a coast line between Nine Mile bayou and the end of Isle à Pitre is a string of islands, does not, from the standpoint of physical geography, does not the main line of Louisiana end upon the west shore of Nine Mile bayou at this point?

A. I don't see why you should say that, to be perfectly frank with you, because there are other parts in—the whole coast is broken in parts.

Q. The object of the examination is to get answers to questions

as to particular points. I am asking you a particular question, not about the coast generally but a question about the line at this particular point. You have said from this point down to Nine Mile bayou there is a string of islands.

A. I have not said there is a string of islands, out to the westward.

Q. West of Nine Mile bayou is there any other piece of land that you can call an island, between Nine Mile and the main land?

A. I have no doubt there are parts.

Q. I am not asking you about that. I ask you about a particular locality on this chart before your eyes, I want to know between Nine Mile bayou and the main land whether there is another piece of land you can call an island?

A. Here is a little part around which a vessel of moderate draft can sail.

Q. Where would you designate that island, show us the boundaries of that island?

A. Malheureux point.

Q. You say that Malheureux point divides an island?

A. There appears to be from this chart a body of land around which a boat of moderate draft can sail.

Q. Would this line indicate it, you can go through this body of water here?

A. A boat of moderate draft might.

Q. If that be true, then where would you fix the main land of Louisiana west of Malheureux point, it must end somewhere before the islands begin?

A. I think the whole coast of Louisiana in my honest opinion is permeated with bays.

Q. That is an abstract proposition you are stating. I am not arguing the question. I ask you a specific question to which I am entitled to a specific answer.

Q. I am trying to answer you to the best of my ability. I think that the whole coast of Louisiana is more or less broken.

Q. I have not asked you any such question.

A. I don't know that I can fix the main land. I don't know just where it begins or where it ends.

Q. Look upon this chart and fix the point at which this string of islands begins; if you can't fix it, why you can't?

A. I can't fix it for the simple reason that the whole coast seems to be intersected with bays.

481 Q. Why does that offer any obstacle to you?

A. Because, from your definition of an island——

Q. It is your definition not mine.

A. My definition of an island, that it is a body of land surrounded by water. There are bodies of land surrounded by water west of Nine Mile bayou.

Q. If so point them out to us?

A. I would like to have more charts, to the west. I take Malheu-

reux point and I find here this bayou which empties into the sound near my station, seems to indicate I should judge from my observation of charts that a boat of moderate draft can get through that bayou.

Q. When you look west of that, can you find any other body of land surrounded by water?

A. I have not got a chart before me covering that area sufficiently.

Q. I am talking right to the westward of this point. I am not talking about south or southeast.

A. Well, here is a small bayou, I suppose that at ordinary tide a person might get in there with a boat of very light draft and go around here and on down there.

Q. You said as I understood you, that the work of the Coast Survey, your work extends over a period of 50 years, not your individual survey but——

A. The first accurate trigonometrical survey of this coast was made somewhere about 1848.

Q. And from that time you have definite geographical data?

A. All of which are on file in our office.

Q. I understand you to say on the basis of that data, there had been no radical change in the conformation of this territory in question during that time, this coast line in question?

A. I state most positively that in the conformation of that coast in 50 years.

The witness, Mr. Baylor, is requested by counsel to run his eye from the mouth of Nine Mile bayou in a south or southwesterly direction along the red line indicated on map marked Exhibit A offered by the State of Mississippi in connection with the testimony of Mr. Dukate's cross examination, around the shores of False Mouth bay and on south and southwest along said red line until he reaches the Lake of the Mound. The witness is then requested to state whether or not as a geographer from his personal knowledge and from his knowledge as a geographer, of that section, he has any reason to believe there has been any material change in the conformation of the land along that red line during the period which has intervened from 1812 to this time?

A. If I answered that question it would be a mere conjecture, south of the shore between Malheureux point and Isle à Pitre.

Q. Please remember I am asking——

A. I just say it will be a mere opinion as I have not examined the territory for myself, except adjacent to Mississippi sound.

Q. Please remember in asking this question, I have not confined my question to your personal knowledge, but your knowledge as a geographer derived from charts and maps of this section of country and I ask you as a geographer upon that data which you

482 have drawn, whether there has been any radical change in the general conformation of the country along that line.

A. I very much question whether there has been any radical change.

Q. Since 1812?

A. I would not say since 1812, but since our surveys were made.

Q. I will put the question, since 1812, upon the basis of your knowledge as a geographer derived from charts and maps, whether there has been, in your opinion, any radical or material change in the conformation of that country along that line since 1812?

A. I could not express an opinion on that. I would be glad to do so; but there have been such violent storms and tornadoes that I couldn't say positively.

Q. If you say that there has been no radical change in the general coast line made up of the string of islands between Nine Mile bayou and Isle à Pitre, is it not reasonable to suppose that less change would have taken place in this interior along this red line which I have indicated, owing to the fact it is in a much more sheltered position from storms?

A. I presume so, I presume it is, to be perfectly frank with you.

By Judge GUION:

Q. That would be a mere presumption?

A. Yes sir.

By Mr. TAYLOR:

Q. But giving your scientific opinion as a geographer, wouldn't you say that?

A. Judging from what has taken place where I have made actual measurements, I am prepared to state positively that as a matter of fact, there has been no radical change.

By Mr. MCCLURG:

Q. I wish you would give us, Mr. Baylor, a statement with reference to this deep water line on your chart No. 17, whether that channel has been marked by bouys by the Government?

A. Yes sir, it is bouyed out.

Q. And that was for commercial purposes?

A. For the use of navigators.

Q. There is nothing on any of these charts to indicate to you that that deep water channel was ever marked as a dividing line between these two States?

A. There is nothing to indiate that at all. I am prepared to say positively there has been no radical change on the coast line fronting Mississippi sound. Down here I have made no examination. This chart map No. 17 is compiled from a series of original topographical and hydrographic sheets upon a much larger scale, which were taken on the ground, and certified copies of these hydrographic and topographical sheets can be obtained from the Coast and Geodetic Survey.

Q. Are you personally familiar with Nine Mile bayou?

A. I have been in the mouth of it and established a signal near the mouth of it.

Q. Are you acquainted with False Mouth bay?

A. Only as seen from the top of my signal towers which are built on the edge of the shore line between Malheureux point and Isle à Pitre.

Q. How deep is the water along this red line through Nine Mile bayou?

A. I can tell if you permit me to examine the Coast Survey chart.

Q. Mr. Baylor what is the most southern point to which you have gone over this territory you see, how far south have you been along the territory traversed by that red line?

A. Only a few hundred yards in the mouth of the bayous.

Q. Which bayous?

A. Nine Mile bayou, Three Mile bayou, Johnson bayou, Turkey bayou, Creole gap, Elephant bayou. Now, I would like to furnish from memory, Drum bayou, Grand pass, Bayou Pierre, I have been in the mouths of all those bayous along there and skirted along the coast.

Q. Please now look at map No. 17 and tell us what you mean by the Louisiana coast line in your estimate from the deep water channel side?

A. It is the coast line between Malheureux point and the eastern end of Isle à Pitre.

Q. Do you claim the coast of Isle à Pitre as the Louisiana shore line?

A. I have not made any such claim, I simply answered the questions that were given to me.

498 Q. You testified a moment ago that these islands, Grassy island, Grand island, Round island, and Isle Petite Bois, are within nine miles of the Louisiana coast?

A. The Louisiana coast as defined by the attorney general of Louisiana in questioning me.

Q. These same islands are also within 18 miles of the Mississippi main land, are they not?

A. Yes sir.

By Mr. DYMOND:

Q. You were testifying a few moments ago in regard to this Exhibit A offered by Mississippi, and you were interrogated as to whether you measured from designated points in a southerly direction. What means did you have to guide you in determining what was a southerly direction, in making your measurements on this map?

A. I only used my eye and the directions as given on the chart showing the north, east, west and the south.

Q. Is there on this map Exhibit A offered by Mississippi a series of arrows which show the north, south, east and west directions?

A. There is one arrow, I don't see a series.

Q. Well, an arrow, there is an arrow?

A. Yes sir.

Q. Did you follow the direction of that arrow in determining your north and south line, as near as your eye would permit you to do so?

A. Yes sir.

By Mr. FLOWERS:

Q. In making this measurement you measured a line as nearly parallel with the north and south arrow as you could by comparison?

A. Yes sir.

Q. Simply by looking at it?

A. Yes sir.

WILLIAM CANDLER HODGKINS, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. My home is in Boston, Massachusetts, but my usual place of residence is in Washington.

Q. How old a man are you?

A. I am 49 years old.

Q. What official position, if any, do you now occupy in connection with the United States Government?

499 A. I am an assistant to the Superintendent of the Coast and Geodetic Survey, a bureau of the Department of Commerce and Labor.

Q. How long have you been connected with that bureau?

A. Since July 1871.

Q. What was your profession before you became connected with the United States Coast and Geodetic Survey?

A. I never practised my profession outside of the Coast and Geodetic Survey. I am a civil engineer by education and a geodetist by profession.

Q. Are you a graduate of any institution of learning?

A. I am a graduate of the Lawrence scientific school of Harvard university.

Q. When did you graduate there?

A. In 1877.

Q. Did you carry on your studies there after you became connected with the United States Coast and Geodetic Survey?

A. Yes sir, I served in the Coast and Geodetic Survey from 1871 to 1873, previous to attending the scientific school, and then I took leave of absence for a sufficient period to pursue my studies at the scientific school maintaining my connection with the Coast and Geodetic Survey throughout that period in working through summer vacations for that corps.

Q. Has your service with the United States Coast and Geodetic Survey since 1871 other than you have designated been a continuous service?

A. Yes sir.

Q. Have you ever been connected as a member of the United States Coast and Geodetic Survey, with any boundary disputes between any of the States of the United States of America or foreign powers?

A. Yes sir; I have had quite a considerable experience in boundary matters, in boundary adjustments, at any rate, rather than disputes perhaps.

Q. Will you please state chronologically, what experience you have had in that connection, as well as you can now remember it?

A. So far as I recollect, my first experience in boundary matters was in 1892 when I was detailed to make a re-survey of the boundary between Pennsylvania and Delaware, commonly known as the circular boundary, which had been surveyed in 1701 for William Penn.

Q. How did you happen to become connected with that particular boundary location?

A. I was detailed for that by the superintendent of our survey by the request of the commissioners for Pennsylvania and Delaware, that is to say, I should qualify that by saying, the commissioners did not specifically request my detail, they requested a detail of a suitable man for that purpose.

Q. Who were these commissioners?

A. Well, I really cannot give the names of all of them with accuracy, but the chairman on each side would be sufficient I presume; on the side of Pennsylvania the chairman was the Hon. Wayne McVeagh and on the side of Delaware the chairman was the Hon. Thomas F. Bayard.

Q. Who were these commissioners, respectively, appointed by?

A. By the legislatures and governors of their respective States, I say the legislatures and governors; although the governors made the appointment I think they were not absolutely free handed in the matter, I believe that the legislatures of the restective States resolved that the speakers of the houses of the legislatures of the respective States should be members of the commissions; in addition to them the chairman of the commissions were appointed by the governors.

Mr. WILLIAMS: We except to all this testimony as to the witness being detailed to make a survey on some other matter and as to the

members of the commission and by whom they were appointed, as being entirely irrelevant.

Q. Was there at that time, a boundary dispute pending between the two States concerning which you have testified?

A. I don't know that it would be properly called a dispute. There was an uncertainty as to the location of the boundary and there was an amicable agreement to have the boundary line run by a suitable person under the direction of the commissioners.

Q. Did you run that boundary line?

A. Yes sir.

Q. Was it adopted by the commissioners?

A. Yes sir.

Mr. WILLIAMS: The State of Mississippi desires it understood that it takes the same exception to all questions of a similar character.

Q. What was the next boundary matter between States, with which you were connected?

A. Before I answer that question, will you pardon me in saying that I had another boundary matter that was not between States, that came next in chronological order?

Q. Yes?

Q. I say that because in the very next year, in 1893, I was attached to the corps which was engaged in surveying the southern part of Alaska in reference to the international boundary.

Q. Was that in reference to the controversy between the United States and Great Britain?

A. Yes sir.

Q. Will you please state what you did in that connection?

A. I accompanied one of the Canadian parties in order to observe the operations under an agreement between the two governments that there should be a joint survey.

Q. Was that data used in the final arbitration of this matter which recently took place in England?

A. Yes sir.

Q. And as I understand, you were a party on that expedition?

A. I was the American representative, the representative of the United States in one of the British parties.

Q. By whom had you been appointed in that instance?

A. By the Superintendent of the Coast and Geodetic Survey.

Q. Under whose instructions did the Superintendent of the Coast and Geodetic Survey appoint you, if you know it?

A. The superintendent is not under anybody's instructions in regard to giving instructions to his subordinates. His instructions to his subordinates are merely as to the general character of the work to be done and in that he acts freely.

Q. From whom had he received the request that an assistant should be designated?

A. This was an extensive survey including something like 12 or

15 officers on each side, and certainly on the American side, and the whole thing was under the general superintendence of the Department of State; but the Superintendent of the Coast and Geodetic Survey was in active charge of the work and all matters of
591 detail were at his discretion.

Q. Is the Secretary of State the official head of——

A. No sir; he has charge of all international matters of that sort, and for the time being our force practically worked for the Department of State.

Q. What was the next boundary matter in chronological order, with which you were identified?

A. In 1895 I was detailed as the chief engineer to re-survey a portion of the boundary between the States of Missouri and Iowa.

Q. By whom were you appointed in that instance?

A. I was appointed by the Superintendent of the Coast and Geodetic Survey, for the time being, at the request of the commissioners appointed by the Supreme Court of the United States to adjudicate the matter.

Q. Was that, then, a boundary matter pending in the Supreme Court of the United States between the two States you have just designated?

A. Yes sir.

Q. Did you make the particular survey?

A. I made the survey and established the monuments.

Q. Was that reported by you to the Supreme Court?

A. Not by me; it was reported by the commissioners.

Q. Was that report approved by the Supreme Court of the United States?

A. So I understand.

Q. What was the next instance in chronological order where you had occasion to establish boundaries?

A. This is rather a minor matter and I do not know that it should be mentioned except for the completeness of my connection with boundary matters. In 1896, if my memory serves me, I was sent to South Carolina to inspect a local survey between two counties. The only reason I mention this boundary survey is as I say for completeness. The county commissioners of Spartanburg and Greenville counties, South Carolina, requested that an inspector be sent down there to look over some work that had been done by the local engineers, and I was sent there. I merely mention that for the sake of completing the matter of my connection with boundary matters.

Q. Did you have anything to do in determining the boundary in that particular instance?

A. No sir; I simply revised or reviewed the work that had been done, and I made certain recommendations.

Q. Were those recommendations of yours adopted?

A. I don't know about that. That was a matter which rested with the supreme court of South Carolina finally; I never heard how they decided the matter.

Q. What was the next instance in chronological order where you had occasion to be connected with any boundary matter?

A. I think it was in the following year, if I am correct, I think in 1897 that I was designated as the engineer on the part of the State of Maryland, in a controversy, or uncertainty would be better, which had arisen as to the boundary between the States of Maryland and Virginia in their water boundary running through the Tangier and Pocomoke sounds, which are branches of Chesapeake bay.

Q. What had caused the dispute to originate between those States; what interest, if any?

A. That was a matter something like this case, of an oyster dispute, that is, the oyster question was mixed up with it; the boundary had been established by a commission some years before, but never marked, it had been established theoretically but not practically, and my friend Mr. Baylor represented Virginia his native State and at the request of the Maryland authorities that an officer be designated to represent Maryland I was selected for that purpose.

Q. Were you selected by the Superintendent of the Coast and Geodetic Survey in that instance?

A. Yes sir, that was my understanding, I received my instructions from him.

Q. Did you proceed to define and settle that line?

A. Yes sir, we settled the line, and marked it by temporary marks which I believe were never replaced by permanent ones.

Q. Were the boundary lines run by yourself and Mr. Baylor satisfactory to the States in interest?

A. They appeared to be entirely so.

Q. What was the next instance wherein you had occasion to consider boundary matters?

A. In 1900 I was called upon, at the same time, to take up two separate surveys, in the spring of 1900, April 30th I think, at any rate, about the end of April 1900, the Supreme Court of the United States appointed me a member of the commission to ascertain, locate and remark the boundary between the States of Virginia and Tennessee and in the same year I was also designated as the engineer in charge of the work of re-surveying the Mason and Dixon line as it is commonly called, otherwise the boundary between Pennsylvania and Maryland.

Q. Before we come to the latter instance, you can refer to the first instance. Do I understand, in the case between Virginia and Tennessee that you were appointed by the Supreme Court of the United States?

A. Yes sir.

Q. Were certain instructions given to you by that court?

A. Yes sir; instructions were given to us which appear in the decree; we were instructed to find the old line and to remark it, but without authority to mark any other.

A. Yes sir.
Q. Does that same channel extend to the Rigolets?
A. Yes sir.

By Mr. DYMOND:

Q. Will you please look at this map marked Exhibit E and state whether the red ink line thereon, represents that same deep water channel extending to the mouth of the Rigolets?
A. It apparently does.

By Judge GUION:

Q. Will you please examine this document that I hold in my hand marked Exhibit A which was offered in evidence by the State of Mississippi in connection with the deposition of Mr. W. K. M. Dukate, and follow that red line extending south from Pearl river, then follow the same line down to the furthest western point south, and then across from that point going east and state whether there is any channel, deep water channel or otherwise, following that line?
A. There is certainly not from this chart. There is no deep water channel in that section according to my knowledge of the territory.
Q. Examine that map and state whether the red line that I have just asked you to examine, does not, in a number of instances cross over bodies of land?
A. Bodies of marsh, marsh land.
Q. Can you, by examining this map and the scale on the map, state how far this southern red line is from the Mississippi coast or shore?
A. The nearest point to the Mississippi coast you say?
Q. Yes, and then the furthest. You might take, Mr. Baylor, from the extreme eastern mouth of Pearl river due south to the southwestern point of this southern red line on this map marked Exhibit A of Mississippi?
A. About 18 miles, a little under 18 miles.
Q. Now, does this red line extending from that point as far east as the extreme southeastern corner of Isle à Pitre extend 18 miles from the Mississippi shore?
A. The nearest point of the Mississippi shore?
Q. What I want to know is, whether that whole line extending from the southwestern corner to the eastern extremity of the red line due south of the southeastern part of Isle à Pitre, whether that line extends 18 miles from the Mississippi shore the whole distance?
A. The nearest point of the Mississippi shore. I have measured that distance; about 25 miles.
Q. Is there any other point on this map marked Exhibit A of Mississippi——
A. I am not accustomed to this scale, it is different from my scale, I would like to make a correction.
493 Q. You have a perfect right to correct your testimony and state your reason for doing so?
A. I correct my testimony for the simple reason that I am not ac-

customed to the scale of this map and I took the wrong scale in making my measurements.

Q. Please make the corrections in your testimony.

A. It is about 21 miles there where I said 18 before.

Q. In other words do I understand you to say that map Exhibit A of Mississippi, shows a distance of about 21 miles from the eastern entrance of Pearl river into Lake Borgne down to the extreme southwestern point of the red line extending across eastward?

A. Yes sir, according to the scale of the map on which I make the measurement.

Q. Then the map Exhibit A offered by Mississippi does not show an 18 mile line from the Mississippi shore south in the Louisiana marshes, does it?

A. Not according to this scale; whether this is statute or nautical miles I don't know, it is not stated.

Q. What were you estimating?

A. It is not indicated on the map as far as I can see, whether the scale is statute miles or nautical miles.

Q. You were following the scale on this map?

A. Yes, sir on this map that is before me.

Q. Now, Mr. Baylor, start at the point marked Gulf view as shown on this map marked Exhibit A offered by Mississippi, and go due south to the red line marked on this map, and give us the distance between Gulfview and the point due south on that red line?

A. About 23¾ miles.

Q. Now, Mr. Baylor, take the point marked on this map Exhibit A offered by Mississippi where it is marked Waveland, and go due south to the red line that extends westward and eastward and give us the distance on this map according to the scale on this map?

A. About 26½ miles.

Q. Now, take the point marked on this map A offered by Mississippi designated as Pass Christian and go due south to the red line marked on this map, and give us the distance?

A. About 27¾ miles.

Q. Mr. Baylor, taking the scale on this map Exhibit A offered by Mississippi, as you find it on the map, and examining this map closely, will you please state whether there is any point where the Mississippi coast or shore line as given on this map is not over 18 miles from the red line on this map extending from the southwestern part going eastward?

A. I would say that is the nearest place.

Q. You select the nearest place and state the direction in which you measure?

A. Approximately northwest according to this map. A little over 20¼ miles.

Q. Then do I understand you to say that the nearest point from the Mississippi shore line marked on this map Exhibit A offered by Mississippi to the red line south, is 20¼ miles?

A. Yes sir. That is, according to my measurement, the measurement from the scale on the map before me.

Q. Please name the points on this map that you have just measured from, as being the nearest points, and mark them in some way to designate these points, in ink?

494 A. I would like to have the opportunity of making that measurement over again.

Q. Certainly?

A. So as to be certain where I started from. About 20½ miles.

Q. Now, mark the points you have just measured from where you say the distance——

A. How shall I mark them?

Q. Mark them A–A?

A. All right (witness marks A–A with a cross).

Q. Is there any point on this map marked No. 17 upon which you have marked the letters C–C where the deep water channel is more than nine miles north of the shore line extending from Malheureux point to Isle à Pitre along what is known as the Louisiana marshes?

A. More than nine miles statute miles shall I say?

Q. Give them both?

A. Both are given on the chart. Scales for both are given on the chart. You want to know how far this channel——

Q. I have asked you whether at any point this deep water channel extends more than three leagues or nine miles whether statute or nautical miles, north of any part of the Louisiana marshes coast line extending from Malheureux point to Isle à Pitre?

A. I first gave it in statute miles.

Q. I mean in a north and south direction?

A. 8⅛ statute miles is approximately the maximum distance measured approximately in a north and south direction. Now do you want nautical miles?

Q. Yes?

A. About 7½ nautical miles.

By Mr. WILLIAMS:

Q. Did you make both of those measurements from and to the same point?

A. Yes sir.

By Judge GUION:

Q. Mr. Baylor, examining this map No. 17 or this chart marked map No. 17, can you state that the deep water channel concerning which you have testified and which you have marked C–C is not, at any point, north of the Louisiana coast line from Malheureux point to Isle à Pitre, more than nine miles from that shore line?

A. It is not more than nine miles north, I just proved it is a little under nine miles.

Q. I am just repeating the question.
A. From my measurements it is within nine miles.

By Mr. DYMOND:

Q. Does it at other points approach any closer to the Louisiana shore line?

A. Yes sir.

495 Q. Did you take the maximum distance when you made your measurements?

A. I took the maximum distance from the shore line between Malheureux point and Isle à Pitre, the end of Isle à Pitre.

Q. Now Mr. Baylor, please examine this map again marked No. 17 and state whether there are marked on this map any bodies of land called on the map, islands, south of the deep water channel marked C–C?

A. Yes sir; there are.

Q. Name them? According to the names given on this chart or map marked No. 17?

A. You mean all embraced on this chart?

Q. North of the shore line extending from Malheureux point to the eastern extremity of Isle à Pitre?

A. Yes sir, there is Petit Bois island, there is Round island, there is Grand island, there is Grassy island, there are no other islands that I can see; Saint Joseph island you know is all washed away.

Q. Saint Joseph island is north?

A. North of it yes, I beg pardon, of the deep water channel, you are right on that.

Q. Then, do I understand you to say that the islands that you have just named and which are marked on this map No. 17 and described as islands, are within three leagues or nine miles of the coast line extending from Malheureux point to Isle à Pitre?

A. Nine statute or nine nautical miles.

Q. Both?

A. To be certain of it I would like to measure it. They are all within nine statute or nine nautical miles either, of that coast line between Malheureux point and the eastern end of Isle à Pitre.

Cross-examination.

By Mr. WILLIAMS:

Q. The information that you gave in the beginning of your testimony this morning, was based upon what?

A. In regard to the location of those points and how much washing away?

Q. Yes?

A. From actual observations I made during last spring, actual field observations I made during last spring.

Q. The spring of what year?

A. The spring of 1903.

Q. Were you all over this territory about which you have been interrogated and about which you have testified, personally yourself?

A. Yes sir, I built a lot of beacons which are still standing there.

Q. Is it not a fact that most of your information about measurements and washings and what I mean by washings is, the territory that has gone away, is based upon information furnished you and upon information that you derived from books, charts and maps?

A. It was furnished in this way. From 1848 to 1855 a number of points were determined accurately by trigonometrical methods and marked along that coast line. I had great difficulty in finding those points, so much so, there was so much uncertainty
496 about it, to be certain that my work was based upon a solid basis, on all this coast survey, I had to go way back to the Biloxi lighthouse and Ship Island lighthouse in order to be certain of my geographical — and projected that base line, which is well known, from Ship Island to Biloxi lighthouses, by a system of trigonometrical methods and established a lot of points along this shore line; those points fell upon certain portions close to the shore line, and I determined from those points that the coast had not washed materially at those given points since the original points were established along in 1850 and '53.

Q. That is, taking those maps and charts made in——

A. Yes sir, and the distances are known absolutely.

Q. As marked on those maps?

A. Yes sir. They were known absolutely, I say absolutely they were known within the fraction of an inch in ten miles.

Q. Did you make any of those measurements yourself personally?

A. Yes sir, I made them all myself personally. I went over the ground myself and made the computations and those computations have been revised in Washington and those positions have been plotted on this chart.

By Judge GUION:

Q. Which chart do you refer to?

A. Map No. 17.

By Mr. FLOWERS:

Q. Mr. Baylor, now, in estimating—(witness being shown map Exhibit A offered in evidence to the deposition of W. M. K. Dukate on his cross-examination offered by Mississippi) in making your measurements on this map Exibit A a few moments ago from points on this red line which is claimed by Mississippi to be her southern boundary, to the Mississippi coast, did you pretend to say that your measurements between the points, were directly north and south of each other?

A. No sir, I did not say directly; I only did it as closely as I could with my eye.

Q. You can't say that your measurements are accurate?

A. I think they are accurate within certain limits, I do not think they are absolutely accurate, they are sufficiently accurate to show the general facts.

Q. One of your estimates was as to the distance between the most eastern mouth of Pearl river and the most southwestern point of what is claimed by Mississippi as her territory. I will ask you what direction that most eastern mouth of Pearl river is from this southwestern corner from which you measured?

A. According to this map I should judge from my eye it is a little west of north.

Q. You also stated that this red line drawn along the territory claimed by Mississippi on the western side of it, you say that this line in certain places crosses over the Louisiana main land?

A. No, I said between here and the end over here.

Q. When you say here, just designate?

A. Between the mouth of Pearl river and the end of the line where it leaves the chart, on the extreme east, it crosses right over the marsh land.

497 Q. Will you please designate at what points this red line crosses over the Louisiana marsh lands?

A. It crosses over the marsh lands north and adjacent to what is marked on this map as Lake of the Mound. It crosses over the marsh land between what is called Southwest pass and Treasure bay. It crosses over the marsh land between Fox bay and Southwest pass, and also over a bayou; those are the principal points.

Q. Are you personally familiar with the territory crossed by this line from the most southwestern point of what is claimed by Mississippi as her territory eastward?

A. No sir, I am not, I only make that statement from the map that is before me.

Q. When you say that this line crosses marsh lands, you base your answer——

A. Upon the map that is before me.

Q. On the map that is before you?

A. I do.

Q. You don't know of your own knowledge that any part of this land here, as shown by this map crossed by that red line, is marsh land?

A. I do not.

Q. Will you please state whether of your own knowledge, this red line marked on this map from this most southwestern corner of what is claimed by Mississippi as her territory northward to the mouth of Pearl river, crosses any land?

A. I only know from the map itself, it does not seem to cross any land.

Q. You don't know of your own knowledge?

A. No sir.

A. This map No. 17, as far as a re-survey of these bayous is concerned, is not up to date. It is only information that was in hand at the time the map was published; and as far as I understand it, the present width of those bayous is not known definitely at our office.

Q. Is there any way by an examination of this map, to determine what the difference is, if any, between the width of these various bayous 50 years previous and at the time this map No. 17 was made?

A. Map 17 only contains the data that was in the possession of the Coast Survey at the time it was published. It don't pretend to be a perfect representation of present conditions.

Q. And you say the only way by which to determine what the present conditions are——

A. Compared to what they were 50 years ago is to order a re-survey of that region and to make a careful comparison between the hydrographical and topographical conditions compared with what they were when the original projection sheets were prepared.

By Mr. DYMOND:

Q. You have stated that there was a tendency to change on the coast line and a tendency to change in the bayous. You have stated that so far as the coast line was concerned there had not, in your opinion, been any radical change stating you would consider a radical change was a washing away of a quarter of a mile. Now, what, if any, has been the tendency of change in the bayous.

A. Well, I should say, as a general proposition I should say that it had been to enlarge the bayous.

By Mr. ZACHARIE:

Q. Would any of these old charts, say along in the '50's, serve to establish what was then the shore line of this north coast of this disputed territory?

A. Yes sir; those old charts show the shore line.

Q. Then, by comparison with this most recent chart map No. 17, ought that comparison not show what changes, if any, have taken place?

491 A. As I said before, I tried to make it plain, I say that this chart before me does not show clearly the present conditions, for the simple reason that at the time the chart was published we had no complete survey of that region up to that date.

Q. Would such comparison approximately show, without the necessity of a re-survey?

A. I suppose it might approximately, but it would be largely a matter of conjecture.

By Mr. DYMOND:

Q. But, Mr. Baylor, if you were to take the old map or old projections and calculate the distances from the beacons on the Mississippi coast south——

A. Triangulation points, we call them.

Q. Yes—south to the triangulation points as originally established on the Louisiana coast, and were to take the distances today between the points that you have recently established, would you not be able to show, in the locality where you have established these points, the approximate difference of the washing away?

A. Yes sir. I have taken the liberty to telegraph my superintendent since I had the honor to testify here on Saturday, to send to counsel of both States, plotted upon this map No. 17, the exact position of all of those old triangulation point-, all that have been established since the first surveys were made.

Q. As I understand you, the distance between, for instance, your Bayou triangulation point to the point on the Mississippi coast——

A. Yes sir.

Q. — is worked out according to the scale of this map in accurate proportion?

A. It is worked out in absolute distance, so many meters and fractions of a meter, so a many yards and fractions of a yard.

Q. For instance if you will take this bayou triangulation point from what point on the Mississippi shore did you go, what distance, in relation to that point?

A. I said on Saturday I went back to the center of the old lighthouse at Biloxi which was built I think somewhere about 1848, and to the old lighthouse on Ship island, and used as a base line, what we call a base line, the same data that had been used in the original surveys, and if it becomes a vital question, every one of those old triangulation points can be established I should say probably within 39 7/100 of an inch.

Q. And you have requested the Superintendent of the Coast and Geodetic Survey to furnish to counsel for both States this data?

A. Yes sir.

Q. Now, Mr. Baylor, you indicated by pencil marks on Saturday the deep water channel on map No. 17. Would you please——

A. No; I think y-u are mistaken. I showed where the coast surveys marked the course for vessels to follow.

Q. Would you please mark that in ink in place of lead pencil?

A. I remember now. I beg your pardon. I made that line. I marked it as the course laid down on the Coast Survey chart for vessels to follow in going to Pearl river.

Q. Now, we want you to mark it with ink?

A. I have marked it with ink C–C.

Q. Will you put another C about in the center of that line?

A. Yes sir.

492 By Judge GUION:

Q. I understood you to say in your testimony on Saturday, after examining this map No. 17 that the line marked by you as C–C, is the deep water channel leading from the eastern mouth of Pearl river to the gulf of Mexico. Am I correct?

the General Land Office in regard to the plats and surveys made by their employees.

Q. Did you look into the question of the transfers of lands by the State under the swamp land acts of 1849 and 1850 and their approval by the General Land Office Department of the United States?

A. I was informed by the officials at the Land Office that such transfers had been made.

508 Q. Will you please look at this document which is now for the purpose of identification marked Document No. 11, and state whether you recognize it to be a certified copy of the report made by you to Mr. O. H. Tittman, Superintendent of the Coast and Geodetic Survey on the request of Mr. F. A. McLain member of Congress from the State of Mississippi?

A. Yes sir; I recognize it as a certified copy.

Q. What we want to know is whether you are able to state that the document that you now hold in your hand and marked Document No. 11, is a correct copy, not only certified but a correct copy of the report that you made to Mr. Tittman at the instance of Mr. McLain member of Congress from the State of Mississippi.

A. This is certified to by Mr. Cortelyou Secretary of the Department of Commerce and Labor. I will have to compare letter by letter.

Counsel suggests that the commissioner assist the witness in collating the original with the copy which is done.

Q. We want you to be able to state whether it is a correct copy. Now, have you before you the original report which you made to the superintendent on the subject matter embodied in the request of Mr. F. A. McLain?

A. Yes sir.

Q. Have you compared that report verbatim with the certified copy of it which is marked Document No. 11?

A. Yes sir.

Q. How does this certified copy compare with the original report made by you?

A. I find there are three, I think slight clerical errors in the transcription.

Q. Have those corrections been made in the copy?

A. So I understand.

Q. Are those errors important?

A. They do not seem so to me.

Q. Otherwise is this certified copy a correct copy of the report which you made to the superintendent at the request of Mr. McLain?

A. It is.

Q. Will you please look at these blue prints which accompanied your report and state whether they are true and correct and faithful blue prints of the original drawings which accompanied your report?

A. Yes sir; I recognize those as authentic copies.
Q. Now, have you noticed the list of maps which is attached to
our report and examined the same?
A. Yes sir.
Q. Does this list correctly represent the maps which you examined
ior to your final report?
A. It represents those that I thought worth citing.
Q. Did you examine other maps in addition to those you have
entioned?
A. Yes sir.
Q. Is this list which accompanies the copy of your report, a cor-
ct copy of the list which accompanied your original report?
A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana now offer, pro-
uce and file in evidence, a certified copy of the said original report
made by W. C. Hodgkins assistant U. S. Coast and Geodetic Sur-
vey, at the request of F. A. McLain member of Congress from
09 the State of Mississippi, together with a copy of the list of
maps and blue prints of the original drawings, all attached
nder the certificate of George B. Cortelyou Secretary of Commerce
nd Labor, together with said certificate all to be marked Document
o. 11.

Mr. WILLIAMS: Counsel for the State of Mississippi objects to the
troduction of this report made by this witness with the certificate
tached and the charts, on the ground that it is simply the opinion
the witness heretofore given, the witness himself being now on the
and, the author of this report; and because it is hearsay; and be-
use this witness had no authority to speak for the State of Missis-
ppi; and because it is irrelevant and incompetent.

Q. Will you please look at the next to the last line on page 5 of
our report and state whether the punctuation consisting of a comma
oming after the word islands, is the correct punctuation or whether
ere should be a semi-colon there?
A. The question as I understand it, is as to a comma after Petite
ass islands?
Q. Yes.
A. In this original it has a comma after Petite Pass islands?
Q. Yes?
A. Between islands and Saint Joseph?
Q. Should there be a comma or a semi-colon there?
A. It is a comma here. Is that the question you wish to ask me?
Q. No. When you prepared that report did you intend to put a
mma or a semi-colon there?
A. You must remember that was three years ago; I can hardly
back and say what my intention then was.
Q. It is a little obscure as it stands there as to which island or
ands in the lower part of that paragraph it is intended to refer
?

A. I don't see the obscurity myself but if you want my interpretation of the sentence, it is that it means that there are four of these islands; namely, those named immediately afterwards, Grassy, Grand Round and Petite Pass islands; now that covers that. Then comes another phrase, Saint Joseph's island east of Point Clear Mississippi being considered as not one of this group. It is a mere question of judgment in regard to punctuating, some people might put a semi-colon there, but according to the report I put a comma there.

Q. The meaning of that is, that these four islands are included in Louisiana——

A. No; the meaning——

Q. The fifth, Saint Joseph's island is not included?

A. The meaning is, that these four islands are included under the term Malheureux islands.

Mr. WILLIAMS: Counsel for the State of Mississippi objects to any explanation on the part of this witness for the reason that the record stands for itself.

510 By Mr. DYMOND:

Q. Considering the experience that you have had in boundary matters, with your knowledge and information, as an expert, what prompted you to suggest that the proper boundary line between Louisiana and Mississippi was the deep water channel running out of the mouth of Pearl river north of Half Moon island eastward through Mississippi sound to the deep water channel separating Cat island from Isle à Pitre?

A. Well, Mr. Dymond, I think I ought to say, in the first place that I don't think I said just that, I don't think I said it was the proper boundary because it is not my business to determine what is the boundary. But I think I said that I thought it would probably be found to be the proper boundary.

Q. I will now quote from your report. "From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, that is, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico." Is that line thus named by you, the deep water channel running from the mouth of Pearl river north of Half Moon island eastward through Mississippi sound to the channel between Cat island and Isle à Pitre?

Mr. FLOWERS: We object to this question because it simply calls for the opinion of the witness on a matter about which he has not qualified as an expert to testify.

A. It is the deep water sailing line; it is called that; that is, the channel ordinarily used and navigated.

Q. What prompted you to suggest that that would be the probable boundary line between the two States?

Mr. FLOWERS: Counsel for the State of Mississippi make the same objection.

A. I concluded, as noted in my report heretofore introduced in evidence, that the islands called Malheureux probably were part of Louisiana; it naturally followed that the boundary line must run between those islands and Point Clear, assuming that premise. I also noted in my report that I concluded that Cat island was probably a part of Mississippi; that the boundary line, therefore, passed to the westward of that according to the generally understood principles covering water boundaries between neighboring sovereignties the line passing through such water area ought to follow mid channel and it was on that supposition that the hypothetical line laid down by me was constructed.

Q. Has the rule which you have just enunciated in regard to the deep water channel between sovereign States been followed in the different boundary cases where that question has come up or between governments where the question has come up?

Mr. FLOWERS: Counsel for the State of Mississippi make the same objection as heretofore noted.

A. In reply I would say, that so far as I know, it is the universally applied rule of interpretation. The question has arisen in a number of international disputes.

Q. Has the rule been held to be what you have just enunciated?

A. That is my understanding of it.

511 Mr. FLOWERS: Counsel for the State of Mississippi make the same objection to the question and answer.

Q. Did any question of this rule come up in the connection with the oyster boundary case in Chesapeake bay?

A. Not affecting the main point of the controversy. There was a small portion in Pocomoke sound and river that was based on that rule, but most of the boundary line traversed the sounds, cut across them, so it didn't come in there.

Q. Where the rule would apply in that portion of Pocomoke sound was it applied in establishing the boundary as to that portion?

A. It is my recollection that it was.

Mr. FLOWERS: It is understood that the objection made by counsel for the State of Mississippi, heretofore, shall apply to all similar questions and answers, as to this witness's experience as to the application of deep water channel rule which he says obtains in controversies of this kind.

Q. As a member of the Coast and Geodetic Survey, are you familiar with the general topography of the section of the country in dispute between Louisiana and Mississippi in this case, as based upon the data and records of the Coast and Geodetic Survey?

A. My information is derived altogether from the maps and charts of the Coast and Geodetic Survey.

Q. Have you any knowledge of the existence of any other deep water channel extending from mouth of Pearl river to the gulf of Mexico, than the one which you have indicated on the blue print accompanying your report marked Document No. 11?

A. It would depend a good deal, in answering that question, on just what is meant. Of course one can draw different lines here, it would be possible to draw other lines which might be called deep water channels varying in some respects from the one I drew; the one I drew is what is called the deep water sailing line.

Q. Would there be any material variance in that channel line between the mouth of Pearl river and the channel between Cat island and Isle à Pitre?

A. There would not be any material variation assuming as I have in all my writing on the subject, that the Malheureux islands are part of Louisiana. Of course if that were open to controversy you might draw a line further south.

Q. In all of your investigations and on all of the maps which you have ever seen of this section of the country now in dispute, between Louisiana and Mississippi, have you ever seen any map that gave to Mississippi that section of the country south of the shore line extending from Petite pass or Malheureux point to Isle à Pitre?

A. No sir.

Q. To what State was this section of the country shown to belong by the various maps which you have examined?

A. Some of them did not give any indication but where there was definite indication they usually showed it as part of Louisiana.

Q. Concerning what portion of the territory, if any, has there been any uncertainty or variance in the maps which you have examined?

512 A. I think that is pretty fully explained in my report, that the main uncertainties have been in regard to the jurisdiction over Cat island and Malheureux islands.

Q. What islands represent the Malheureux islands?

A. According to my understanding, Grand, Grassy, Round and Petite Pass islands.

Q. Is Saint Joseph island included in that group?

A. Not to my understanding; of course it may be interpreted to be, but I never understood it so.

Q. Is Saint Joseph island north of that deep water channel, deep water sailing line?

A. Yes, sir; but it has disappeared from our recent maps; it has been washed away.

Q. Are these islands which you have described as being the Malheureux islands, south of that deep water sailing line?

A. Yes sir.

Q. Have you ever seen in your investigations of the various ma

is section of the country, any map which gave Isle à Pitre to
issippi?
Not to my recollection.
To what State was Isle à Pitre given by the various maps
ch you have examined?
To Louisiana, so far as shown at all; there are some general
s that do not represent the jurisdiction at all.
Do you know of any deep water channel extending south
ugh Nine Mile bayou to a distance of 18 miles from the shore
of the State of Mississippi and thence extending in an easterly
ection?
A. I know of no deep water channel in the whole area included
that section.

Mr. FLOWERS: Counsel for the State of Mississippi object to all
e testimony of this witness as to what the several maps he has ex-
mined show, because the maps speak for themselves.
At this stage of the proceedings, the hearing was adjourned by
e commissioner for recess, until 2:30 p. m. the hearing to be re-
med at the same place and date at 2:30 p. m.

Resumption of Proceedings.

2:30 P. M.

Pursuant to adjournment for recess the hearing was resumed at
he hour of 2:30 p. m. at the same place and date.
The direct examination of Mr. W. C. Hodgkins, continued as fol-
lows:—

By Mr. DYMOND:

Q. Will you please look at this map marked map No. 17 and state whether the deep water sailing channel between the points C-C-C is the same channel that, in its prolongation, would reach the Rigolets?

A. Yes sir.

513 Q. Will you please look at this map marked Exhibit E, and state if the red line extending eastwardly from the mouth of the Rigolets and joining the red line extending out of the mouth of Pearl river, is the deep water channel leading from the Rigolets to the channel between Isle à Pitre and Cat island?

A. When you say deep water channel, I suppose you mean——

A. Deep water sailing channel.

Q. That would be the usual route that a vessel would pursue, I should think.

Q. Is there any other deep water sailing channel, that you know of in this immediate locality coming out of the Rigolets?

A. It depends somewhat on just what you mean by that question. Do you mean the very deepest channel there is in that region, or any practicable channel?

Q. Any practicable channel?

A. Understand, of course, that all that country is very much the same; there is no very marked difference except in some particular spots, and vessels in order to navigate that region at all, must necessarily be of light draft, therefore there are alternative channels they might take, although they cannot be called the usual sailing channels.

Q. Are you prepared to say what the maximum draft of a vessel could be to navigate from the mouth of the Rigolets out through the pass between Cat island and Isle à Pitre, in a general way?

A. I should not want to fix an absolute limit, but I should say it would be imprudent to navigate a vessel in that channel drawing more than six or seven feet of water.

Q. Would there be any other channel other than that indicated on this map Exhibit E, where a vessel drawing six or seven feet of water, could navigate, between the mouth of the Rigolets and the pass separating Isle à Pitre from Cat island?

A. Oh, yes, it is quite possible for a vessel to go in other places.

Q. Will you please designate any sailing line, other than the one that you see indicated by the red ink line?

A. Well, you mean, to show any other designated line, or show any other possible line. There is no other line designated.

Q. I mean, coming out of the Rigolets and running eastwardly to the pass between Cat island and the Isle à Pitre?

A. Well, it would be quite practicable, of course, for a vessel to go down between Grant island and Petite Pass island, that is, a vessel of light draft.

Q. Taking the maximum draft that would be permitted on the line designated by red ink on this map E, is there any other well defined channel, where a vessel of equal draft could follow?

A. I don't know that I could say there is a well defined channel, but there — a considerable expanse of water where a vessel, according to this map, of course, where a vessel drawing seven feet of water might pass. The whole area is very much of the same depth except in certain places where deeper holes have been scoured out.

Q. Is this line which you see before you, designated in red ink, the line which you have designated as the deep water channel on the blue print which accompanied your report made to Mr. Tittman and concerning which you have testified today?

A. Without comparison I could not say it was identical; it seems to bear a close resemblance to it.

Q. Will you please compare the two.

A. Yes sir. (Witness compares the documents referred to.)

Q. Have you now made a comparison of the channel shown on your blue print being part of Document No. 11, with the channel shown in red ink on map Exhibit E?

A. That is, with the boundary line, you mean?

514 Q. Yes.

A. I made a comparison with a number of selected points

Q. How did you find them to compare, in a general way?

A. In a general way they coincided, not strictly however, there were slight discrepancies that might be expected being drawn by different people with different ideas in view.

Q. Examine these blue prints which are attached to your report marked Document No. 11, and state whether you projected any lines on the original drawing of which this is a blue print and the purposes for which you projected those lines?

A. I suppose you refer to these lines that run approximately paral-el*l* to the shore, you want the explanation of them. I drew certain sets of lines representing approximately, lines paral-el*l* to the shore line under various hypotheses as to what the shore line might be.

By Judge GUION:

Q. What does the line marked nine nautical miles, from Isle à Pitre what does it indicate?

A. That is a portion of a line drawn paral-el*l* to the general coast line of the marsh land lying south of Mississippi sound and including Isle à Pitre.

Q. Drawn from what part of Isle à Pitre?

A. From any part, from all parts of it, what we call a paral-el*l* curve.

Q. Drawn from the eastern or northern shore?

A. The eastern extremity and northern shore would all come in there. If I may be pardoned for injecting a definition, I may say that when in mathematical parlance, we undertake to draw a paral-el*l* to a curved line, and by a curved line I mean any kind of a line, for any line is a curve, technically speaking, the paral-el*l* is the evolute of a circle which is rolled along that curve, that is to say, if you describe circles of a given radius from a number of consecutive points at any desired intervals along a shore, a line which will circumscribe the outer edges of all those circles will be the evolute of the original line and such line would be paral-el*l* to the original line. And that line on the map is a small portion of such a paral-el*l* line.

Q. What do the words nine statute miles next to the line marked nine nautical miles from Isle à Pitre, mean?

A. They mean that a line was similarly drawn with the radius of nine statute miles instead of nine nautical miles.

Q. From the same points?

A. Yes sir.

Q. What do the words nine nautical miles from Grand pass etc. mean?

A. They mean that a similar line was drawn from a general coast line leaving on Isle à Pitre passing down the western shore of Grand pass and skirting the islands which lie below it.

Q. What do the words nine statute miles mean?

Q. Was Mr. J. B. Baylor an assistant of the United States Coas and Geodetic Survey on that commission?

A. Yes sir. He represented the State of Virginia his native Stat in that matter.

Q. Did you represent any State in that instance?

A. No sir; the representative of Tennessee was Professor Andre H. Buchanan of Cumberland university.

Q. What official connection did you have with that body tha was to determine and re-establish this old boundary line?

A. On the organization, I suppose on account of my being fro a neutral State, I was chosen chairman of the commission.

Q. Did this commission re-establish this old boundary line b tween Tennessee and Virginia?

A. Yes sir.

Q. Was that reported to the Supreme Court of the United States

A. Yes sir.

Q. Was that report of yours approved by that court?

A. Yes sir.

Q. What was the next instance in which you were called upo immediately subsequent to that or about the same time?

A. I have already mentioned the Mason and Dixon matte

503 Q. In what way did you become connected with that matte

A. Well I don't know anything about the antecedent ci cumstances, I was at the time on duty in the West Indies in co mand of one of our survey ships and I was notified that my servic were needed in the United States, and on my return from the We Indies to the United States I was detached from the command the ship and put in charge of this work.

Q. By whom?

A. By the Superintendent of the Coast and Geodetic Survey w was *ex-officio* chairman of the commission of the two States, the was a commission that represented each State and he was the cha man of the board to conduct the survey and I was designated as t engineer in charge and conducted the actual work.

Q. How did this particular controversy in regard to the Mas and Dixon line arise?

A. I don't think it is correct to say there was a controversy; was simply an uncertainty as to the location of the boundary li

Q. What was the character of uncertainty to which you refer?

A. It was merely that in certain places there were stretches wh the line was not properly marked, the old marks either had be destroyed or had not existed and were insufficient and people co not tell on which side of the line they lived.

Q. What had occasioned this request for the establishment of t line?

A. It was done by agreement between the States and by author of the respective legislatures. Each State appropriated a sum money for paying each State's share of the expenses of the surv

Q. Were you designated by the Chief or Superintendent of

United States Coast and Geodetic Survey to do the work in connection with the establishment of this line?

A. I was designated by the commission; but my selection was made by the superintendent undoubtedly.

Q. As I understand it then, there was a commission composed of a representative of the State of Pennsylvania and also a representative of the State of Maryland, and those two with the Chief of the United States Coast and Geodetic Survey or the superintendent, constituted the board to determine this boundary?

A. Yes sir.

Q. And the actual performance of the work was delegated to you by the Superintendent of the United States Coast and Geodetic Survey who was chairman of this commission?

A. Yes sir.

Q. Did you establish those lines?

A. Yes sir.

Q. Did you submit your report to the commission?

A. I submitted the preliminary report; the work has just been completed and the final report has not yet been submitted.

Q. There has been no final action taken on this?

A. No sir; but there is no dispute on it, so really in a sense no final action is necessary. It is merely a matter like building up an old fence that had tumbled down in places.

Q. What was the next instance wherein you had occasion to consider boundary matters?

A. The most recent one was in connection with the Alaskan boundary arbitration, under the treaty concluded in February 1903 between the government of Great Britain and the United States. There was a commission appointed by the President of the United States to present the case of the United States, and at the request of the Secretary of State I was designated as cartographer of that commission by the Secretary of the Treasury, who then had con-

504 trol of our bureau.

Q. Did you, in connection with this boundary dispute between the United States and Great Britain, have occasion to study this subject matter or the subject matter there involved?

A. Of the Alaskan boundary?

Q. Yes.

A. Yes sir, I did.

Q. Did you have charge of the charts showing the contentions of the United States Government in this matter?

A. Yes sir; I had personal charge of all the maps that were carried to London in our case. I also compiled for the case and for the counter case of the United States, atlases showing the maps on which the case of the United States chiefly rested, so far as it rested on maps.

Q. Was the decision of that tribunal in favor of the contention of the United States?

A. In a general way it was; not in all points, but in the main contention it was.

Q. Were these maps and charts prepared by you, used in arriving at that conclusion?

A. They were used in their deliberations, in the deliberations of the commission, but of course I have no means of saying how far they contributed to the result.

Q. Were you in attendance continuously at the discussions of this tribunal?

A. Yes sir, unless I was needed elsewhere.

Q. Did you have any connection with any boundary dispute between Missouri and any other State?

A. Missouri and Iowa, that case I mentioned.

Q. What connection was that; when was that?

A. That was in 1895.

Q. Well, now, what was the next instance after the Alaskan boundary matter wherein you were called upon to do any work in connection with the establishment of boundaries between States?

A. I have not, since then, had anything—I suppose it would be rather unfair to your case to leave that out. I don't want to burden you unnecessarily but I was just thinking that I had skipped over this matter, the report I made at the request of Mr. McLain one of your Congressman.

Q. When you say one of your Congressmen——

A. I was looking at Mr. Flowers.

Q. Who is Mr. McLain?

A. Perhaps you will pardon me if I go back and state that in addition to those cases I have mentioned, that in 1901 I think it was, I was brought into the case in a way, into this case which is now before the court, at the request of F. A. McLain one of the Congressmen from Mississippi who asked our office to furnish him with any information which could be obtained in Washington relative to the location of the boundary line between the States of Louisiana and Mississippi.

Q. Will you please look at this document which is, for the purposes of identification to be marked Document No. 9 and state whether it is composed of certified copies of the correspondence between the United States Coast and Geodetic Survey and Mr. F. A. McLain member of Congress from the State of Mississippi on the subject concerning which you have just been testifying?

A. These are apparently certified copies of the original papers.

505 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer and produce for the purpose of filing in evidence, and offers in evidence the said Document No. 9, being certified copies of a letter of Mr. F. A. McLain to Hon. O. H. Tittman dated 27th January 1901; of letter of O. H. Tittman to Hon. F. A. McLain dated February 1st 1901, and of letter from O. H. Tittman to Hon. F. A. McLain dated

bruary 8th 1901, which the commissioner is requested to mark cument No. 9 and a copy thereof is tendered to the State of Mis-ippi.

OBJECTION.—Mr. WILLIAMS: We object to copies of these letters ng offered in evidence and note here an exception.

Mr. WILLIAMS: We ask, at this point, that an exception be noted to the particular surveys in which the witness has been engaged olving boundary disputes between States, and especially as to the ults of his work.

By Judge GUION:

Q. I notice that in the letter of date 27th January 1901, signed by A. McLain and addressed to Hon. O. H. Tittman, Superintendent the Coast and Geodetic Survey reference is made to a letter of . I. Heidenheim of Biloxi, Mississippi. Will you please examine document which is now shown to you and which will be marked cument No. 10 and state whether you can testify to the signature t is signed there. It is not certified.

A. The signature is all right; I can testify to that.

Q. Whose signature is that?

A. F. W. Perkins, otherwise Frank Walley Perkins.

Q. Who is he?

A. He is chief assistant to the Superintendent of the Coast and odetic Survey and in the superintendent's absence acts for him.

Q. You recognize his signature?

A. I do.

Q. As being the signature to this letter marked Document No. 10?

A. Yes sir. His signature there is authentic.

Judge GUION: I offer this letter in evidence in connection with testimony of the witness and which is marked Document No. 10. r the purpose of complying with the agreement entered into be-een the States of Louisiana and Mississippi counsel for the State Louisiana now reads the letter so that it may be embodied in the by of the evidence which will be delivered to the State of Missis-pi.

"DEPARTMENT OF COMMERCE AND LABOR,
COAST AND GEODETIC SURVEY,
WASHINGTON.

on. Walter Guion, attorney general, State of Louisiana, New Orleans, La.

SIR: Your telegram April 11th asking that two certified copies of the letter of I. Heidenheim referred to in letter of McLain of 27th January 1901, be sent you is received.

In reply I beg to state that the letter referred to is not on the files this office having been returned to Mr. McLain at his request.

Respectfully,

F. W. PERKINS,
Acting Superintendent."

By Mr. DYMOND:

Q. Do you know what became of that letter of I. Heidenheim?

A. I think that is fully covered by the letter that has been referred to just now.

Q. Do you personally know anything about it?

A. No sir.

Q. In these various instances wherein you have become associated in one way or another in boundary matters, have you had occasion to study the issues which were presented in each case?

A. To the extent that was necessary for the performance of my duties.

Q. From the experience that you have had, do you consider that you are a competent authority or an expert on the subject of boundary controversies?

A. Well, I should not want to assume too much in that respect; but I think I might fairly be called an expert in such matters as the term is generally understood.

Q. Have you ever had occasion to study or to consider international law in any of its phases or aspects in connection with the controversies as to boundary disputes pending between States which have come under your observation and concerning which you have had to take action?

A. Well, only so far as they came in direct connection with my duties and more especially in connection, naturally, with the Alaskan boundary matter, that being purely an international matter.

Q. These States you have referred to concerning which you were called upon to assist in settling boundary matters, were they sovereign States of the United States?

A. They were.

Q. Were you possessed of the information and study which you have just mentioned, at the time that the request came from Mr. McLain member of Congress from Mississippi to the United States Coast and Geodetic Survey, for a report on the boundary between the States of Louisiana and Mississippi?

A. Well, of course, I have gotten a good deal of information out of our Alaskan arbitration and my attendance in London brought a good many points to my attention, in a general way I may say I was possessed of information but perhaps not quite so fully.

Mr. WILLIAMS: Objection is repeated to all this testimony as to the witness' knowledge of international law and as to his being an expert on boundary questions.

Q. Mr. Hodgkins, when this request came from Mr. McLain, to whom was it directed?

A. To Mr. Tittman.

Q. Who is he?

507 A. The Superintendent of the Coast and Geodetic Survey.

Q. What became of the request so far as action thereon was concerned?

A. The action taken was to request me, or direct me perhaps would be the better phrase, to procure the information requested by Mr. McLain.

Q. Do you know why you were requested to perform this official duty?

A. Only by conjecture. I am, like all other officers of the survey, subject to the superintendent's orders and I am supposed to fulfill the duty assigned me.

Q. Have you previous to that been connected in one way or another with similar controversies between the States of the Union?

A. With those I have already stated in my testimony.

Q. Did you make a study of the facts and issues in connection with the request of Mr. McLain?

A. I think I could hardly say that. I made a study of the facts on record in Washington. What Mr. McLain asked for, as I understand it, was not the opinion of the Coast Survey in the matter, but the information that was in Washington. The Coast Survey, of course, as you will understand is not authorized to establish boundaries, but we try to furnish any information that is called for, as far as we can.

Mr. WILLIAMS: We want to except to all the testimony relative to Mr. McLain's letter, as to what it contains and the acts of the witness and from whom he received directions in that matter. It is understood this is a general exception to all testimony on that line.

Q. Did you make the investigation rendered necessary by the request of Mr. McLain?

A. I did.

Q. Did you make a report as the result of your investigation?

A. Yes sir.

Q. Was that report transmitted to Mr. McLain member of Congress from the State of Mississippi?

A. I think it is so stated in one of the letters you have just filed.

Q. I mean a copy of the original report?

A. I couldn't say of my own knowledge whether anything was sent to Mr. McLain or not, but I take it that the statement in the letter is correct.

Q. What work did you do prior to your making this report to the Superintendent of your Coast and Geodetic Survey?

A. I don't know that I fully understand the question. Do you mean in relation to that matter?

Q. Yes.

A. Well, I state in the report that I examined all the maps that I could conveniently get hold of in the library of the Coast Survey and the Library of Congress, and looked over the published records of the organic acts of the two States and I consulted the records of

520 A. Fixed theoretically but not practically and we fixed it practically.

Q. Did you say the legislatures of the two States declined to accept it?

A. No; they did not decline to accept it, they simply did not appropriate money to put up permanent marks.

Q. But the line you marked there is one that still exists between those two States across that territory?

A. Yes sir.

Q. And you say you helped to mark Mason and Dixon's line?

A. Yes sir; I have just finished marking that.

Q. Is that satisfactory to both States?

A. I have not heard any complaint.

Q. You say you are also familiar with international law?

A. I beg your pardon, I don't think I stated that. I think you are mistaken.

Q. Didn't you say you made a special study of international law?

A. No sir; at least I don't remember of doing so. I said I had occasion to come in contact, I might say, with international law.

Q. Did I understand you to say that you have frequently had occasion to apply the deep water channel rule?

A. No, I don't think you understood me to say that.

Q. Didn't you say in your examination in chief that this rule was applied in the settlement of the dispute between Maryland and Virginia through Chesapeake bay?

A. To a certain small portion I understand the rule was applied, but, as I said before, I had nothing to do with determining that boundary; my function was only to help lay it down.

Q. Didn't you give it as your opinion in your examination in chief that in going to the gulf of Mexico from the mouth of Pearl river, you would follow the deep channel line in this instance?

A. I indicated that that seemed the most probable.

Q. Didn't you give it as your opinion that this is a line that international law would fix as a correct line?

A. I don't remember that I stated that.

Q. Can you state what that rule is that you applied in this case?

A. I think I can state the substance of it. Of course I do not profess to be an authority on international law. I am not attempting to qualify as an expert on that; but my understanding of the rule of international law in regard to the deep water channel, is, that where the boundary between two conterminous States is in or over water, the line should follow the line of the deepest channel where the deepest channel is not coincident with the middle. Under the ordinary rule it would be mid-channel, that is, mid-way between opposite shores, but where there is a channel that lies to one side of the middle line, that deep water channel would be followed. And if there was more than one channel, the deepest one or the one that is usually used for purposes of navigation, practically the deepest

channel would be the one to be adopted. That is the substance of my understanding of the rule.

Q. To what bodies of water separating States would you apply that rule?

A. I could—of course if you ask me for particular instances——

Q. I don't ask for particular instances; I want to know the general rule on the subject.

A. I think I can remember two or three instances in which it has been applied.

Q. I don't ask for instances?

521 A. I don't quite understand the purport of your question.

Q. I wish to know to what bodies or to what kind of bodies of water separating States, is this deep channel rule you speak of applied?

A. I should say it would be applied primarily of course in the case of rivers which are the most common water boundaries, estuaries of rivers, or sounds or arms of the sea.

Q. It does not apply, as a rule, particularly to bodies of water that have regular currents?

A. I do not know that the question of current would enter materially, it does not seem so to me.

Q. In this particular case, do you say that the line marked on your sketch No. 3, attached to your letter to Mr. F. A. McLain——

A. I beg pardon, that is my report to O. H. Tittmann

Q. Well, your report to Mr. Tittmann marked Document No. 11, do you undertake to say that the line you have marked as indicating the deep water channel from the mouth of Pearl river eastwardly, and then south to the gulf of Mexico, that that is the deepest channel across that territory?

A. Not in all places.

Q. Do you undertake to say that it is the only deep channel?

A. No sir.

Q. Do you undertake to say that that is the only route that ships or boats—do you undertake to say that boat that can travel this route can travel no other routes between those two points?

A. No sir; I have already stated in my examination in chief, that vessels, small crafts, suitable to navigate those waters, could go by other routes.

Q. Have you ever been in this territory yourself?

A. No sir.

Q. You get this information as to the location of this deep water channel from maps and charts?

A. From the maps of the Coast and Geodetic Survey?

Q. I will ask you what the water immediately south of the Mississippi main land is called?

A. I understand it is called Mississippi sound.

Q. I will ask you how far it is from the most eastern mouth of Pearl river to the waters of the gulf of Mexico?

A. Allow me to ask you what you mean by the gulf of Mexico;

do you want me to put my construction on the gulf of Mexico, or your construction?

Q. Your construction?

A. Of course in all of these things, you understand, there is a little room for latitude in the interpretation. I assume that you mean the distance according to the sailing route that is laid down on the maps?

Q. I will ask you to give that first?

A. You want that in statute or nautical miles?

Q. Both.

A. From the beacon at the mouth of Pearl river to the line joining the South spit of Cat island and the southeastern point of Isle à Pitre, on this map No. 17, the distance is a little scant of 26 statute miles as scaled by me from the map; in nautical miles the same distance is about 22½ miles.

Q. In making that measurement what point did you take as the gulf of Mexico, the waters of the gulf of Mexico?

A. I stated in my answer I took a line joining the South spit of Cat island and the southeastern point of Isle à Pitre.

522 Q. How far is it from the point where the southern boundary line of the State of Mississippi, going westward, first intersects this deep water channel lies, to the most eastern mouth of Pearl river?

A. You will have to indicate for me on the map just what line you mean, because I cannot undertake to say what is the southern boundary of Mississippi.

Q. I mean the line drawn on Exhibit E as the southern boundary of the State of Mississippi, designated in red ink?

A. I understand you want the distance from the point of intersection of those two red lines on Exhibit E to the most eastern mouth of Pearl river. I suppose you mean to follow this red line all the way down here?

Q. That is the way the question is stated.

A. The distance along the line between the points indicated is just short of 33 statute miles or almost exactly 28½ nautical miles, as scaled by me from this map marked Exhibit E.

Q. Are you able to locate on map No. 7 the point in the gulf of Mexico from which you measured any of these distances?

A. I can do it by construction.

Q. Well, for other purposes I wish you would please locate on map No. 7, that point in the gulf of Mexico or in the waters there?

A. I have located the point by measurement from the South spit of Cat island and from the west end of Ship island.

Q. Please indicate it on the map with ink.

A. How would you have it indicated?

Q. Just however you wish.

A. (Witness marks a circle around the point with a letter A just to the right in quotations.)

Q. I will ask you to please measure from the point you have just

ocated on map No. 7, to what you consider the physical coast line on the western side of Lake Eugenie?

A. I understand you to mean the point at which this broken red line intersects the shore line?

Q. Yes?

A. You wish the distance measured in a straight line?

Q. Yes?

A. From the point indicated in the gulf of Mexico marked A on map No. 7, in a straight line to the point of marsh on the west side of Lake Eugenie nearly south of the west end of the broken red line marked 18 statute miles, the distance scaled from this map, is 30½ statute miles or 26½ nautical miles nearly.

Q. I will ask you to please measure on the same map, the distance between the most eastern mouth of Pearl river to the western point from which those measurements were made?

A. This being a smaller scale map I shall have to measure at the point of marsh at the mouth of Pearl river, I think, in order to get any result, instead of measuring from a point in the water. From the southern point of the marsh on the west side of the eastern mouth of Pearl river, in a straight line to the point on the western shore of Lake Eugenie afore-mentioned, the distance in a straight line on this map is 18½ statute miles or 16 nautical miles nearly.

Q. I will ask you please to measure from the southeastern projection north of Point Chico to the point in the waters of the Gulf designated by you on this map No. 7 as A in quotations?

A. That distance as scaled from this map is 31 statute miles or 26¾ nautical miles nearly.

Q. I will ask you to state whether you have measured in a straight line between those two points?

A. Those last distances were taken in a straight line.

523 Q. If I understand you correctly, you mean that in all these measurements up to this time you have measured in a straight line between the points except——

A. Not in the measurements from the eastern mouth of Pearl river.

Q. Except that from the most eastern mouth of Pearl river along the deep water channel to the point marked A in quotations?

A. Yes sir.

Q. Well——

A. I will put it another way?

Q. Just explain——

Q. The distance from the point A in quotations, to the western shore of Lake Eugenie and from that point to the mouth of Pearl river and the distance from the point A in quotations to the point northwest of Point Chico, I measured in straight lines.

Q. Is that all you want to say about how you made those measurements?

A. I think I have covered it.

Q. I will ask you please to measure from this last point established

north of Point Chico, to the point from which you measured on the western side of Lake Eugenie?

A. The distance between the point noted, measured in a straight line on this map, is 14½ statute miles or 12½ nautical miles nearly.

Q. Now, state, please, whether that is a straight line?

A. I stated in my answer that it is a straight line.

At this stage of the proceedings the hearing was adjourned by the commissioner until April 13th 1904 to be resumed at the same place at the hour of 10.30 a. m.

Resumption of Proceedings.

APRIL 13TH, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed by the commissioner at the same place.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y general State of Louisiana.
Mess. John Dymond, Jr. and F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. William Williams, att'y general of the State of Mississippi.
J. N. Flowers, Esq., ass't att'y gen'l for the State of Mississippi.

Examination of W. C. HODGKINS resumed.

By Mr. FLOWERS:

Q. Mr. Hodgkins, the testimony you have given here is simply the result of your investigations made at the instance of Mr. McLain of Mississippi; is that true?

A. Precisely. I beg pardon, one minute, you refer to that report of course?

Q. Yes?

A. Yes sir.

Q. And the result of your investigations at the instance of
524 Mr. McLain is embodied in this report to the Superintendent of the Coast and Geodetic Survey?

A. Yes sir.

Q. You have never been in this territory?

A. I have not.

Q. You got your information from the maps, charts and books that were available at that time, and this report of yours is made up solely from these maps, books and charts which you examined?

A. That is a correct statement in reference to the contents of that report.

Q. You have attached to this report a list of the maps and charts examined by you, have you not?

A. A list of certain ones of those which I have examined.

Q. Does this list embrace all such maps and charts examined by you in making up this report?

A. It embraces all which show the Malheureux islands with distinctness.

Q. What is the oldest map or chart of this territory you found in this investigation?

A. I am unable to answer that question further than by referring to the appended list. I did not preserve notes of all of the maps which I inspected.

Q. I show you here the list appended to your report and will ask you please to answer from that list what is the oldest map or chart you discovered in that investigation?

A. The oldest map, mentioned in the list attached to my report or mentioned in it, was published in the year 1806 by B. Lafon.

Q. Please state the next oldest one you discovered?

A. The next oldest map cited is one by William Darby, New Orleans, dated 1816.

Q. Mr. Hodgkins you exhausted the sources of information?

A. I should hardly like to say that.

Q. One moment. As far as you were able to do it at that time?

A. I should hardly like to say that I exhausted the sources of information, but I took note of all which I could conveniently get access to in Washington.

Q. What opportunities did you have to get at the original sources of information on this subject?

A. As stated in my report I had the maps and atlases contained in the libraries of the Coast and Geodetic Survey and of Congress; I also was allowed to see the plat books at the General Land Office, procured some further information from the Law Library of Congress.

Q. You did this work in Washington?

A. Yes sir.

Q. And you had access to the Congressional Library?

A. Yes sir.

Q. And to the records in the United States Land Office?

A. Yes sir.

Q. Please examine sketch No. 2, blue print, appended by you to the said report, and explain why the lines designated as 18 statute miles and 18 nautical miles, respectively, from the Mississippi coast——

A. I don't understand you.

Q. —were drawn on this sketch?

A. This sketch was drawn for the information of the Honorable Mr. McLain and the lines mentioned were drawn thereon for his information and used as he saw fit.

Q. Mr. Hodgkins, suppose the act of Congress creating the State of Mississippi had been turned over to you and you had been di-

rected to mark off the line constituting the southern boundary
525 of the State of Mississippi, where on this sketch No. 2 prepared by you, approximately would you have located that line?

A. It seems to me that the question ought to be somewhat qualified by giving me some further conditions, that is to say, whether I am to take into consideration the existence of the State of Louisiana or consider there is no State of Louisiana in existence.

By Mr. WILLIAMS:

Q. Well, the purpose of that question is this, that you may distinctly understand what we want to know, if you had been furnished the act creating the State of Mississippi and directed to find its boundary, what would you indicate on that sketch as the southern boundary of the State of Mississippi?

A. That is, you want my own personal opinion?

Q. Yes, where you would put it, I want to know?

A. According to my understanding, the southern boundary of the State of Mississippi extends from one island to another, on this sketch No. 2, from the southern point of Ship island to the southern point of Cat island and thence along the line joining the opposite headland of Isle à Pitre to the mid-channel, thence up the mid channel to the eastern mouth of Pearl river; that would be my own interpretation of the organic act.

Q. That would be your interpretation of the statute?

A. Yes, providing for the organization of the State of Mississippi.

Q. Is there anything said in the act of Congress creating the State of Mississippi, about the deep water channel?

A. Not to my knowledge.

By Mr. FLOWERS:

Q. When you say that you would in this marking off the southern boundary line of the State of Mississippi, under the said act of Congress, follow the deep water channel after the line running westwardly strikes that channel do you mean to say that you would do this if you were simply attempting to describe the line as defined by that act? Or do you mean that that is the way you would reconcile the boundary lines of the two States construing the two acts together?

A. The latter supposition would express my idea better. As you asked my personal opinion as to where the boundary line would run I feel bound to take into account my personal knowledge of the pre-existence of the State of Louisiana.

Q. Please state whether, as an expert civil engineer, with your knowledge of the Mississippi coast, there would be any difficulty in marking off the southern boundary line of the State of Mississippi with that act standing alone?

A. I understand you now to mean to ignore the existence of Louisiana?

Q. Yes?
A. I should say that in such a case it would be a question somewhat difficult of interpretation to fix exactly the southern boundary Mississippi.
Q. Wherein would the difficulty lie?
A. This is all a matter of my opinion, of course?
Q. Yes?
A. The difficulty, to my mind, would lie in the difficulty of determining just what islands should be included under this general designation of six leagues from the shore.
Q. Would there be any difficulty in determining what islands ere within six leagues of the shore?
A. The difficulty would come from the fact that it would be almost inevitable that certain islands would be bisected by such line nd that consequently a question of interpretation would arise as whether such islands should be included or excluded in the six agues limit.
Q. Is that the only difficulty which you think would be met?
A. That is the only serious difficulty I see, assuming the premise hat nothing is to be considered but the State of Mississippi itself.
Q. I will ask you if the lines marked by you on sketch No. 2 as eing 18 statute miles and 18 nautical miles respectively, from the Mississippi coast, do not approximately designate the southern oundary line of Mississippi as it would be drawn if that act stood lone?
A. In part, at least, probably so, as far as they are drawn. With his proviso, that I should not understand the boundary to extend o the distance of six leagues from the shore universally, that is to ay, where there were no islands to be included. I should not think he act conferred jurisdiction to that extent over open sea.
Q. The lines drawn by you on this sketch No. 2 are so drawn as to embrace all islands within six leagues. Let me state the question differently. Those lines, as I understand it, are so drawn by you as to embrace all islands within 18 miles of the Mississippi coast?
A. That was not the intention of drawing the line. The lines were drawn simply as lines approximately parallel and approximately at the distances stated, from the shore of Mississippi. They were not drawn for the express purpose of including islands, but merely to show how parallel lines would lie in those particular regions.
Q. Those lines drawn by you indicate the southern boundary line of the State of Mississippi in the waters south of the main land, as fixed by the act of Congress creating the State of Mississippi without any reference to the claims of Louisiana; is that true?
A. That would not be my understanding of it.
Q. I do not mean to say that that is your idea about this case——
A. No, I understand.
Q. —but I only mean to say that those lines on that sketch indi-

A. They have the same force as in the previous case, the distance of nine statute miles from the same points.

Q. What do the words nine nautical miles from the main body of marsh land, mean?

A. They mean that the distance was measured similarly as in the previous case, from what is here termed the main body of the marsh land, beginning at what I think is called Nine Mile bayou.

Q. What do the words nine statute miles which words are to be found along the line close to the words nine nautical miles from main body of marsh land, mean?

A. They mean, similarly, the lines paral-el*l*, at a distance of nine statute miles, to that same hypothetical coast line.

Q. Why did you use the words from main body of marsh land?

A. That appears on the map itself, that body of marsh is shown, substantially, as a continuous piece of territory, not much
515 broken up into islands and these are merely illustrations of what might happen; they are not intended to be exclusive in any way of any other hypothetical lines that might be drawn, but to illustrate how such lines might be drawn under various hypotheses.

Q. Will you please look at this chart which is now submitted to you as map No. 7 and state whether the lines projected on that chart, correspond and are identical with the lines projected by you on your blue print attached to your report marked sketch No. 2.

A. I presume you mean as to their being substantially the same?

Q. Yes?

A. In answer to your question I should say there is a substantial agreement throughout, with a slight discrepancy which is almost inevitable in the map maker's work.

Q. I did not examine you concerning the two lines on this map, sketch No. 2, a moment ago, because I did not notice them. Will you kindly state what the two lines mean, one of which is marked 18 nautical miles from coast of Mississippi and the other near it is marked 18 statute miles.

A. Those lines are similar to the ones previously described; they are drawn in a similar way, paral-el*l* to the outer coast of the main shore of Mississippi.

Q. What are they intended to indicate on your sketch No. 2?

A. They are intended to indicate the approximate supposed locations of lines paral-el*l* to the Mississippi coast at the distances stated.

Q. Of 18 statute and 18 nautical miles respectively?

A. Yes sir.

Q. Do the two lines marked on the chart marked map No. 7, also marked 18 nautical miles from the coast of Mississippi and 18 statute miles from the coast of Mississippi, agree with the lines projected by you on your sketch No. 2?

A. In all essential respects they do.

Q. Would it be possible, drawing a line from Malheureux point to Isle à Pitre, to the eastern extremity of Isle à Pitre, granting for

he sake of argument that that distance covers the coast or shore ine of the State of Louisiana, to get north a distance of nine miles r three leagues, and at the same time go from Mississippi following he meander of her coast a distance of 18 nautical and 18 statute niles south; would it be possible I say, to prevent an overlapping f boundaries; would there not be a conflict of boundary lines be- ween the two States?

A. I am not sure that I fully understand the purport of your uestion; but I see no necessity for a conflict. Assuming that ouisiana was established before Mississippi her boundary would aturally be definite and Mississippi's boundary would necessarily all outside of that. I am not sure that is the meaning of your ques- ion, however.

Mr. WILLIAMS: Counsel for the State of Mississippi object to all his testimony as to the witness's opinion about matters on a subject e has not qualified as an expert.

Q. Assuming for the sake of argument, that the shore line begin- ning at Malheureux point and running eastward, as far east as the astern extremity of Isle à Pitre, belongs to the State of Louisiana, do I understand you to mean that if Mississippi were to go
516 south in order to get an 18 mile stretch, that it would not overlap that territory from Malheureux point to Isle à Pitre?

A. As I said before, I cannot see——

Q. The map shows that but——

A. Granting your assumption that this is Louisiana territory, I lo not see how Mississippi could have anything to do with it.

Q. Then the line of Mississippi would go south of that line from Malheureux point to Isle à Pitre, if you would go 18 miles from the Mississippi shore?

A. Undoubtedly.

Q. What do you consider the coast line of Louisiana from Mal- heureux point going eastward?

A. There comes up that old question of what is the coast line, whether you mean the physical or political coast?

Q. I want you to define both?

A. When we speak of the physical coast of a continent or an island, anything of that sort, we mean the boundary between the solid land and the water, and when I say solid land I do not mean necessarily very solid but continuous land. That line exists for the purpose of boundary between those two formations. But when we talk about the political coast line we mean the line that is supposed to follow around the outer portions of the coast, running across bays from head land to head land, jumping across narrow inlets, and generally in circumscribing the whole territory of the State or nation.

Q. What would you give as the coast line, for the purpose of es- tablishing a boundary, starting from Malheureux point going east- ward?

A. That would depend on the circumstances of the case, I should say; whether there was a particular line specified or not.

Q. Is there a coast line defined on this map before you, marked No. 7?

A. There is, of course, a physical coast line which defines the boundary between land and water.

Q. What is that on this map?

A. I should have to trace that out if you want to get the actual limits. It is a little hard to say. As far as appears on this map, answering your question directly, the physical coast line, the edge of that coast line properly speaking, the edge of the absolutely continuous shore line, on this map, appears to run through what is called Otter bayou and Bayou La Loutre from the southern part of Lake Borgne down to Breton sound; that appears to be water communication, and as far as this map shows, that would be the edge of absolutely continuous territory.

Q. Is there a physical coast line from Malheureux point to Isle à Pitre?

A. No; I cannot say there is a continuous physical coast line.

Q. Is it a coast line from which you would establish a boundary?

A. Well,——

Q. Assuming that that territory belongs to the State of Louisiana?

A. Undoubtedly, with that assumption that would be the coast line.

Q. From what point?

A. As you stated just now, from Malheureux point to the Isle à Pitre, that is the limit you wish to cover?

Q. Yes, that is the limit of——

A. Undoubtedly, if that is a part of the State of Louisiana the coast line would follow along this line, the coast line for the purposes of jurisdiction, from Malheureux point to the north eastern extremity of Isle à Pitre would follow along the shore, crossing the coves and bayous encountered on the way.

517 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said map marked map No. 7, and tender to counsel for the State of Mississippi a copy of said map.

By Mr. ZACHARIE:

Q. In your experience in adjusting boundary lines, is there a well recognized distinction between shore and coast?

A. In certain cases.

Q. What is that distinction?

A. The shore, the term shore, as I understand it, is substantially identical with what I just called the physical coast line, that is, it is the actual boundary between land and water. The coast line may or may not be the same line, the coast line for purposes of jurisdic-

ion. The coast line for purposes of jurisdiction may depart very ar from the physical coast line of the main body of the State.

Q. What would be the coast line as distinguished from the shore ine, for instance, suppose that along, some distance from the shore utside of the three mile limit, the ordinary limit, there was a line f broken islands; what, in such a case as that would be the coast s distinguished from the shore?

A. My understanding of the rule of international law, in that natter, is that each case has to be determined on its own merits. In some cases, in the majority of cases perhaps, the coast line would e held to follow the outer edge of the outlying islands.

Q. I ask these questions——

Mr. FLOWERS: Counsel for the State of Mississippi object to the ntroduction of testimony relative to what the witness's idea may be bout international law.

Q. The question I asked you, Mr. Hodgkins, was, as a geodetic urveyor, what would you consider the difference between the shore ine and the coast line?

A. Well, I do not know that I can add much to what I said, unless I would give a particular instance; I think it depends so much n the particular circumstances of a case.

Q. Now, the boundary line of Louisiana in the act admitting it nto the Union says all islands within three leagues of the coast, the oundary line as given in the admission of the State of Mississippi ays all islands within six leagues of the shore. Now, as a geodetic urveyor, if you were called upon to run those lines, what distinction, if any would you make between the word shore and the word oast?

A. Well, now, having the particular instance, I can answer that little more plainly. Referring to this map which is marked No. 7, which shows the whole extent of Mississippi sound, the distinction etween the coast and the shore, is, I think, quite evident there, that s, it is perfectly obvious what the shore is, to my mind, that is, it is here the main land terminates and the water begins, and Mississippi is entitled to any islands not already granted, I assume, which lie within six leagues of that shore; but, the coast of 518 Mississippi, as I understand it, runs along the outer edge of that group of islands, going from one island to another, across he inlets, and I understand that jurisdiction would extend to the listance of three nautical miles from the outer shores of those islands.

Q. Apply the rule upon which you act, to the phraseology contained in the act admitting Louisiana where the word coast is used?

A. That is, you want my personal interpretation of it?

Q. If you are given certain directions in writing to draw a line, r run a line, with those instructions, one giving so many leagues rom the coast and the other so many leagues from the shore, you ave now given us what you consider the difference in Mississippi, hat is to say, six leagues from the shore would include these islands,

and if it were three leagues from the coast it would have a different meaning, it would go from the outside of the islands?

A. Shall I interpret it?

Q. Now, apply that rule to Louisiana, I say where would you run the line from there?

A. I think I have already indicated in my report that there is a possibility of different interpretations of that, but my personal opinion on the matter is that the coast line would follow, what I call the political coast, along the outer edges of the group of islands.

Mr. FLOWERS: Counsel for the State of Mississippi object to the testimony as to any opinion of the witness.

By Mr. DYMOND:

Q. Do you refer to the stretch between Malheureux point and Isle à Pitre as the coast?

A. I was referring to that as part of the political coast line.

By Mr. ZACHARIE:

Q. In your report and the list of maps that you have given, you have stated a wide variation between three different list- of maps. How do you account for that variation?

A. Well, it is somewhat difficult to account for such variations in any logical way, but mainly I think they are due to carelessness of the map makers, the map makers are not sufficiently careful what they put on the maps.

Q. Is it, or is it not a fact, that the subsequent map makers and cartographers will follow and copy errors which may exist in the originals, so that there may be a series of maps originating in an original error?

A. That is undoubtedly frequently the case.

Q. What is the original map called among cartographers?

A. We generally speak of original maps as mother maps.

Q. And those that proceed from that map, what do you call them, have they any name like family——

A. They have no special name designating them, simply maps; I could illustrate that perhaps in a very striking way by the instance about the northwest coast of America over which there has been so much dispute. In the latter part of the 18th century,
519 Captain George Vancouver of the British navy made an exploration of that coast and he made a series of maps which were, you might say practically for 100 years, the only source of information on all matters along that coast. His maps were copied by cartographer after cartographer and they were the mother maps of that region. That is about as striking an instance as I know of.

Q. Were there errors in the original maps?

A. Yes sir, there are some errors. Of course Van Couver was a wonderful man for his day, but he did not have the data to make his maps complete.

Q. And these errors were carried into the maps which were copied from his maps?

A. Yes sir, naturally.

Q. To what would you attribute the variation between the two maps published by a surveyor and cartographer within the space of two or three years, which are conflicting on a particular point; to what would you attribute that variation?

A. It is hard to say.

Q. For instance, to give you an instance. Hardee's map of Louisiana which was published about 1870 gave some of these islands to Mississippi; Hardee's map of Louisiana which was published later and a second edition of Hardee's map, produced, gave these islands to Louisiana. Now, to what would you attribute this variation and difference on the part of this same ca-tographer?

A. I say in that case it was sheer carelessness and neglect.

Q. Could it not be attributed to the fact that he got, in that interval, more definite information and more correct information?

A. That might be so, but it would be purely conjectural I would say.

Cross-examination.

By Mr. FLOWERS:

Q. You say you have had experience in several cases of disputed boundary questions between States or sovereignties?

A. Yes sir.

Q. You say you have had experience in cases that involved the settlement of water boundaries, did I understand you to say, between States?

A. I have had experience in regard to the settlement of water-boundaries between Maryland and Virginia.

Q. And that was an oyster dispute too?

A. Well, the oyster matter entered into it naturally; it was not really an oyster dispute.

Q. And you say in that case your decision of the matter was accepted by the people of the two States?

A. I did not make any decision in that case. I had no decision to make.

Q. Did you say the line that you surveyed was the line finally agreed upon and accepted?

A. The line had been previously agreed upon but not marked.

Q. You marked it?

A. Mr. Baylor and myself marked the line in accordance with the previous agreement.

Q. You surveyed a line or marked a line that had already been surveyed?

A. It had not been surveyed but had been agreed upon in principle and laid down on the maps.

Q. In other words you marked a line that had been fixed?

Survey, a bureau of the Department of Commerce and Labor; what did you mean by that?

A. About what part of it?

Q. What did you mean by the term Coast and Geodetic Survey and your connection with it?

A. The Coast and Geodetic Survey is a bureau of the Government organized for the purpose of making surveys of the coast of the United States, of the islands belonging to the United States, and of the sea within certain distances of the coast of the United States.

Q. You say of the Government, you mean the Government of the United States?

A. Yes sir.

Q. What other duties do they perform?

A. Well——

Q. Than to survey the boundary lines of the United States Government?

A. It is not a function of the Coast Survey to inspect boundary lines; we sometimes do it at the request of the State governments but otherwise, not. The States are independent sovereignties in that respect.

Q. Then the bureau of the Coast and Geodetic Survey is a department of the United States Government for the purpose of making surveys of the territory belonging to the United States, independent of the different States of the Union?

A. Yes sir, except that, I beg to correct counsel in the word department. It is not called a department.

Q. So that we may understand that and get it in the record, just explain fully, in your own way, what you mean by the Coast and Geodetic Survey?

A. The Coast and Geodetic Survey took its rise from an act of Congress passed in the year 1807, approved by President Jefferson, providing for a survey of the coast of the United States for the benefit of commerce and navigation and for the purposes of defense. That survey, with some rather long intervals in its early history, has been prosecuted ever since for the purpose, primarily, of furnishing charts for the use of navigators, furnishing military maps for the use of the army and for the navy in the defense of the coast; and also under subsequent enactments of Congress the survey has been extended in certain respects to the interior making a geodetic connection between the Atlantic and Pacific coasts by triangulation across the continent; and since our insular possessions were obtained has also been extended to them.

Q. What other duties does the Superintendent of the Coast and Geodetic Survey perform than those you have mentioned?

A. He has general supervision of those operations; in addition he is sometimes called upon for special duties by other departments of the Government, frequently by the State Department; at the present time he is commissioner for the United States in the delimita

tion of the boundaries between the United States and Canada of the northwestern country as it is commonly called and of Alaska.

Q. Who is the Superintendent of this Coast and Geodetic Survey?

A. At present it is Mr. O. H. Tittmann.

Q. By virtue of what authority does he hold his office?

A. By appointment; he was appointed by the President on the recommendation of the Secretary of the Treasury, that is my understanding of it.

Q. How many assistants has he?

A. I cannot give the exact number, but in the neighborhood of 50.

535 Q. By whom were they appointed?

A. Most of them by the Secretary of the Treasury. But now by the Secretary of Commerce and Labor since the transfer. Almost all of them were appointed by the Secretary of the Treasury as the transfer only took place on the first of July last.

Q. You are one of his assistants?

A. Yes sir.

Q. What are the duties of these assistants?

—. To assist in executing any duties necessary for the purpose of the work, under the direction of the superintendent.

Q. What kind of work do you do?

A. We do almost all kinds of work.

Q. Explain to us what kind of work?

A. It would be quite a story; but, in the beginning if one starts out to make a survey from the beginning, he has in the first place to measure the base line.

Q. What kind of survey do you refer to?

A. To such surveys as the Coast Survey usually makes, of sections of the coast. Do you wish me to continue?

Q. Yes?

A. Well, the primary object of the bureau, as already stated, is to make accurate charts of the coast of the United States. That work is all based on triangulation and fixed in position upon the earth by astronomical determinations of latitude and longitude and azimuth. The subsequent detailed surveys, both topographical and hydrographical depend upon the triangulation and upon the astronomical positions so determined. The survey also includes the determination of the magnetic elements; sometimes in the determination of gravity by pendulum observations. In addition to these and other regular duties of the survey, the officers are often called upon for assistance by other departments of the Government, and by various States of the Union for special surveys, the location of lighthouses and navy yards and docks, and in a case of States, frequently for the demarkation of boundaries between them.

Q. How are these surveys made by this department of the Coast and Geodetic Survey?

A. I do not know that I fully understand just what counsel wants me to answer.

Q. I mean the practical operation of it; how do you make that?

A. I started in to say, it would be a long story to tell just how we do it, because there is a great deal of work to it.

Q. I do not mean for you to go into detail, but, do you send a man, assistant or——

A. You want to get the administrative features of it?

Q. Yes?

A. When a piece of work is to be done, the superintendent, in the first place, decides in his own mind as to what work was to be done, and then he selects the most available man to do the work, and then he issues his orders for the work to be taken up at such time and under such conditions. A specified allotment of funds is made to cover expenses of the work. The officer in question then proceeds to the field and takes up the operation; employing such persons for his assistants as he may find necessary.

By Mr. FLOWERS:

536 Q. When was this line indicated on the sketches prepared by you indicating the deep water channel out of the mouth of Lake Borgne to the gulf of Mexico, surveyed and marked or bouyed?

A. So far as my knowledge extends it never has been surveyed or marked.

Q. Well, upon what information then, did you determine this line as indicated on your sketches?

A. I think it is explained in the report itself, and I believe I stated already that this report was rather an informal matter. It was prepared with no idea of being submitted in court, and purely for the information of Mr. McLain, for the benefit of one of his constituents, and is by no means, perhaps, I may say, as thorough or as precise as might have been the case if I had had any idea it would be used in any subsequent proceedings; but as far as that particular line you refer to goes, that merely expresses my own view as given to Mr. McLain of what might possibly or probably be held to be the line between the States. It is merely an expression of opinion on my part.

Q. What does this line indicate, marked deep water sailing line, on sketch No. 3?

A. It indicates approximately the channel usually employed for purposes of navigating those waters.

Q. That line has never been marked by any representative of your department?

A. Not as far as I know. The only marking on it is the marking by buoys placed there by the lighthouse department.

Q. Do you know when that was done?

A. I cannot say as to that; the buoys are changed frequently from time to time, according to the views of the inspector.

Q. The marking of that line had no reference whatever to any boundary line?

A. Absolutely none.
Q. It was just for purposes of navigation as shown on the chart?
A. Yes sir, purely for purposes of navigation as shown on the chart.

By Mr. WILLIAMS:

Q. Then as I understand you, your Exhibit No. 11, which is, as I understand it, your report to Mr. McLain, in writing, with certain blue prints attached thereto, was made by you upon his request, from such information as you were able to obtain in the different libraries in the city of Washington?
A. Yes sir; from the different libraries and other sources of information. And as I have already stated, the maps attached are not intended to be exact; they are merely illustrative.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, to be resumed at the hour of 2.15 p. m. at the same place and date.

Resumption of Proceedings.

Pursuant to adjournment for recess, the hearing was resumed by the commissioner at the hour of 2.15 p. m. at the same place and date, all parties being present.

537 Cross-examination of W. C. HODGKINS resumed.

By Mr. FLOWERS:

Q. In drawing the green line on exhibit marked Mississippi B, as indicating your idea of the political coast line of the State of Louisiana, you assume that the islands south of that line and east of the red line, drawn by you, as indicating the physical coast line of said State, are the property of Louisiana, do you not?
A. Before answering the question I should say that the red line referred to by counsel for Mississippi, is a line drawn between points indicated by him. With that proviso I should answer yes.
Q. Please answer the question directly as to whether in drawing this green line, you assumed that the territory south of that line and east of the red line indicated, is part of the State of Louisiana?
A. Yes sir, I assume so.
Q. It is a fact, is it not, that in drawing the red line mentioned to indicate the physical coast line from Malheureux point to the northwest point of Point Chico, was drawn at the request of counsel for Mississippi and in that question they simply requested that you draw a line to indicate your idea of the physical coast line between those two points?
A. I think that is correct, with the exception, as I stated at the time, it is based on this particular map and the scale of the map, my own knowledge of the circumstances being absolutely nil.

By Mr. WILLIAMS:

Q. It is a fact that you simply answered the question propounded by counsel for the State of Mississippi?

A. Yes sir.

Q. To indicate the physical coast line between those points, your opinion?

A. My opinion as shown on this map.

By Mr. FLOWERS:

Q. On the sketch made by you appended to your report, made to the head of your department, at the request of Mr. McLain, sketch No. 3, you indicate a route from the mouth of Lake Borgne to a point southeast of the most northern point of Isle à l'itre. Please tell us what that line is?

A. That line is designated on the sketch itself as the deep water sailing line from Pearl river to the gulf of Mexico.

Q. That is simply a sailing line you say?

A. Deep water sailing line representing the usual and practicable route of navigation.

Q. That does not mean that this is the only practicable sailing line between these points, does it?

A. That would depend altogether on the draft of the vessel in question.

Q. Does it mean that this is the only practicable sailing route for all vessels of a deep draft?

538 A. In part. It is the most practicable route all things considered for a vessel of draft suitable to cross the bar east of the Malheureux islands.

Q. Is that the only deep channel route?

A. It is in the western portion; in the eastern portion near Cat Island channel there might be a variation made; that is shore more distinctly on this compound map of the same scale, where the channels are indicated.

Q. What map is that?

A. Map No. 17.

Q. When you stated in your examination in chief, that if you were marking the boundary line across this territory, between these two States, you would follow the deep water channel, did you mean to say you would follow the line indicated on sketch No. 3?

A. Not necessarily. That might be a matter of agreement between the States for the sake of simplifying the direction of the line.

Q. It is your understanding that States can agree to anything, is it not?

A. You are referring now to the States of the United States?

Q. Yes?

A. I understand that the States can agree provided their action is sanctioned by Congress.

Q. Is it your understanding, from your information and knowledge of international law, that the States could not agree unless it was sanctioned by Congress?

A. I do not think international law would apply in that respect, but I understand it is held under the Constitution that the consent of Congress is necessary in order for a State to alienate any portion of its territory.

Q. It is your idea that under the Constitution of the United States that two States could not establish the line by agreement without the sanction of Congress?

A. In case of material variation from pre-existing established boundaries I suppose it would be advisable to secure the consent of Congress.

Q. I understood you to say, on your cross examination heretofore, that if you were measuring off the three leagues provided in the Louisiana act as bounding the State of Louisiana, you would measure from what you consider the political coast line. That is correct is it not?

A. It is correct in so far as relates to the starting line, the political coast line. It is not correct in assuming that if I were running out a boundary line I should lay it always three leagues from that coast line.

Q. If the act of Congress under which you were proceeding had a provision of that kind in it, you would follow the act would you not?

A. Presumably if it were merely an executive act; if I had absolute power to construe the act I should hold that Congress had no power to confer jurisdiction on the high seas beyond three miles from shore.

Q. You would hold the act of Congress in such case as being unconstitutional?

A. I should hardly say unconstitutional; but there is a legal phrase *ultra vires* which seems applicable.

Q. Will you please state whether the three league line drawn with reference to the political coast line which you have defined on map marked Mississippi B, would coincide with the deep channel line indicated by you on your sketch No. 3?

539 A. Undoubtedly not.

Q. Can you tell us how it would run with reference to that line?

A. Approximately, if that would be sufficient, more exactly by measurement. That is shown on this very map Mississippi B where the lines parallel to the coast of Louisiana are represented by blue lines passing through the waters of Mississippi sound, the line marked nine nautical miles from Grand pass etc. in combination with the line marked nine nautical miles from Isle au Pitre, would form the line parallel to the political coast of Louisiana, while the black line marked deep water sailing line from Pearl river to gulf of Mexico indicates approximately the deep water channel.

hardly seem to come (to my mind at least) within the meaning of the act creating the State of Mississippi with reference to islands.

Q. That is not an answer to the question. Now, forgetting the fact that there is a controversy between the States of Louisiana and Mississippi; if you were given the act creating the State of Mississippi and defining its boundary lines, and you were sent to mark off the southern boundary line in the waters of the gulf of Mexico, how far would you mark it, would you mark it so as to include all islands within six leagues of what you regarded, in your judgment, as the southern shore of the State of Mississippi?

A. It is the same thing in another form.

Q. Remember, forgetting the fact that there is any controversy between the two States and you were given the act creating the State of Mississippi and you were sent to mark the southern boundary of the State of Mississippi and you are the sole judge ——

A. You ignore the existence of Louisiana in this matter?

Q. Forgetting that there is any controversy between the two States about it. If you were sent, if you were furnished with the act creating the State of Mississippi and sent to mark this
529 line, how would you do it. Just explain that point?

A. I do not really think that is a question that ought to be asked me because it is an impossible supposition.

Q. What is your opinion about this, that is what we want.

A. I am not prepared to answer that, because it would be a question requiring deep study to find the equity of the case.

Q. Would you include all islands within six leagues of the shore. Take this act, it says including all islands within six leagues of the shore, taking this act and you were sent to mark the southern boundary line of the State of Mississippi, would you *not* include all islands within six leagues of the shore, or would you not?

A. I would be in serious doubt. It is not a question, as I say that can be answered off hand, for a great many considerations would enter in there. It would be necessary to decide what were meant by islands and what were not. It is a question of course, that properly ought to be considered by a court. I am perfectly willing to grant that according to the letter of the act, Mississippi would seem to have a claim to such islands, but on the other hand my own interpretation would be that islands that were closely jammed up against others and practically form one mass of marsh, were not really intended as islands in the intention of the Government. It seems to me that that refers to detached islands, that are physically so.

Q. We are not now trying to ascertain whether this territory in controversy consists partly of islands or not. But the question is, would you include, if you were sent, under this act creating the State of Mississippi, to mark the southern boundary line of that State, would you include all islands within six leagues of the shore. Then the question will come up whether these were islands or not?

A. I would be in serious doubt about that. I do not think I

hould be inclined to include everything that might absolutely be alled an island.

Q. Under this act?

A. Yes sir; it is a question of construction. Of course I am willing o say there might be possibly a few more, but I would be very nuch in doubt whether everything that can be called an island, that s, every piece of marsh separated by a slough from another piece of narsh constituted an island within the meaning of the act.

Q. My question is this. I want to get your answer to this one uestion. That if you were sent, under this act saying that all slands within six leagues of the shore should belong to Mississippi, nd you were sent there with this act and this act alone, now, re-ardless of sloughs, marshes or anything else, to mark that line, ould you or would you not, when you established the line, include very island within six leagues of the shore?

A. I do not think I could answer that question without having he actual case on the ground, I would have to go there and see hat the country looked like.

Q. I do not believe we exactly understand each other about that. do not think you understand me. Just taking it, now, for granted, hat is, regardless of what might be an island or what might be a iece of marsh, or what might be anything else, if you were sent ith this act and this act alone, before you, regardless of any controversy that might exist between the State of Mississippi and the State of Louisiana, and directed to mark the line following this particular act, with full authority to fix it by he act, and construing the act yourself without reference to any ther act of Congress or any State, would you include all islands ithin six leagues of what you thought to be the southern shore of he State of Mississippi?

A. Well, I think perhaps I can answer it in this way, by saying hat I would include everything that I thought was an island.

Q. I do not mean to commit you in your testimony as trying to efine what an island is, or what a marsh is, or what a deep water hannel is; but if you had the act creating the State of Mississippi nd that act alone, and you were sent with that act, regardless of verything else, would you not include every island within six eagues of the southern shore of Mississippi?

A. All I can say in regard to that is to repeat my answer, that I hould include everything that I considered an island.

By Mr. FLOWERS:

Q. The only question would be what are islands?

A. Certainly.

Q. If you found anything there that you considered an island ou would include it?

A. Yes, sir, but if the whole thing was left to my own judgment should construe what I thought was an island.

By Mr. WILLIAMS:

Q. It would be absolutely within your own judgment as to what an island was. You might say this is an island and it might not be an island when it came to a judicial decision of it. You might say that was a piece of marsh and the court might say it was an island. But if you went to establish the line you would put everything within six leagues of the shore what you regarded an island, would you not?

A. Yes sir, under those suppositions.

By Mr. FLOWERS:

Q. In doing that you would not consider the deep water channel, would you?

A. Not under this suppos-titious case.

Q. That would not enable you to determine what piece of land might be an island and what piece might be a marsh?

A. The deep water channel would not enter in that determination, certainly not.

By Mr. WILLIAMS:

Q. That is upon the supposition we have already put?

A. That is on the supposition that it is entirely a new case.

By Mr. FLOWERS:

Q. Then, looking at the act creating the State of Mississippi, there is no uncertainty or indefiniteness in it as to all islands within six leagues of the southern coast of Mississippi is there?

A. I think my previous answers indicate there would be a great deal of uncertainty.

531 Q. That uncertainty would arise from the difficulty of determining what land is an island and what is not an island, would it not?

A. Partly that and partly the matter already alluded to, the possibility of certain islands being crossed by the boundary line.

Q. If there was no uncertainty or discrimination as to what are islands in these waters, there would be no indefiniteness or uncertainty in this act creating the State of Mississippi would there?

A. Not under the hypothetical case which you put.

Q. The act of Congress creating the State of Mississippi is definite, in that, standing alone it embraces within the territory of Mississippi all islands within six leagues of the shore; it is definite that far, is it not, standing alone?

A. It is a definite statement, certainly.

Q. Then the uncertainty in the interpretation of this act, in your opinion, arises only when you undertake to reconcile it with the act creating the State of Louisiana?

A. Yes sir. I think that might fairly be conceded with the qualification already stated.

Q. Will you please indicate on map No. 7, in ink, what you consider the physical coast line as testified about by you in your examination in chief, of the State of Louisiana?

A. In order to do that I should have to follow the shore line all along, it is so irregular it would be impossible to identify it by straight marks. I would suggest that it might be put on another copy of this map if it would suit counsel equally as well.

Q. Read the question please. (Question read.)

A. Mr. Flowers how far do you want that designation to extend, between what points?

Q. From the mouth of Lake Borgne to the gulf of Mexico.

A. I would ask counsel to fix the points a little more definitely because it would be almost impossible for me to determine just the limits you want.

Q. I will say that one purpose of the question is to have the witness to indicate on this map at what point the main physical coast line enters the gulf of Mexico?

A. That is a job for me.

Q. I will ask you to mark this line as far south as the projection northwest of Point Chico?

A. I take it you want the line to begin at the point commonly called Malheureux point?

Q. Yes.

A. I would like to say to counsel that this marking will be dependent on the scale of this map, as I have no personal knowledge of the locality in question. As requested by counsel for the State of Mississippi I have indicated on a copy of map No. 7, by a red line from the point marked B on the shore of Lake Borgne to the point marked C northwest of Point Chico, what appears to be the physical coast line on this portion——

By Mr. WILLIAMS:

Q. Is it the physical coast line or shore line?

A. Either one. I think you said physical coast in the question; it is the physical coast line of this portion of Louisiana.

532 By Mr. FLOWERS:

Q. Please indicate on this same map what you consider the political coast line as testified about by you in your examination in chief, between Malheureux point and the most northeastern projection of Isle à Pitre?

A. In order to avoid confusion of lines would colored chalk be permissible in this marking?

By Judge GUION:

Q. We will give you another map.

By Mr. FLOWERS:

Q. I think this would overlap a little bit there—I leave that to you, just anything to indicate it, use another pencil.

A. In compliance with the request of counsel for the State of Mississippi, I have marked in green chalk the line specified from Malheureux point marked B to the northeastern extremity of the Isle à Pitre marked D, on copy of map No. 7.

Q. In construing the act creating the State of Louisiana, and in determining what islands belong to the State of Louisiana, under that act, from which of these lines marked by you would you measure?

A. This is my personal opinion.

Q. Yes?

A. I would measure from the green lines as the political coast line.

Q. Will you please define political coast line as used by you in this examination?

A. By the political coast line, I understand a line which is superposed, as one might say, upon the natural or physical coast line of a continent, to include all those outlying portions of territory and the included territorial waters which come under the local jurisdiction.

Q. Please state, upon examination of this copy of map No. 7 before you, the maximum distance from this political coast line as defined by you on this map, to the line on the same map indicating the deep water channel?

A. The maximum distance between the two lines mentioned, scaled from this map, seems to be about 8¼ statute miles or 7 4/10 nautical miles.

Mr. FLOWERS: For purposes of identification counsel for the State of Mississippi offer in evidence as an exhibit to the testimony of this witness on cross examination, United States Coast and Geodetic chart No. 19, marked Mississippi B.

Q. Mr. Hodgkins, what was the authoritative survey of this territory in question.

A. What part of the territory does counsel refer to?

Q. I mean this southern coast of Mississippi and the eastern coast of Louisiana?

A. As far as I am aware of, the first surveys by authority of this Government, were those of the General Land Office.

533 Q. When was the first topographical survey of this territory made by the official authorities of the Government?

A. Aside from the surveys of the Land Office already referred to, the only surveys of which I have knowledge, are those of the Coast and Geodetic survey which were made in this region, of the Malheureux islands, at any rate, in the year 1852.

Q. When was the survey by the United States Land Office you mentioned made?

A. The survey of the southwestern portion of Mississippi was apparently made about 1827, and the survey of the territory commonly called Louisiana coast on the south side of Lake Borgne and Mississippi sound was made in the neighborhood of 1845 or thereabouts.

Q. In the surveys made by the United States Land Office, is anything done more than to divide the territory up into townships and ranges, with reference to certain established base lines?

A. Yes sir; the surveyors are supposed to furnish an accurate plat of the country surveyed showing the outlines of lakes, streams bays etc.

Q. Was that done by the survey made under the authority of the United States Land Office in 1827?

A. Such plats were furnished.

Q. By the officers making that survey?

A. By the surveyors.

Q. How do you know that; have you seen those plats?

A. That appears on what is called plat books of the General Land Office.

By Mr. WILLIAMS:

Q. In other words, your testimony is, that you know this from the records that you have seen, books and plats, in the General Land Office?

A. Yes sir.

Q. Personally you know nothing about it?

A. Of course not.

By Mr. FLOWERS:

Q. Is it a fact that since that survey, the maps made are uniformly approximate?

A. What maps do you refer to?

Q. All maps made of this territory?

A. Oh, no, I should hardly say all maps are uniform, they vary very much.

Q. When you made your investigation at the instance of Mr. McLain the result of which appears in this report offered in evidence, did you make an investigation with that end in view, especially, to find the earliest maps and surveys of this territory?

A. I did not attempt to go back of the period of the cession of Louisiana from France to the United States.

Q. You had the benefit of all such information, however, as could at that time be found in the Congressional library at Washington, and of the United States Land Office?

A. Of all that I thought necessary for the purpose.

By Mr. WILLIAMS:

Q. You said in your examination in chief that you were
534 assistant to the Superintendent of the Coast and Geodetic

cate the southern boundary line of the State of Mississippi without any attempt to reconcile them with the Louisiana lines?

A. I have already just stated that I do not think any such line could hold in open waters of the Gulf. They might represent the boundary line across the island district, but when you get into the open waters of the Gulf I cannot conceive the possibility of the State having jurisdiction of such a distance from the shore.

Q. Do those lines as drawn embrace all islands within 18 miles of the Mississippi shore?

A. Presumably they do, within the limits within which they are drawn.

Q. Is there any island in those waters within 18 miles of
527 the Mississippi coast, not embraced within those lines?

A. Yes sir, that is evident from the fact that the lines stop at a certain point on the map; they might be continued to the westward of course, across Lake Borgne.

Q. In drawing these lines, the western extremity represents what you consider the physical coast of the main land of Louisiana, do they not?

A. I should hardly like to say that either. This was simply an approximation of what I call in my report the main body of marsh land including some islands and could not be considered as a rigid physical coast or shore line of the main land.

Q. Mr. Hodgkins, the act of Congress creating the State of Mississippi, defines the southern boundary line of that State sufficiently for the purposes of a civil engineer or surveyor who might undertake to a mark it off, if no other law was to be taken into consideration, does it not?

A. I should be somewhat in doubt about that, from the terms of the act itself. I have already explained that as far as crossing islands it would cause considerable difficulty to a civil engineer in laying out a line under such circumstances.

Q. The only difficulty you think would be met with and the only uncertainty in the act, is, that it does not fix the territory to which islands which might be crossed by the 18 mile line, would belong? Is that correct?

A. No; I do not think that is the only difficulty.

Q. Please name any other difficulties you see?

A. Another difficulty which would present itself to any engineer construing the terms of the act, in laying out a line, would be the provision that the line should extend to the eastern mouth of the Pearl river, and it would be a natural assumption in my opinion, that it would not be expected to follow a tortuous course through winding passages in an area of marsh.

Q. Is it your understanding of the rule of international law, that a boundary line between States cannot cross a deep water channel?

A. Not at all.

Q. If you were marking the line as defined by the act of Congress creating the State of Mississippi which provides that Mississippi ter-

tory shall embrace all islands within six leagues of the shore, and marking that line you should strike the deep water channel, would ou consider that you had to define that although that line might ot embrace islands within the limits fixed by the act of Congress?

A. Not necessarily, I should say; but an engineer in the field has consider all the circumstances of a case. Each case has to be considered on its own merits; one cannot lay down a hard and fast rule cover all contingencies.

Q. I understand your idea about this case is, that if you were directed by the authorities to mark the boundary line between these wo States, you would very likely follow the line indicated on the lat or sketch. I am interrogating you now about the Mississippi ct alone. If you were marking the boundary of the State of Mississippi under an act which gives all islands within six leagues of the hore to the State of Mississippi and you were acting under that statte alone, simply defining the boundary as described in that act, would you not draw the line so as to embrace all islands 28 within six leagues of the shore?

A. I have already stated that I thought that would be a ource of difficulty, in interpretation. I do not think any engineer ould feel authorized to decide for himself. He would probably eel obliged to refer it to some court for decision as to the proper onstruction of the act.

By Mr. WILLIAMS:

Q. Here is the point. If you were called upon to take the act nd *and* the act alone creating the State of Mississippi, and define ts boundaries, would you mark the line so as to include all islands vithin six leagues of the shore, taking into consideration your unlerstanding as to what the shore was?

A. That would depend, of course, as I stated before, a great deal n circumstances. A man who has absolute power in a matter can lo one thing, whereas if he is only delegated he might do another hing.

Q. But the point is this. If you were given the act and delegated by the authorities to go and mark that line, how would you do it?

A. You mean with absolute authority to fix it and mark it?

Q. It is your opinion we are after about that. Here is the act——

A. Precisely.

Q. We furnish you with that and you are directed to go and fix that line, how would you do it?

A. I hardly think that is a fair question because that is putting me in a judicial position which of course an executive officer cannot occupy; but I think it would be a question difficult of interpretation in that case as to what was really meant by islands. It does not really seem to me that the act means to include such areas of marsh as lie on the western side of Cat Island channel. It might possibly be construed to include Isle à Pitre, but the other islands form, so closely allied, an aggregation of marsh areas that they

Q. On the southeast portion of the lower end of Lake Borgne, on nap No. 18, there are how many bayous in this locality under con-ideration, which start at Lake Borgne and run eastward?

A. You include the whole of this bight——

Q. Between Point aux Marchettes and Shell beach?

A. In that distance there are six streams sufficiently large to be vorthy of notice.

Q. How many of them have names?

A. East branch of Bayou St. Malo and Grand bayou.

Q. Do I understand, then, there are only two of them big enough o have names?

A. Only two of them have names on this map and the others are elatively small.

Q. How many bayous are there in that same area of Lake Borgne, s shown on map No. 19?

A. Two.

Q. Do I understand you to say, therefore, that if you were called pon to project the physical coast line as shown on map No. 19, that ou would do so by projecting it through Bayou Guillemard, and if ou were called upon to project it on map No. 18 you would not ake the bayou there corresponding to Bayou Guillemard but would xtend it eastward to Nine Mile bayou?

A. No, I do not think that is quite a correct statement of my un-tanding so far as this map No. 19 is concerned. I think the pas-age marked Bayou Gillemard is sufficiently important to consider t as separating in a strict sense the outlying portions from the main-and of Louisiana, and similarly on this map marked No. 18 in tak-ng the strict definition of physical coast line I have already stated think the line would be drawn through Bayou La Loutre.

Q. And not through Nine Mile bayou?

A. That line drawn through Nine Mile bayou was drawn in pur-uance of a request for a line between Malheureux point and the oint northwest of Point Chico.

Q. Was, or was not, the line between Malheureux point and the oint northwest of Point Chico, your definition of the physical coast ine of the eastern end of the parish of Saint Bernard?

A. No; that was not my definition of it. It was my understand-ng, from the map in question, of the physical coast between two pecified points only, not as applied to the general question.

Q. Will you now please look at the map No. 19 and state what ou recognize to be the political coast line on map No. 19?

A. In what sense, please?

Q. In the sense concerning which we have just had our discus-ion. Would you indicate it, say from the southern end of Lake Borgne eastward, by drawing a red line along there?

A. You want my opinion?

546 Q. Yes?

A. Witness draws line.

Q. Will you please locate both ends of that line?

A. I have marked the line requested and lettered it A at the western end and B at the eastern end.

Q. And you made the line in red ink?

A. Yes sir.

Q. Will you please refer to map Mississippi B and state from what point or points of the line, you would project the nine mile line if you were given the act of Congress creating the State of Louisiana and were called upon to project a nine mile line from the Louisiana coast line?

A. Construing the act myself?

Q. Yes?

A. I should draw that line paral-el *l* to what I call the political coast line.

Q. Will you designate it by color and by the letters that are attached to it on the map?

A. As shown, in part, on this map, it is drawn in green chalk marked B in red ink at the western end and D in red ink at the eastern end.

Q. Referring back again to this report made by you to Mr. Tittmann at the request of Mr. McLain of Mississippi, was there anything that you could have done which would have made the report more complete for the purpose for which it was intended?

A. I do not think there is, for the purpose for which, at that time, I thought it was intended. I could have made the sketches, perhaps more carefully and exactly, if I had had any idea they would be subsequently used in court. They were intended as illustrations for Mr. McLain's information and not exact statements of facts. They are approximate rather than exact.

Q. Would that affect the general worth of the report as made?

A. That would be a matter of opinion. I should not think so myself, as the sketches are merely illustrations of the report.

By Mr. ZACHARIE:

Q. On your cross examination, you have spoken of the gulf of Mexico in tracing lines. By that, did you, or not, mean the open gulf of Mexico?

A. Yes sir, I mean the open Gulf outside of the coast line.

Q. What relation did the gulf of Mexico have to this portion of water lying between the north coast of this disputed section and the Mississippi coast; what would you call that?

A. In name or description?

Q. In description?

A. I should call it an arm of the sea.

Q. Would it be an arm of the gulf of Mexico?

A. Undoubtedly I should say.

Q. You mentioned in your examination in chief, and I believe also in your cross examination, that a part of the fixing of the boundary between Maryland and Virginia, namely in regard to that

portion known as Pocomoke sound and river, that the theory of the deep channel was adopted as being the boundary line?

A. I think in that case that the centre line was taken, the mid channel.

547 Q. Do you know of any other case in which the deep channel theory has been adopted and the case decided?

A. The most noteworthy case that comes to my mind is that of the international dispute between Great Britain and the United States in regard to the boundary line extending through the gulf of Georgia and the strait of Juan de Fuca and the Pacific ocean.

Q. And in that case, am I right in saying that they fixed the boundary line as the line of the deepest channel?

A. The case was referred to Emperor William of Germany as an arbitrator and he decided in favor of the United States, that the extreme western channel of the three possible routes, was the proper channel, and my understanding of the case is, that that was decided, on the principal of what is called Thalwueg, that is, the deepest and most suitable channel for purposes of navigation.

Q. The word Thalwueg is generally known, is it not, in adjusting water boundaries?

A. I think it is.

Q. What does it mean, and what is it derived from?

A. Literally it means the way of the valley or valley path. It is used to signify the deepest passage through a body of water intervening between two conterminous States.

Q. Do these Coast and Geodetic surveys show, in the waters of this disputed territory, a buoyed channel?

A. They do.

Q. Is there more than one channel so buoyed, on these maps, between the north shore of the disputed territory and the Mississippi coast?

Mr. WILLIAMS: Counsel for the State of Mississippi here interposes the same old objection to all these leading questions and to all matters of opinion about which the witness is testifying and concerning which he has not qualified as an expert.

A. Do I understand you to mean a channel running north and south?

Q. No sir, a channel running east and west?

A. On this map No. 17 two channels are indicated eastward from the deep water in Grand Island pass near Lake Borgne light; one leading to the gulf of Mexico through Cat Island channel; the other leading to the northward and then to the eastward into the waters of the Mississippi sound, for the purposes of local navigation inside.

Q. Do both of these channels pass north of Grassy island and Half Moon island?

A. They do.

Q. Are there any other channels buoyed by the Government?

A. None appear on this map.

Q. Do you know how long, from the inspection of the charts of your bureau, that these channels have been so marked as buoyed, if not exactly about how long?

A. I cannot say how long the Lighthouse Board has maintained buoys in those waters; but the channels are identical with those found at the time of the survey about 1850.

548 Q. Now, Mr. Hodgkins, I find in your report, in speaking of these islands to the north of this peninsula or archipelago, "all the above islands would be included within Louisiana's three league 1812 line and within Mississippi's 6 league limit of 1817." If you were to follow the literal words of the two grants to the States without reference to any legal principles, would there not be an overlapping?

A. Evidently.

Q. That is to say, that the two States would be claiming the same territory?

A. That appears to be the state of the case at present, I believe.

Mr. WILLIAMS: Counsel for the State of Mississippi object to the testimony as being an opinion of the witness.

Recross-examination.

By Mr. FLOWERS:

Q. In your re-direct examination, with the B. Lafon original map before you, a copy of which is referred to as map No. 19, at what point along what course did you say you would mark, if called upon to do so, on this original map, the physical coast line of the main land of Louisiana?

A. On this map I stated that I should be inclined to draw it through the passage called Bayou Guillemard.

Q. That line would not be the same as that indicated by you in red ink on the map referred to as No. 19, would it?

A. Not at all.

Q. Map No. 19 purports to be a copy of this original does it not?

A. So it appears.

Q. And it is the same map made on a smaller scale, is it not?

A. It is a photographic copy.

Q. Then would your location of the physical coast line vary with the size of the map on which you were making it?

A. Not at all.

Q. What is the bayou along which you say you would mark the physical coast line on the original map?

A. It is marked here Bayou Guillemard.

Q. Does that bayou appear on the copy referred to as map No. 19?

A. It does.

Q. Why would you mark the physical coast line along that bayou on the original but would not mark it there on the copy?

A. I did not understand that it was desired that I should mark on the copy.

Q. Please indicate in red ink, on map No. 19, what your idea is, the physical coast line as shown by that map?

A. I have marked the line requested by counsel, with a series of d dots marked at the northern end C and at the southern end D, map No. 19.

Q. You say you have been called upon in a good many boundary ontroversies to survey or establish lines?

A. Yes, sir, I have had occasion to perform such duties.

49 Q. And your decision, you say, has, in nearly every instance, been accepted?

A. I should not put it just that way. The decision in such cases was not always left to me, that is, I was not always an arbitrator or commissioner; I have been an engineer to carry out the instructions of commissioners; but so far as I have had any connection with boundary surveys, the results have been accepted.

Q. You had already, before you began to testify in this case, decided this question involved here, as far as you were able to do it with the facts available?

A. My conclusions are embodied in my report, which is in evidence, made three years ago, at the time the matter was brought to my attention.

Q. As far as you were able to gather the facts and make up your own mind about it; you did that two or three years ago did you not?

A. Yes sir; the matter in question was given to me three years ago. I made my report and the matter dropped from my mind then, and I had no further occasion to look into it until the other day when I was summoned to come down here and testify in the matter.

Q. You were summoned here at the instance of Louisiana, of course?

A. I presume so; I got a subpœna from Mr. Mortimer commanding my attendance here.

By Mr. WILLIAMS:

Q. In most of the cases in which you have been interested, relative to boundary lines between different States, it has been in the capacity of an engineer to mark the lines, has it not?

A. In the majority of cases, yes.

By Mr. DYMOND:

Q. You have, as I understand it, fixed on this map No. 19, between the points C and D a dotted red ink line which you state was, according to that map, in your opinion, the physical coast line of Louisiana. Was I correct, or, was I not correct, in understanding that you reached that conclusion because of the large size of Bayou Guillemard as given on the original map No. 19.

A. Yes sir, substantially so. It seemed to me, as shown on that map, that that passage was so apparently large and important that it could not be passed over as a mere brook or ditch in the marshes. I do not wish to be understood, though, as saying that I consider that that is necessarily the only interpretation of the phrase, physical coast. It is a matter largely of opinion in such cases as that, whether a stream is wide enough or not wide enough to constitute a real division. In a case of very narrow, tortuous intersecting creeks, through a marsh, I, personally, should be disposed to exclude them and consider such a marsh as practically continuous; but where a passage of such width and reasonably direct, exists, my own opinion is, that such passage, in the strictest sense of the term would constitute a physical coast line.

550 Q. Do you recognize any similar bayou on map Mississippi B, or map No. 18 of Louisiana, similar to Bayou Guillemard?

A. There is one that seems similar to it, at its Lake Borgne end.

Q. How do the bayous on map Mississippi B and map No. 18 of Louisiana, compare as to size, with the bayou on map No. 19?

A. The bayou on map No. 18 marked East Branch Bayou St. Malo, is a great deal smaller considering the scale, than Bayou Guillemard as shown on map No. 19.

Q. Is there, on map Mississippi B, any bayou which would correspond to Bayou Guillemard?

A. A bayou is shown which corresponds to some extent, not very closely, but which may very possibly represent the same bayou.

Q. How does it compare as to size, considering the difference in scale?

A. The scale on this map marked Mississippi B is so small, that it is impossible to tell anything accurately about the width of those bayous; they are represented, practically, as mere lines, and it is mere guess work to try to say how wide they are.

By Mr. WILLIAMS:

Q. Is map Mississippi B the same map, or an exact copy of map No. 7?

A. The two are identical so far as the maps themselves are concerned.

By Judge GUION:

Q. How wide, if you know, is what is called Nine Mile bayou?

A. I can measure it off the large scale map as it was in 1852 or thereabouts.

Q. All right.

A. At its entrance from Lake Borgne, Nine Mile bayou is here given as just about a quarter of a mile wide, but a little further south, about ½ of a mile or a mile south of the entrance, it narrows to an eighth of a mile and the width varies slightly from there, the average width being ¼ of a mile, according to this map.

Q. Is that the present width?

A. I cannot say as to that; I know nothing about the present width.

Q. At what time did the bayou have the width you are referring to?

A. At the time of the topographical survey in 1852 or thereabouts.

Q. Is there anything that shows what its width was prior to 1852?

A. There is no record of that.

Q. There is no record of that in the office of the Coast and Geodetic Survey?

A. There are no records except those on which map is based.

Q. Are there any islands within 18 miles of the Mississippi shore between the Mississippi shore line and what you call the political coast line between Malheureux point and Isle à Pitre; and, if not now, were there any in existence in 1817?

A. The map shows certain small islets marked shell banks, the extent of which I do not know. As to the existence of any island in 1817 I have no information. The Malheureux islands, already alluded to, of course existed in the entrance of Lake
551 Borgne. Saint Joseph island on the Mississippi shore has been washed away I understand. On some of the earlier maps there was an island shown up in this region somewhere (witness points to the western part of Mississippi sound); but I have no authentic information in regard to it, I don't know anything about it.

Q. Are there any islands, or were there any islands in 1817, within 18 miles of the Mississippi shore west of the eastern extremity of Isle à Pitre?

A. You are speaking, now, of the mere physical fact?

Q. Yes.

Q. In 1817 you say?

Q. 1817 or now?

A. I have no accurate information as to what existed in 1817, but at the time of the survey of 1852, a number of islands are shown.

Q. Could you name them?

A. The principal one is designated here as Isle à Pitre.

Q. I am speaking now, east of Isle à Pitre.

A. I beg your pardon, I thought you said west of Isle à Pitre.

Q. I meant to say east?

A. East of Isle à Pitre there were a series of islands known as Cat island, Ship island, Horn island, etc.

Q. Give them all if you can?

A. Between Isle à Pitre and Mobile bay?

Q. And the line between Alabama and Mississippi, within 18 miles from the Mississippi shore.

A. — I am not mistaken that line strikes Petite Bois island. Taking them in order, from the westward, Cat island, Ship island, a small sand island not named, east of Ship island, Horn island, Petite Bois island, all of which lie well off the shore; there are also several

sissippi B is drawn across the western portion of an island marked Martin island, then across a small islet, then across a larger island lying between Live Oak bay and Fox bay, crossing a narrow bayou, it passes over the island lying immediately westward, crosses
541 two small islands in what is marked Drum bay, crosses the south western end of an island lying in between Drum bay and Southwest pass, and crosses a small island situated west of the southwest end of Southwest pass, and then proceeds into the marshes beyond, which although more closely connected are still intersected by narrow bayous so that they might in a very strict sense of the term, still be considered islands.

Q. Will you now state what bodies of land the red line representing 18 miles statute miles from the Mississippi coast, crosses?

A. This line, as drawn on this map, crosses two points on the island stretching southwest from Door point, crosses the islands on both sides of Deep pass, crosses an island lying north of Southwest pass and west of Elephant pass, crosses along a narrow island northwest of Southwest pass, crosses an island between Indian Mound bay and Treasure bay, crosses two islands between Treasure bay and Lake Eugenie, and, if continued, would extend into the Louisiana marshes to the westward.

Q. When you speak of crossing islands, so far as those two red lines are concerned, do you mean that there would be parts of these islands north and parts of these islands south of the red lines?

A. As drawn on this map, there would be.

Q. Do either one of those projected lines pretend to follow any channel through that area?

A. I see no indication.

Q. Will you please look at this map marked Exhibit A offered by Mississippi and note the red line extending east and west across the southern portion of the map, and state whether that red line crosses any bodies of land and bisects any bodies of land?

A. As drawn on this map it does.

Q. Will you please state what bodies of land it crosses?

A. Beginning at the southwestern angle?

Q. Yes?

A. Starting from the southwestern angle of the red line mentioned and proceeding eastward, the line crosses two islands lying north of the Lake of the Mound, an island lying to the westward of Southwest pass and southwest of Cat Fish pass, two islands lying between Southwest pass and Drum bay, an island lying between Southwest pass and Fox bay, and again crosses, in two different places, the island before the one last mentioned.

Q. If that line was taken as the southern boundary of the State of Mississippi, the line concerning which you have just been testifying, would there be islands along that line part of which would be lying in Louisiana and part of which would be lying in Mississippi?

A. Undoubtedly.

Q. Does this red line on map Exhibit A of Mississippi, indicate in

any way, that it pretends to follow a channel as it extends eastwardly from its southwestern corner?

A. The only indication that I see, is a legend reading "Mississippi line." I see no indication of any channel.

Q. If you will notice the line which appears as the southern boundary line on Mississippi's Exhibit A, and notice the red ink line which appears on Mississippi Exhibit B, and compare them with the 18 mile line appearing on your sketch No. 2 attached to Document No. 11, will you state whether you recognize any similarity in those lines. I refer now for comparison taking map Mississippi's Exhibit A as one map, and map Mississippi's Exhibit B and
542 your sketch No. 2 as another, for comparison?

A. There appears to be a certain resemblance between the line marked on Mississippi's Exhibit A as the boundary of the State of Mississippi and the line marked 18 nautical miles from the coast of Mississippi on map marked Mississippi B. This is not an exact likeness, but there is a certain similarity.

Q. Was I correct in understanding you to say on your direct examination, that you recognized the red ink lines on Mississippi Exhibit B to be, in a general way, the corresponding lines on your sketch No. 2?

A. Yes sir.

Q. I believe you measured them to see that; is that correct?

A. Yes sir, they correspond generally.

Q. Will you please look at map No. 18 and state whether there are, in your interpretation of an island, any islands west of Nine Mile bayou, as shown on the map before you, in the neighborhood of Malheureux point?

A. There are bodies of land which undoubtedly would be called islands in the strict definition of the term, but it would depend on the purpose for which I was considering them, whether I should take them as islands or not.

Q. You were interrogated on the question of the difficulty that an engineer would experience in locating a line 18 miles distant from the Mississippi shore. Will you please repeat what those difficulties would be?

A. You are alluding now to this same marsh area?

Q. Yes, I refer to the same marsh area?

A. One difficulty would be the question — deciding what should be considered islands within the meaning of the act, and another difficulty would be the question of deciding in the case of a line crossing the islands, whether said islands should be included within the territory of Mississippi or excluded from it or divided between it and adjacent territory.

Q. Would there be any other difficulty?

A. I don't know that any other occurs to me at this moment; there would, of-course, be the practical difficulties of running out such a line, but that is a mere matter of labor.

Q. You have shown on this map Exhibit Mississippi B, a red ink

line between the points B & C, the first mentioned being at Malheureux point, and the second at the point north of Point Chico. Do you consider that to be the absolute physical shore line of that portion of the State of Louisiana?

A. Not if you take the term in its strictest sense. That was the physical coast line taken from this map between the two points specified by counsel for the State of Mississippi. As I stated, I think in my examination in chief, if you carry the reasoning to its ultimate limit you have to go back to what is called on the map Otter bayou and Bayou LeLoutre, but for my own part I consider that those bayous are too narrow and tort-ous to be construed, in a fair interpretation as making islands, in any proper sense, of the territory lying outside.

Q. Is your statement now, based on any knowledge of the locality other than that shown by the map Mississippi B which is before you?

A. I have no other knowledge of the locality than that obtained from this and similar maps.

Q. Have you any personal knowledge as to the conditions that existed in this locality in 1812?

A. Absolutely none.

543 Q. Have you any knowledge of any change by subsidence or storm which may have occurred in this locality since 1812?

A. I have no knowledge or information on the subject.

Q. Have you any knowledge of the storms which have occurred in this locality since 1812?

A. None at all.

Q. You spoke a moment ago of the first authoritative survey which had been made of this locality. Do I, or not, understand you to mean by authoritative survey the first survey made by this Government?

A. I think my answer specified the survey made by authority of the United States. That is what I intended.

Q. If some one else, at a prior date, had made an actual survey of that locality, or had made actual soundings of the depth of water in the locality, his records would be, would they not, entitled to as much consideration as any subsequent work?

A. That would depend on the accuracy of the man who did the work. So far as they were authenticated and corroborated they would.

Q. You were speaking of the surveys made by the officers of the United States Government in the Louisiana marshes, I believe about the year 1847——

A. I think about 1848 they began work in that region and the surveys continued several years, if my recollection serves me right.

Q. Did they also survey on the shore of Mississippi?

A. Not by the same authority.

Q. Well, but, had they previously surveyed——

A. Previously, the United States land survey, under the authority of the surveyor general of Mississippi had been extended to the southwestern part of Mississippi as early as 1827.

Q. Did those surveyors indicate the locality in which they were when they were made.

A. All of their surveys are based on the rectangular system of township, which are represented in the plat books and those plat books show the topographical features, that is to say they show the outlines of the physical features of the country.

Q. Is it the custom for those surveyors to indicate on their sketches or their survey, the locality by name, in which they are operating?

A. Only so far as it — necessary for a general understanding, I believe they have to locate each township and section by number and they are expected to give all the information they can get in regard to the country. All those surveys were made by contract; some of them were much better made than others; it depended on how much conscience a man had; how much work he would be willing to give for the money.

Q. Do those surveys indicate, in any way, a delineation of the line between Louisiana and Mississippi?

A. I can't say there was any delineation of a line. There was a delineation in a certain way, in regard to jurisdiction over certain portions of territory?

Q. What about Half Moon island?

A. Half Moon island or Grand island was included in both surveys, that from the Mississippi side and that from the Louisiana side.

Q. Included in what way?

544 A. The Mississippi plats show it as connected by two courses and distances taken from lower Point Clear and from St. Joseph island.

Q. Is it located by township, range and section lines?

A. It is not. It is not sub-divided at all so far as appears on the plat.

Q. What about the Louisiana survey of the same area?

A. The Louisiana survey included, not only Grand island, but all of the islands of the Malheureux group, and the township and section lines were laid out across all of the islands.

Q. Will you please look at this photo print which, for purposes of identification, will be called map No. 19, and will you please take a pen and ink and designate thereon, what, by this map, is shown to be the physical coast line of that section of the Louisiana marshes south of west Florida according to this map?

A. I think I will have to ask you to be a little more explicit in regard to that and tell me just what kind of a coast line you expect. Do you want to take it in its strictest sense?

A. I would like you to be guided in your interpretation by the

same influence that caused you to draw the line from the point B to the point C north of Point Chico on map Mississippi B?

A. If you remember that was a request for a line between certain definite points?

Q. We will say from a point in the southern loop of Lake Borgne to the point marked Petit Isle au Chat?

A. As shown on this map, the physical coast line would appear to pass west of that point through a passage called here Bayou Guillemard.

Q. Would that be according to the same interpretation as influenced you in projecting the line on map Mississippi B?

A. It would, using my judgment as to what would constitute a passage of that magnitude. This Bayou Guillemard, as shown on this map, appears to be a wide and considerable passage.

Q. Is it any wider than Grand bayou on map No. 18?

A. According to the relative scales of the maps, I should say it was very much wider. That, of course, is not saying there was any such passage, but merely that such a passage is shown on the map.

Q. Will you please compare map No. 18 with map No. 19, and state whether or not Grand bayou has any connection, so far as represented, with any bayou shown on map No. 19, so far as its situation locally is concerned?

A. I understand your question to mean, you want me, if possible, to identify the streams on the two maps?

Q. Yes.

A. Yes sir.

Q. All right.

A. As regards the point of exit into Lake Borgne, Grand bayou seems to resemble a bayou shown as entering at a point marked Point St. Malo on map No. 19, but, in their course into the interior the two do not seem to accord.

Q. Is there any bayou on map No. 18 which would compare at its point of entrance in Lake Borgne, with the bayou which is marked Bayou Guillemard on map 19?

A. There are two small bayous shown on map 18 which might correspond to the bayou indicated, but it would be difficult to state definitely whether either one of them was actually identical.

545 Q. Does the bayou on map No. 19, marked Bayou Guillemard, run into a bayou which would correspond with the connection between Bayou East Branch St. Malo on map No. 18, and Bayou La Loutre on the latter map?

A. It might be so interpreted, though the discrepancy between the maps is considerable.

Q. Is, or is it not, the discrepancy more of detail rather than as to the general location of the two bayous?

A. It seems to me there is a pretty radical discrepancy. There are resemblances, but I should find it difficult to identify on the recent maps the various water courses shown on this map of 1806.

Q. Will you please refer again to your sketch No. 3 attached to your report marked Document No. 11 and estimate the distance from the point northwest of the most northern point of Isle à Pitre where a bend appears in the deep water channel route indicated on said sketch, to the point on the Mississippi coast main land immediately north therefrom?

A. I should suggest, if it answers the purpose of counsel, I take it on this map because it is more accurate, but if you prefer I will take it on this.

Q. If you can estimate that same distance from any other map it is all right.

A. That distance measured by me from map No. 17 is approximately, $8\frac{3}{8}$ statute miles and $7\frac{1}{4}$ nautical miles.

Q. Will you please estimate the distance from the point on the Mississippi main land coast, to which this last measurement was made, to the most eastern mouth of Pearl river?

A. In a straight line?

Q. I will ask you to give it first as a straight line?

A. That distance from the point mentioned on the coast of Mississippi, to the beacon at the mouth of Pearl river, is, approximately $22\frac{3}{4}$ statute miles and just short of 20 nautical miles.

Redirect examination.

By Mr. DYMOND:

Q. You have been interrogated by counsel for the State of Mississippi as to the preparation of the report which you made to Superintendent Tittmann at the request of Mr. McLain member of Congress from Mississippi, and, as I understand it, you stated that you were aided in the gathering of data in the formation of that report, by the maps that you looked into, and the records of the Land Office and other sources to which you had access?

A. Yes sir.

Q. Were you aided in any way, in reaching the conclusions that you reached, by your previous experience in boundary matters?

A. I suppose that that might be a natural conclusion My opinions, of course, are based on all the information which I have acquired.

Q. As I understand it, you personally have never visited the locality concerning which you have been testifying?

A. That is, this marsh area?

Q. Yes?

A. No sir, I have never been there.

Q. Were you ever in the territory to the westward.

540 A. I have been over a great deal of the western coast of Louisiana.

Q. Are you familiar with the general formation of that coast line over there?

A. A considerable portion of it.

Q. What you have been testifying, then, as I understand, is based upon data in possession of the Coast and Geodetic Survey as evidenced by the latest maps or charts which are issued by that bureau?

A. You refer to my report?

Q. I refer, not to your report, but to the testimony which you have given here on cross examination by counsel for the State of Mississippi?

A. Well, my testimony as to topographical and hydrographical facts in this region, is based upon information before me in the shape of maps.

Q. You have testified concerning a deep water sailing channel: Will you kindly look at the channel marked on map No. 17, C–C–C, and state whether that is the deepest sailing channel between the gulf of Mexico and the mouth of Pearl river as a continuous channel?

A. In answer to that I would say there is no such thing as a continuous channel through that area. There is a broad bar which fills the whole area of the western part of the Mississippi sound and all we can do is to select a course across that with *with* the best average depth of water; one can hardly call it a channel although it connects with a channel at each end.

Q. When you say that you speak entirely as based upon data shown by the map which is before you, namely, map No. 17?

A. Precisely.

Q. Do you know when those soundings were taken?

A. I cannot give the exact date on which the soundings in that particular area were taken; soundings began in that region in 1848 and were continued for several years, but they were completed within a period of a few years after 1848; subsequently surveys have been made in the district further south.

Q. Do you know of any recent soundings through there?

A. So far as I have been informed, no additional work in that region has been done, except in Bay Boudreaux. I would say, though in regard to this channel, that while there is not a very well defined channel through there, it is the best average course for vessels to pursue in going to the mouth of Pearl river and the only one which any vessel going to Pearl river would naturally pursue.

Q. Now, Mr. Hodgkins, will you kindly refer to map Mississippi B. concerning which you have been testifying on cross examination and state whether the red ink lines marked "18 statute miles" and "18 nautical miles" from the coast of Mississippi and running in an east and west direction, would bisect or cross any land as they progress westward into the Louisiana marshes?

A. As drawn on this map, they undoubtedly would.

Q. Can you state how frequently they cross separate bodies of land?

A. I can do that by inspection of the map. The line marked "18 nautical miles from the coast of Mississippi" on this map Mis-

Q. Have you known of instances where the instruments have blown away?

A. Yes sir, at Galveston they blew away, while they were under my personal supervision in 1900. You will find something here that would answer that. This is quoting from Doctor Enrique del Monte, member of the Havana university, who says "A continual variation in the wind velocity, that passes, in a few seconds, from a fresh breeze of 25 miles an hour, to the most violent and furious gale of 90 and 100 miles."

Q. Have you any data that would show the velocity of these recorded hurricanes concerning which you have testified, the maximum?

A. No, we have no records. We only have one instance where it passed over a station and the instruments were blown away, and I cited that in my testimony.

Q. Have you any record of a storm occurring in November 1893?

A. I find no record of a storm in November, 1893. It is not given on the charts as a hurricane and I don't find it here among the November storms.

Q. I notice, Mr. Cline, that you have cited storms in various years, but have confined your citations to the months of August, September and October. Why have you confined your citations to those months?

A. The charts show that those are the only months in which storms have passed near the mouth of the Mississippi river.

Q. Are those the months in which we generally have what you call equinoctial storms?

A. No; those are what we term West Indian hurricanes; they come into the waters of the gulf of Mexico and Atlantic ocean from June until November inclusive and they are more frequent in August, September and October.

Q. In what direction do those storms generally come?

A. Well, their direction is not always the same; they sometimes move west and sometimes move northeast and sometimes east; their tendency is northward.

Q. In these storms, is there ever any violent change of wind during the storm or during the several days of storm?

A. The wind always changes from one quarter to another during
the passage of a storm, it reverses direction almost, it de-
558 pends on the relation of the—that is, the position of the locality as regards the center of the storm as to the direction in which the wind shifts.

Q. But suppose the storm started from the southeast, blowing from that direction, from what direction would the wind come towards the end of the storm period, to what point of the compass would the wind shift?

A. That would depend on the location of the center of the storm. To get at that,—you will find that in the Bulletin H already cited.

Q. We just want to know in a general way.

A. It would vary with every storm.

Q. Was I correct in understanding a moment ago that, as a rule, when a storm started at one point that it ended up at the opposite point of the compass?

A. I will state that in a storm moving from west to east, there comes first easterly winds, that is, while the center of the storm is to the west of the locality in question; after the center of the storm has moved to the east of the locality in question the winds are westerly.

Q. Suppose then, you take a north and south line, would the same reasoning of results apply. Suppose the storm was coming from the southward, moving north, from what direction would you have the wind?

A. If the storm were moving towards the north the wind on the right hand side would be from an easterly direction; on the left hand side it would be from a westerly direction, blowing in towards the center of the storm.

Q. Now, suppose the storm was to the north and going southward?

A. No, we never get anything like that, hurricanes always move in a northerly direction, sometimes westerly and sometimes easterly, in the Gulf, but when they go north we find they nearly always go towards the northeast.

Q. If a storm originated in the Gulf and moved northward, after the storm had passed over a given locality, from what direction would the wind then come?

A. If the storm were moving northward?

Q. Yes, in its first stage, and had passed a given locality?

A. If moving towards due north?

Q. Yes, in what direction would the wind come so far as that given locality is concerned?

A. It would be between the southeast and southwest, from southerly point depending on the position of the center of the storm as regards locality.

Q. As an illustration, let us suppose a storm came up from the Gulf into Mississippi sound from the southeast. After the storm had passed on, from what direction would the wind come?

A. The wind would come from a southerly direction with the storm moving from the south towards the north.

Q. When would it shift around?

A. That would depend on the position of the storm center. Now if the storm center were to pass up to the east, the wind would shift around to the west; if the center were to pass up to the west the wind would shift around to the east.

Q. Mr. Cline, the area in dispute between Louisiana and Mississippi as to ownership in this case, is that area south of Mississippi and in the northeastern portion of the southern part of Louisiana. Would this locality be in the path of the storms concerning
559 which you have just testified and the storms which affect the mouth of the Mississippi river?

A. Now, the storms cited would, in some way or other, have an effect on southern Louisiana and southern Mississippi. To what extent that would be impossible to say; but they would all have an effect in some way or another.

Q. Would that effect be dependent on the distance of the storm center from the locality in question?

A. Well, it might, it would depend more on the intensity of the storm than on anything else; but the position of the storm would also be a consideration.

By Mr. ZACHARIE:

Q. Have you, connected with the Weather Bureau, made a study from the data before you, of the effects of any of these storms?

A. Well, no, my work has all been in the line of studying up the causes in the atmosphere which produce them with a view of forecasting them. I never made a study of the effects of the storms.

Q. In other words, to ask the question differently, have you ever studied where the damage came from any of these storms, whether from the front of the Gulf or from the rear waters being driven from the rear, that is, from the sound; for instance, if you have ever noticed, from your study or personal experience——

A. Well, now, I don't remember to have had an opportunity to study that particular question.

Q. You would not pretend to locate the particular violence of any of these storms which you have mentioned, in regard to the locality in question here?

A. No sir, that would be impossible from the amount of knowledge that we have.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, the following extracts from the reports of the Superintendent of the United States Coast Survey. Report for the year 1852, page 43, the following extract "Since the close of the season in this section, a hurricane has swept over that portion of it from Chandeleur bay up to Mobile bay, and has so altered the regimen of the vicinity of some of the islands, as to induce a re-examination of Naso roads, and of Horn Island pass, before publishing the charts which had been prepared. The lighthouse at Chandeleur islands was destroyed. A break was made through Ship island and also through Petite Bois island. The results of the re-examination will be given in my next report."

Report for 1853 of the same department, page 67—"Mr. Gilbert reports great difficulty in the preservation of the station points on the south and east shores of Lake Borgne, as many of them necessarily placed near the water are liable to its encroachment. Proctors point, on Lake Borgne, has been washed away to the extent of 50 or 60 feet in two years. He has taken pains to secure the
560 points as far as practicable." Page 68, same report. "Mr. Gilbert upon closing his work in that section, and finish-

he computations required, has been employed in the execution of
table work in section 1. Topography.—Assistant William
reenwell who has executed the topography in this section from
mmencement in 1847, resumed that portion of the work in No-
ber last, and continued until May, commencing at Isle au Pied,
extending along the southern shore of Mississippi sound and
Borgne nearly to the western limit of the lake (see sketch H,
1). Two sheets were completed, comprising an area of ninety-
t (98) square miles, and an extent of shore line four hundred
twenty-five (425) miles. Re-surveys were also made of part of
island and Dauphine islands, to ascertain the changes produced
he hurricane of August 23rd, 1852. Mr. Greenwell was assisted
his work by Mr. William M. Johnson, and used the schooner
enix as means of transportation and accommodation of the party.
his report upon the character of the topography of this region,
Greenwell speaks of the great changes in the position of the
re line thus: 'From the experience of the past year, I find that
lake shores of this region, and so, likewise the sound shore
ming from Isle au Pied to Malheureux point, are fast being cut
ay, at the rate of 75 to 100 feet per annum.' 'What is worthy of
mark also is, that whilst these inland shores, subject to the fierce
rthers of the winter, are being washed away, the eastern shores of
is marsh region though washed by the heavy waves of the Gulf,
e gradually encroaching upon the sea in nearly the same ratio.'
"This last may be attributed mainly to the undertow which is
nstantly throwing up sand banks and reefs outside, which serve
check the force of the waves, and behind which deposits are be-
g made by the eddy at each succeeding gale, until this gradually
ses above the surface and becomes linked with the main shore
self. This mass of sand, shells etc. is so firmly cemented, as it were,
ith the marsh mud, as to resist without wash the heavy swell from
he Gulf."

Page 69, same report.

"Nassau roads at the north end of the Chandeleur islands, was
next examined to ascertain what effect the same storm had produced
upon the passage there, and whether any changes had taken place
since the survey of May 1852. No material change was found to
have occurred in the hydrography of the roads since that time.

The lighthouse had been destroyed by the sea from the north-
561 ward undermining its base; and there is some slight change
in the topography of the point. As the dwelling of the
keeper is still standing, it may be used instead of the lighthouse in
the sailing directions, as it was adjoining the tower."

Counsel for the State of Louisiana now offers in evidence the extracts as read from the two reports.

Cross-examination.

By Mr. McCLUNG:

Q. Mr. Cline, I understand that you are district forecaster in the Signal and Weather Bureau?

A. In the Weather Bureau?

Q. In the Weather Bureau of the United States Government?

A. Yes sir.

Q. And your duties have reference to forecasting and giving that information to the public?

A. Yes sir, with reference——

Q. To these storms, tornadoes and hurricanes?

A. Yes sir.

Q. And as to the effects they produce?

A. And also keep a record of all phenomina of a meteorological nature.

Q. And in that line you undertake to speak as an expert?

A. Well, no, I am not speaking as an expert. I am giving evidence as to what the records show. I was not summoned as an expert.

Q. You do not undertake to speak even as an expert forecaster?

A. I consider myself an expert forecaster when it comes to predicting; but it is the past we are dealing with here, I am not forecasting the past, but when it comes to forecasting the weather I consider myself an expert in that. I am just telling you what is in the past.

Q. As a matter of fact you have not testified to anything at all about forecasting, in this testimony?

A. No.

Q. You are out of your range in giving this testimony as an expert?

A. I am not testifying as an expert. I am giving what the records show.

Q. You are a keeper of the records?

A. I am producing the records of the United States Weather Bureau.

Q. You do not undertake to say what effect these several storms and hurricanes of which you have given references, had upon physiological formations?

A. No, I could not say what effect they have had.

Q. You do not undertake to say whether any of these storms or hurricanes to which you have referred, have made any material changes on the East Louisiana coast in the neighborhood of Lake Borgne or the Mississippi shore?

A. I could not say that they had made any change.

Q. As far as you know those lines around Malheureux point, Proctorville and on east to Isle à Pitre, are the same now as they were in 1812 or 1817?

A. It would be impossible for me to say anything about those lines.

Those records to which you have referred do not indicate any rial changes?

These records deal only with the movement of storms in a gen- way.

Then do you find anything special in those records that indi- any material change in the conformation of the marsh lines?

These records do not take up that subject. These are, as far ny knowledge of the question goes.

Are there any records in your office that would indicate any nges in the geographical conditions of that section?

A. Nothing that I can call to mind.

Redirect examination.

By Mr. ZACHARIE:

Q. In regard to that portion of your testimony in regard to the ange or the shifting of the winds in the movements of these rms, have you not testified as an expert from your knowledge and dy——

A. Well, on the movement of storms and shifting of winds, I would nsider that I have given that from the authorities that I have died, all authorities agree on that. I do not consider that could expert testimony, but that is an established fact accepted by all uthorities, not by me alone but by all meteorological authorities nd I do not consider that as expert testimony because——

Q. It comes from your study of the authorities?

A. Yes sir; those are movements that are established by the au- horities, and also by meteorological observations.

Q. Then in so far as that portion of your testimony is concerned, it is really expert testimony?

A. That would be, you can term it, the facts in the case.

Q. Would there be in the possession of the Weather or Survey Bureau any source of information in regard to these different storms which have occurred since the establishment of the Weather Bureau, as to show at what particular point the storm center was, further than what you have read?

A. These charts show as near as, I presume, the bureau can get it. The charts in Bulletin H show the movements of the storms as near as the bureau can get at it, I presume.

Q. Do those charts show the center of these storms?

A. The lines show the movement of the storm and I presume are as near the center as it is possible to locate them. These maps go as part of this history.

Q. Do any of these maps show the center of any of these storms as touching this disputed territory, that is, that portion of Mississippi sound or the gulf of Mexico lying between this peninsular of Saint Bernard and the Mississippi shore; if so please point out——

A. These charts show the tracks of the storms passing over southeastern Louisiana as follows: 1895, August 14th and 16th; 1885, September 25th and 26th; also September 20th and 21st near and north of Port Eads moving towards the east; 1889 September 23rd; 1892 September 12th; 1882 October 19th, 1895 October 30th
563 and 31st. These I believe are the only ones that passed directly over the territory in question.

Q. You mean to say the storm centers were immediately in the neighborhood of this territory in question?

A. In these instances, the tracks of the storms as given in these charts there with Bulletin H. The track of the storm as given on these charts is, as I understand, to represent the course of the center of the disturbance.

Q. As I understand, the center is the maximum violence of the storm?

A. No, the maximum violence of the storm is, as a rule, to the eastward of the center.

Recross-examination.

By Mr. McCLUNG:

Q. Do I understand you to say that these storms you have just spoken of, in 1882, 1885, 1892 and 1895, passed through the territory in dispute in this case?

A. They passed over southeastern Louisiana.

Q. Did they pass over that portion of the Mississippi sound immediately east of Lake Borgne and as low down as Malheureux point and Isle à Pitre, in that section?

A. I should judge that the storm movements covered that area, from the tracks of the storms as given here.

Q. But I understood Mr. Zacharie's question to be, the storm center?

A. I could not tell you exactly the point over which the storm center passed. I can tell the area over which the storm would prevail but as to the locality traversed by the exact center I cannot tell that from these maps, these maps do not show the exact localities in question.

Q. Do your maps show in what direction those storms travelled?

A. Yes sir.

Q. Tell me in what direction the storm of October 30th and 31st 1895 travelled with reference to that section?

A. It moved from a westerly direction towards the east and a little north of east.

Q. And near the Mississippi shore, did it not?

A. Well, now, I could not say definitely where it touched on the Mississippi shore. Our record shows it passed in just to the south of—the center of it—to the south of the 30th paral-el of latitude.

Q. And travelled easterly?

A. Yes sir, that was the general movement of the storm.

. Now, the storm of September 25th and 26th, 1885, was what ction?

By Mr. ZACHARIE:

. Will you state where that storm struck the northern portion of s projection of Louisiana if you can?
A. That would be impossible. You see the storm came in here er the southwestern part of Louisiana and passed off to the east.

By Mr. McCLUNG:

Q. Did it pass into the Mississippi main land?
A. It did not go north of the 30th paral-el*l* of latitude as shown on this chart, it is not chartered north of that.
Q. Can you tell from your chart at what point it struck the 30th paral-el*l*?
A. It did not go north of the 30th paral-el*l* at all, it is south of he 30th paral-el*l*.
Q. But it struck the 30th paral-el*l* in Mississippi?
A. No, it don't go north of the 30th paral-el*l*, it moved east just a hort distance south of that.
Q. It don't show where it struck it?
A. No sir, it don't show the passage north of it at all.
Q. What was the course of the storm of September 25th and 26th 1885?
A. That storm moved from the central Gulf north eastward across the 30th paral-el*l* of latitude, approximately in the vicinity of the 88th meridian west from Greenwich.
Q. How far is the 88th meridian east of Lake Borgne?
A. I could not answer that because I would have to refer to a standard map for that, I haven't it here. This does not show a detail map.
Q. One of the 20th and 21st of September 1885, how about that?
A. That one passed eastward across southeastern Louisiana a short distance north of Port Eads?
Q. Did it touch the territory in dispute?
A. Well, it would be impossible for me to answer that question unless I knew how broad the storm was. I don't know exactly where that territory is.
Q. It is right on the south of the Mississippi coast right up in Lake Borgne where Mississippi and Louisiana join at the mouth of Pearl river, in that section?
A. You see that map does not show sufficiently for me to judge.
Q. How is it you gave that storm in answer to a question to give those affecting the territory in dispute?
A. I gave those that passed over southeastern Louisiana. I told him I would give him those that passed over southeastern Louisiana.
Q. I understood that to be the first inquiry by Mr. Dymond and

islands contiguous to the shore of Mississippi; do you wish those named also?

Q. Well, within 18 miles of the Mississippi shore east of the extreme eastern part of Isle à Pitre?

A. On the Mississippi side of the sound, Deer island, lies off Biloxi bay, an island called Le Grand in the mouth of the West Pascagoula river, an island immediately east of the latter, an island called Round island about mid-way of Mississippi sound off Pascagoula; I think that is all that can be properly separated from the shore line.

Q. Then do I understand you to mean that the islands just named by you, are shown to have been in existence at the time that the Coast and Geodetic Survey was made in 1852?

A. Yes sir; I cannot say exactly as to date those islands were surveyed, without inspecting records, but it was about 1852.

Q. In your examination, Mr. Hodgkins, of the records in the office of the Interior Department in Washington, did you find any evidence of any survey of this country south of the point between Malheureux islands and Isle à Pitre, to have been made as giving that territory to Mississippi?

A. I saw no surveys from the Mississippi shore extending south of Grand island sometimes called Half Moon island.

Q. Did you find surveys in the Interior Department showing that this area of country been Malheureux islands and the eastern extremity of Isle à Pitre had been surveyed by the United States Government as belonging to Louisiana?

A. It is my recollection that the land surveys covered that whole area, although my special attention was given to the Malheureux islands distinctly, and I do not remember so much about
552 the other plat books, but it is my impression that the survey had covered the whole area.

Q. Did you find that the Malheureux islands had been included within any survey at all by the United States Government made by the authorities of the United States Government?

A. As I just stated Grand island was included in the Mississippi land survey; not only Grand island but also Grassy island, Round and Petite Bois islands were included in the survey under the surveyor general of Mississippi.

By Mr. FLOWERS:

Q. I believe you said that you found on map Mississippi B a bayou corresponding with the one on map No. 19 along which you drew a line indicating your idea of the physical coast line of Louisiana as shown by that map. Will you please state what that bayou is on map Mississippi B?

A. The bayou is marked in two places, one place Otter bayou and another place Bayou La Loutre which of course mean the same thing; but I think I noted before that although there is a certain resemblance that the coincidence is by no means close; it is some-

conjectural whether they are the same bayous, but it might be terpreted however.

Please indicate on map Mississippi B, the mouth of that bayou ake Borgne, in red ink?

. I mark the point requested, by a red cross and the letter E.

. Mark the other end of it please, where it enters the waters on south?

. That is to say, the other end of this particular passage?

. Yes.

. There are two southern entrances. I will mark the most tern one and I mark that likewise by red cross and the letter F. ould like to add, Mr. Flowers, to that, that this bayou which I ve just marked E–F is the same one which I previously described my testimony as being the apparent rigid limit of the physical tent of the continent in this region.

At this stage of the proceedings, the hearing was adjourned by e commissioner until tomorrow April 15th 1904, to be resumed at e same place and at the hour of 10.30 a. m.

APRIL 15, 1904—10.30 a. m.

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Pursuant to adjournment the hearing was this day resumed at ne same place, at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y general of Louisiana, Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. J. N. Flowers, ass't att'y general of the State of Mississippi.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

ISAAC M. CLINE, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live in New Orleans.
Q. What is your occupation?
A. I am district forecaster of the United States Weather Bureau.
Q. How long have you been following that profession or occupation?
A. Since July 7th, 1882.
Q. When did your employment start in New Orleans?
A. On August 7th 1901.
Q. Where were you employed prior to that date?
A. At Galveston, Texas.

Q. For how long were you in Galveston?

A. From March or April 1889 until July 1901, inclusive.

Q. Prior to that, were you in the employ of this same Government service at other points?

A. Yes sir.

Q. Have you been continuously in the employ of the Weather Bureau of the United States Government since 1882?

A. Signal Service and Weather Bureau.

Q. What are your duties in connection with your office?

A. Well, my duties are district forecaster and supervising official.

Q. Do your duties involve the recording of storms and other elemental troubles?

A. Yes sir, everything of a meteorological nature.

Q. Has the Government taken any steps to compile data concerning the meteorological disturbances?

A. Now, they have compiled a publication called Weather Bureau Bulletin No. 232, United States Department of Agriculture, Bulletin H, West Indian Hurricanes, by E. B. Garriot Professor of Meteorology, prepared under direction of Willis L. Moore, chief U. S. Weather Bureau, Washington. Weather Bureau, 1900.

Q. From what date do the statistics of the Weather Bureau, or, are the statistics of the Weather Bureau Department by actual records?

554 A. Well, the Weather Bureau commenced actual records in 1872 or 1871, I think at some stations, 1871 here.

Q. Prior to that date, from what source did the Government get its information in regard to previous storms?

A. Well, that was taken from official and other publications, different publications they could get that were considered sufficiently reliable to use the information.

Q. Have you, in your position as forecaster, forecast official, located in the city of New Orleans, had occasion to study the history of storms in Louisiana, since the creation of the bureau, and prior to the creation of the bureau?

A. Well, only as published in that report that I cited, I have had occasion to use the report and study it.

Q. Are the records to which you have referred, the best obtainable records on the subject of storms in the locality of southern Louisiana and southern Mississippi?

A. I consider them so. The bureau publishes only the best, only that which passes through the careful scrutiny of the supervising officials.

Q. Are you prepared to give a list of the storms which have occurred in this general locality since 1804?

A. Yes sir. I have prepared a list from the publication cited above.

Q. Will you please state what storms have occurred in this locality since 1804, giving their date as near as you can?

Well, 1812, August 19th, New Orleans, 1822, July 11th, Mobile. I am only citing those that pass in the vicinity of this section.

Yes.

In 1835, August 12th and 8th, Cuba and Galveston. 1839, mber 5th, Galveston. Then there were 12 hurricanes of which ve no exact dates here.

Between what dates did they occur?

From 1856 to 1877. Then I have a record here that I was re- ng to in the report of the Coast and Geodetic Survey.

What year's report is that you are citing from now, of the st and Geodetic Survey?

1853.

What date did the storm occur as mentioned by that report?

August 23rd 1852. Then I have a number of charts that give paths of the hurricanes from 1878 to 1900 inclusive; these are ared from reports of the Weather Bureau from 1878 to 1900. ve noted the dates of such as passed in the vicinity of the 90th idian, somewhere in the vicinity of the mouth of the Missis- pi river, that is, somewhere between Mobile and the 92nd meri- n.

Q. Where would that carry you, so far as locality is concerned, the Sabine river?

A. No, that would not go as far as the Sabine river.

Q. It would be east of that?

A. You might as well make the Sabine river the western limit, it go as far as that river, because all those mentioned pass inland the east of the Sabine river.

Q. Will you please state the storms which have occurred subse- ent to the dates you have just mentioned?

A. During August, 1880, 30th to 31st; 1888, 19th to 20th; 1894, 6th–9th; 1895, 14th to 16th. During September: 1885, 20th 55 to 21st; 1885, 25th to 26th; 1889, 23rd; 1892, 12th; 1893, 7th and 8th; 1890, passed through the Gulf south of New Or- ans on the 7th. During October, 15th and 16th; 1882, 19th; 886, October 12th; 1892, Oct. 23rd; 1895 October 30 and 31st. Now, those are the only dates I have of storms that passed in the eighborhood of the mouth of the Mississippi river.

Q. Do you remember the date of the storm when so many people were killed in southern Louisiana in the neighborhood of Cheniere Caminada?

A. No, I have no record of that, I can find—you see that was be- fore our records were kept I believe.

Q. No, I mean on October 1st 1893?

A. Are you sure that was in 1893?

Q. Yes.

A. I believe I have skipped that. There is no chart of that here in October. That probably was a local Gulf storm, that is not charted, there is no chart of that here, that is not charted as a West Indian hurricane. Now, we have those frequently that are locally devel-

oped in the Gulf that are not chartered as hurricanes, they spring up and are of short duration and die out. I probably have records of that in the books up stairs.

Q. Be kind enough to search for it.

A. Yes sir.

Q. Where were you in 1893?

A. I was at Galveston, but I do not call that storm to mind just now.

Q. Would you have records in your office up stairs which would show that storm?

A. Yes sir, our records should show a reference to that storm in our journal and also our maps. Let me look here just a minute in October and see whether there is any reference to it. Here it is, right here, I have it. I will read the full report of that storm.

Q. Pease do so.

A. "So-called Gulf hurricane of October 1–6, 1893. A small violent whirl in the gulf of Mexico on the 1st, the early history of the storm not being known. It developed rapidly, striking the Gulf coast on the same date, its destructive influence being felt from New Orleans, La., to Pensacola, Fla. It had reached the southwest corner of Alabama on the morning of the 2nd, and was central in the northern portion of Alabama on the 3rd. On the morning of the 4th it had reached the Atlantic Coast line in North Carolina near Hatteras, and was dissipated in the Atlantic on the 5th. Violent wind, heavy rains, and local storms attended its progress through the South Atlantic States, though the greatest amount of destruction and loss of life occurred in Louisiana, where the track of the storm passed between Port Eads and New Orleans. As the instruments used in the weather service were blown away, or destroyed, only an estimate of the maximum force of the wind was made, which placed the velocity at 100 miles an hour near Pointe a la Hache. The storm was accompanied by a tidal wave which engulfed everything before it, explaining the great loss of life reported, one local account placing it as high as 2,000. The canning interests suffered severely, and there was immense destruction to shipping, the property losses in
556 the aggregate footing up millions of dollars. There was great suffering among the living in many localities, and in some instances, as on the islands, it was necessary to use for food dead animals and poultry that had perished in the storm. In the vicinity of Mobile, Alabama, the storm was very severe, though unattended with the terrible loss of life recorded in Louisiana. In the marsh truck farm region nearly every house was swept away and the crops destroyed; 7 lives were lost. At Pensacola, Florida, considerable damage was done to the water front, and there were bad washouts on the railways. The influence of the storm extended to Savannah, Georgia."

By Mr. McCLURG:

Q. Are we to understand that this historical fact is to be copied into the record as part of your testimony. Is that the object?

I am only citing the published report, that is the only testi-
I have given, is the published reports by the bureau. I am
the records. I do not know anything about it personally. I
mply citing the records.
If it is an official record you do not have to read it to get it
e the court.
I can leave these records.
That is between you and your counsel. I just wanted to un-
and the purport of this investigation.

By Mr. DYMOND:

Can you furnish counsel for the State of Louisiana and counsel
ne State of Mississippi, and the Supreme Court, one copy each
nat publication?

y Mr. MCCLURG: I would like to have the records that have
introduced on the part of Louisiana so I may have an oppor-
ty to examine them.

is agreed between counsel for the State of Louisiana and coun-
or the State of Mississippi that counsel for the State of Missis-
pi shall be furnished with a copy of Bulletin H, United States
partment of Agriculture, Weather Bureau, West Indian Hurri-
es, by E. B. Gariot, professor of meteorology, prepared under the
ection of Willis L. Moore, chief United States Weather Bureau.
at such extracts therefrom as may be desired, on either side, to be
ered in the record, shall be made therefrom without the necessity
introducing the original bulletin in evidence in its entirety.
It is further agreed between counsel for the respective States in
e presence of the commissioner that extracts may be made by
her side from the report of the Superintendent of the United
States Coast Survey for the year 1853 and entered in the
57 record by either side without the necessity of offering the orig-
inal report in its entirety and that an opportunity shall be
rnished to counsel for the State of Mississippi to examine the said
eport so that they might be able to make such extracts therefrom
s they desire.

By Mr. DYMOND:

Q. With the exception of the storm which you have mentioned
ccurred on October 1st, 1893, what was the character of these other
storms, in a general way, how were they denominated?

A. They were denominated as West Indian hurricanes. I will
get the exact wording of it. West Indian hurricanes.

Q. Are you able to state what the maximum velocity of the wind
is in these West Indian hurricanes?

A. Well, it varies, at different times, under different circumstances,
from a moderate wind to a wind that we have been unable to get a
velocity of. I have known 100 miles an hour to be recorded for a
minute, before the instrument would be blown away.

that Judge Zacharie meant to confine you to this territory in dispute?

A. I have given, in my opinion, all of these storms that affected the territory in question; judging from my knowledge of storms I would say that all of these storms cited affected that territory in question.

Q. I understood that Mr. Zacharie asked you about the storm center?

A. Yes sir.

Q. Now, about the direction of the storm of 1892, September 12th?

A. Well, that storm moved from the central Gulf northerly and to the east of north and passed over southeastern Louisiana and cut the 30th paral-ell of latitude, well, about, I guess about the meridian of 88, came very close to where the other went across it. These are approximate, because I have not the exact meridian here.

Q. Tell us about the storm of October 30th and 31st 1895?

A. That storm passed eastward across southeastern Louisiana, to the south of the 30th paral-ell of latitude. I have given that already.

Q. You have no record there of the storm of 1893?

A. Nothing further than what I have stated.

Q. What about the storm of October 19th 1882?

A. That storm passed northeasterly across southeastern Louisiana, the center passed slightly to the north of New Orleans,
565 thence eastward south of Mobile.

At this stage of the proceedings, W. C. Hodgkins, witness on behalf of the State of Louisiana, requests of the commissioner an opportunity to make certain corrections in the report of the testimony as given by him, which opportunity is accorded him.

Mr. HODGKINS: Mr. Commissioner, I have noticed in the morning paper, the Daily Picayune, what purports to be a report of my testimony given yesterday and I notice one or two statements which do not agree with my testimony, at any rate, as I intended to give it, therefore I ask the privilege of noting the corrections to these statements assuming that the statements may perhaps have crept into the stenographer's report. It is here stated (reading from Daily Picayune) Questions by counsel for Louisiana: "What do you consider the coast line of Louisiana from Malheureux point going eastward?" Answer: "There comes up that old question of what is the coast line, whether you mean the physical or political coast. When we speak of the physical coast of a continent, or an island, we mean the boundary between the solid land and the water. When I say solid land and the water, I do not mean necessarily very solid land, but continuous land. The line that exists for the purpose of boundaries is assumed between these two formations. But when we talk about the political coast line, we mean the line that is supposed to follow around the outer portions of the coast and running across

bays from headland to headland, jumping across narrow inlets, generally in settling the whole territory of the State or nation." That is quite a perversion of what I stated, in two points; first, in regard to the physical coast. What I said was "That line exists for the purpose of boundary between those two formations, that is to say, between land and water." When I spoke of political coast line I said "That line that is supposed to follow around the outer portions of the coast running across bays from headland to headland, jumping across narrow inlets and in general circumscribing the whole territory of the State or nation." I would ask that that stand as my testimony on that point. There is another statement made here in regard to a disclaimer on my part in regard to the preparation of the report made at the request of the Hon. F. A. McLain Congressman from Mississippi in which it is stated that I testified that if I had known that the report would be filed in a boundary suit I would have prepared it with more care. I wish to state that that qualification was not intended to refer to the report itself, but to sketch No. 2, especially, which accompanied that report, on which I drew certain lines approximately parallel to certain shore lines as shown on the same sketch. I ask that that be recorded as the intent of my testimony in that regard.

566 J. B. BAYLOR, recalled, on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. You have already testified that you have been engaged in the Coast and Geodetic Survey work along the territory in dispute in this case?

A. Yes sir. I was engaged in 1903, the spring of 1903.

Q. How long a time were you engaged in that locality?

A. I can't give it exactly, but somewhere about a month and a half or two months.

Q. Have you had occasion from personal observation to examine the deep water channel?

A. Only from the charts in connection with my work there, Coast Survey charts.

Q. Did you make any examination of the depths of that channel for the purposes of the navigation of vessels?

A. Yes sir; I examined the charts very carefully in connection with the navigation of the vessel I was on.

Q. What did she draw?

A. She is a light draft vessel drawing somewhere about from 5 to 6 feet.

Q. What portions of this water lying between the northern coast of this disputed territory and the Mississippi shore, was she able to navigate?

A. She could navigate all that water, practically.

Q. In regard to any other larger vessels did you see any there?

A. Yes sir, I saw vessels pass quite frequently.

Q. Of what drafts?

A. That I am not prepared to say as I did not examine the drafts, but certainly drawing more than five or six feet of water.

Q. What did they navigate?

A. They navigated the Mississippi sound.

Q. In regard to the navigation of this channel which you have before testified to, what vessels of what depth, or about what depth, can navigate that channel?

A. I should like to have the chart before me, before I answer that question.

Q. (Witness is shown map No. 17.) What did you observe in regard to vessels of a deeper draft navigating that water?

A. I noticed that no vessels of deep draft went down through that disputed territory.

By Mr. McCLURG:

Q. Do you mean below Malheureux point?

A. Between Malheureux point and the end of Isle à Pitre.

By Mr. ZACHARIE:

Q. In so far as this deep channel was concerned, what did you observe, if anything, in regard to the navigation of it by vessels of deeper draft?

A. I noticed that all vessels of deep draft going to the gulf
567 of Mexico from Pearl river or the Rigolets, when going directly to the gulf of Mexico, they seemed to go through that channel, going by way of Gulfport, they went through that channel down Mississippi sound.

Q. Do you know why, or for what reason, these vessels go down to Gulfport to take that other channel to the eastward?

A. Usually it seemed to me because most of them called at Gulfport in their route to the Gulf.

Q. Are you aware of any deeper water off of Gulfport?

A. There is a very much deeper channel from Gulfport to the gulf of Mexico, it is a dredged channel, artificial channel.

Q. Do you know about what depth it is?

A. They claim it to be somewhere about 23 feet of water, I think, at mean low tide.

Q. That is eastward of this territory in dispute?

A. Yes sir.

Q. It has no relation to this case, the deep water channel at Gulfport?

A. It does not seem so to me.

Q. We have some testimony in regard to two channels, that is to say, the channel from the mouth of the East Pearl river going

eastward and a departure or branching off of the two channels. Do either one of these channels go south of these Malheureux islands?

A. Neither of them.

Q. Now, is there any other information that you can give us in respect to that channel which would assist in elucidating this case?

A. I do not know that I could, except that it seems to be the only channel, in fact, it is according to this chart the only possible channel for a vessel leaving Pearl river drawing as much as nine or ten feet by which said vessel could reach the gulf of Mexico by any channel west of Cat island.

Q. Would be this particular channel?

A. Yes sir.

Q. Is that the only bouyed channel until it branches off?

A. It seems to be so on this chart.

Q. Does your personal observation, as far as it goes, accord with what is designated on that chart?

A. Yes sir, it corresponds, inasmuch as it seems to be the most direct and feasible channel to reach Pearl river from the channel between Isle à Pitre and Cat island.

By Mr. DYMOND:

Q. Will you please look at this map Mississippi Exhibit A, and note a red line running across the southern portion of the map and marked Mississippi line, and note the location of that line: Will you now please look at map No. 17 and note the location where this Mississippi line would go if projected on map No. 17, and state what the average depth of water would be along that red ink line shown on Mississippi's Exhibit A?

A. In some place it crosses solid marsh that has practically no water except when you have extraordinary winds that cover the marsh with water.

Q. Where there is water, will you please note the average depth of it?

A. According to this Coast Survey chart map No. 17, which is my sole information on the subject, inasmuch as I have never
568 been in that immediate territory myself, there seems to be places in which there seems to be depths of 4½ and 3½ feet at mean low tide. There is an average tide of about a foot and a half, in these waters.

Cross-examination.

By Mr. MCCLURG:

Q. These vessels that you speak of travelling the deep water channel, are seagoing vessels, are they not, mostly?

A. It depends entirely on what you would term a seagoing vessel; they are coasting vessels, vessels engaged in the coasting trade. I do not think I saw any vessels going out of Pearl river or the Rigolets going to any foreign port.

Q. And that was during the spring of 1903?

A. Yes sir, though I am not positive on that point, but th
pression made on my mind was that the majority were engag
the coasting trade.

Q. As to how that was in 1812 and 1817, you do not unde
to say?

A. I do not, most decidedly.

At this stage of the proceedings, the hearing was adjourne
the commissioner for recess to be resumed again at 2.15 p. m.

Resumption of Proceedings.

2.15 P.

Pursuant to adjournment for recess the hearing was resume
the same place, and date, at the hour of 2.15 p. m. all parties be
present.

FRANK L. LOOMIS, witness sworn and examined on behalf of
State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. In New Orleans, La.

Q. What is your business?

A. I am assistant manager of the American Printing Compan

Q. Does that company do a printing business?

A. Yes sir.

Q. Will you please look at these plates which are submitte
to you for examination and state whether you have ever see
them before?

A. Yes sir. I have seen this one (referring to stereotyped plat
exhibited to him).

Q. You have also looked at the second stereotyped plate?

A. Yes sir.

Q. Will you please now look at the third stereotyped plate?

A. Yes sir.

Q. Will you state the circumstances under which you first saw
those plates and the purpose for which you first received them?

569 A. They were delivered to me by the photoengraving com-
pany.

Q. For what purpose?

A. To print some maps which were embodied in a brief of the
oyster commission.

Q. Will you please look at these diagrams which are marked dia-
grams Nos. 1, 2, 3 and 5, attached to the original bill of complaint
in this suit of The State of Louisiana *vs.* The State of Mississippi,
and state whether those diagrams were printed from the stereotyped

plates which you have just been testifying about and which you have just examined?

A. Yes sir, they are.

Q. When you stated a moment ago that these stereotyped plates were used in connection with printing a brief for the Oyster Commission of Louisiana, did you mean that to be a fact or do you mean it was for the original bill of complaint in the suit of The State of Louisiana *vs.* The State of Mississippi?

A. No sir, this is the brief of The State of Louisiana *vs.* The State of Mississippi.

Q. That is the document for which——

A. We printed this brief (witness refers to bill of complaint in the suit of The State of Louisiana *vs.* The State of Mississippi) and bound those diagrams in there.

Cross-examination.

By Mr. McCLURG:

Q. Did you have anything to do with making the plates that have been exhibited to you?

A. No, sir.

Q. Do you know whether they are correct or not?

A. No sir.

Q. You made these maps from those plates?

A. That is, we printed the maps from the plates as delivered to us.

Q. The maps are not correct unless the plates are, are they?

A. The printing—they are bound to be reproductions of the plates.

Q. If the plates are wrong the maps are wrong?

A. Yes sir.

Q. And you are not prepared to say that the plates are correct?

A. No sir.

Q. Did you ever see a plate made for the use of the State of Mississippi?

A. Not to my particular recollection, no sir.

Q. Did you make a map for the State of Mississippi to be used in this controversy with Louisiana?

A. Not that I recollect of, I might have made one, if I saw it I could tell.

Q. Look at this map which I show you Exhibit A to the deposition of W. K. M. Dukate on cross examination April 8th, 1904, and say whether this American Printing Company made that map?

A. No sir, the American Printing Company did not.

Q. It did not make that map?

A. No sir, it did not print it.

Q. Do you know who made that map?

A. No sir.

570 Q. Have you any idea from the physical appearance of the map, or otherwise, who made the plate from which the map was made?

A. It has the imprint of the photo-engraving company on it.

Q. That is the same company that made your plates?

A. Yes sir.

Q. Then the same company that made your plates made the plate from which this map that I now show you was made, so far as the certificate or indication there will show?

A. The indications are that way, yes sir; it has the imprint of the photo-engraving company on it.

Q. Then I understand that the same company that made the plates shown you by counsel for Louisiana, made the plate for the map which I now show you?

A. I would judge so from that imprint, yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. Are you familiar with the manner in which these plates are made?

A. Yes sir, to a certain extent.

Q. Is there any possibility, if so, what, of mistakes being made in maps by the process of stereotyping?

A. No sir, that is, the plate could be changed but not by mistake.

Q. Not by the process?

A. No sir, any changes could be ordered and made.

Q. Afterwards, in the plate?

A. Yes sir.

Q. But in the process of making the original plate is there any possibility of any error or mistake being made in making the plate?

A. The plate would be naturally a reproduction from the photo-engraving.

By Mr. DYMOND:

Q. If a photo-engraver was given a piece of work to reproduce by the stereotyping process——

A. We will say first, photo-engraving process.

Q. Photo-engraving process; if there was an error in the map that was given him to reproduce, would that same error re-appear in the map that was printed?

A. Yes sir.

Q. Do I, or do I not, understand that the map that is presented must be correct in order to get correct results?

A. Yes sir.

Q. And therefore any error would be an error that was in the original map that was given to the photo-engraver to reproduce?

A. Yes sir.

Recross-examination.

By Mr. McCLURG:

Q. Tell me the difference between the process of making the maps shown by counsel for Louisiana and the map which counsel for Mississippi now has shown you?

A. I do not think there is any difference; there is a pos-
571 sibility of being a difference, but I know there is not in these two. Maps can be made by different processes, they can be lithographed.

Q. But were these maps presented to you now by the counsel of the two States, made by the same process?

A. To the best of my knowledge, yes sir.

JAMES WILKINSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?

A. I am forty eight years old.

Q. Where do you live?

A. I was born in the parish of Plaquemines on the east bank of the Mississippi river, 60 miles below New Orleans.

Q. How long have you resided in that parish?

A. All my life, with the exception of the time, off and on, I was in New Orleans.

Q. Did your ancestors live there?

A. My great grandfather, James Wilkinson, was one of the commissioners that received Louisiana from the hands of the French, and ever since then my family, my grand father, father, and myself have successively lived in that section of the country.

Q. Have you, at any time, been district attorney of the judicial district embracing Saint Bernard and Placquemines parishes?

A. Yes sir, from 1884 to 1892 I was district attorney of the parishes of Saint Bernard and Plaquemines. I was a practising lawyer there for three years before I was elected district attorney and have practised law there ever since.

Q. Have you ever had occasion to visit this disputed territory in the suit, which I presume you know about, or any portion of it?

A. Yes sir.

Q. What portion of it have you visited?

A. All the way from, you may say, the mouth of the bayou that leads from Terre Bœuf canal, all the way around to Cat Island pass opposite Pass Christian. I have been around that section, particularly the east portion of that section, a great deal when I was district attorney. When we had court at Saint Bernard I would frequently go down to Shell beach, as it was known, and that Saint

Malo country down there, and along that section, fishing and sometimes hunting.

Q. That was on the southern coast of this territory.

A. That was on the southern, I judge it was towards the southwest, I should judge, of the disputed territory, and I also have sailed along that shore on various trips over to the towns along Mississippi sound, in Mississippi.

Q. What shore are you talking about now?

A. I am talking of the north shore of the disputed territory on Lake Borgne. I have never been outside, on the sea side, that is, between Chandeleur islands and this section, I think it is Chandeleur islands, on the outside.

Q. When you say that shore, do you mean the shore between Point Malheureux and Isle à Pitre?

A. If you show me exactly where Point Malheureux is, I
572 have forgotten the name of it. Now, I have been along there all of the way between Proctorville on the map and Point aux Marchettes. I refer now to map No. 17. Then I have come out of the Rigolets and been along this entire coast south of the Rigolets or southeast of the Rigolets all the way to Cat Island pass and then across there to Pass Christian where my father stayed for a number of years. I sailed along this sound very frequently.

Q. Do you know the character of the soil in the territory in dispute?

A. The character of this soil as observed by me in this section of the country, the section of the country that is north from Proctorville towards Malheureux point, is very similar to the soil on the west bank of the marshes, on the west bank of the river, except, I think that the lands on the west bank of the river, the blue clay strata or sand strata as it might be, below the old decomposed vegetation, somewhat like coffee grounds, is closer to the surface here than it is on the west bank, particularly, I have noticed it particularly on the east bank where they are dredging below this point, from Pointe à la Hache coming up, the blue clay strata there seems to begin about 5½ feet below the old decomposed vegetation of the swamp, whereas on the west side it seems to be six or seven feet below. I have done a great deal of dredging, I am secretary of the company now that has, within the past two years, dredged over 200,000 cubic yards through the swamps on the west bank, and I have been probably, out in these prairies, off and on, during the last 25 or 30 years, I have been probably out there almost every week, with few exceptions, either in the bayous, bays or prairies. I have been very fond of that kind of work and have done a great deal of travelling around and have observed the contour of the lands, the formations of the lands, and the various depths of the waters. I was president of the company that built the large Ocean Club hotel on Grand island where we had probably the largest hotel in the South, about four times as large as the Mexican Gulf hotel at Pass Christian.

Q. Have any of your relatives owned or leased property in the vicinity of this disputed territory, that is, east of the river?

A. Yes sir—not in the disputed territory.

Q. No, but I say in the vicinity of the disputed territory?

A. Well, my brother owned the place near Proctorville, the last plantation, Theodore S. Wilkinson owned the last sugar plantation in Saint Bernard on the extreme end of the cultivable part of what is known as Terre Beuf ridge, about 14 or 15 miles from the river, and he owned that a number of years, and I frequently went there.

Q. Did you witness any excavations on that plantation?

A. Yes sir; he had a dredge, an immense dredge that was dredging out, on one of my visits, that I paid there, a canal leading into Lake Borgne and deepening the water way out into Lake Borgne.

Q. Did you observe the character of the soil there as compared with the soil that you spoke of, on the west of the river?

A. Yes sir, the soil, as I stated, over there where the prairies are, is very similar—or where the marshes are—is very similar
573 to the soil on the west side. The edge of Lake Borgne, though, in a number of places, there are shell banks right along the borders, in several places on the south side.

Q. Did you ever, in the course of your observations and works that you have witnessed, notice any facts which demonstrated the subsidence of that territory?

A. Yes, sir. My attention was first called to notice the subsidence of the marshes and lands of the section below the city, particularly the marsh section, by the works of Mr. Corthell and other engineers' writings on the gradual subsidence of the soil. I say my attention was first called, and then I examined for myself, for instance, a place known as Hermitage in the rear of Deer Range plantation, that is the west of the river——

By Mr. FLOWERS:

Q. When you speak of the river, what river do you mean?

A. I mean the Mississippi river. On the place known as the Hermitage, situated on the banks of Bayou Hermitage, where they used to cultivate corn, the lands were high enough to cultivate corn, I noticed afterwards that the ordinary tide water came up on to the land so as to prevent any cultivation. The lands that I used to hunt over and walked over almost dry shod, have sunk very materially. It is very perceptible, the difference between the levels.

Q. Well, did you ever notice, in your excavations, any evidence of a submerged forest, if so, what description?

A. Only day before yesterday we held a meeting, it was Monday, we held a meeting of the directors of the Gulf and Louisiana Transportion Company Limited, who are now dredging a canal through one of these same groves, and I made a certain estimate of work, and I came across two sunken oak forests where some of the logs or trees I would have to take out with dynamo, they were oak trees, that only grow on lands not submerged, and these lands were sub-

merged by the tides, over and over again, and frequently in these prairies, we found the same thing, evidences of where there had been groves of trees, very large trees. I moved a stump from about eight miles west of the river, I suppose, a stump about 3 feet in diameter, where to day you can hardly walk.

Q. How deep below the surface of the earth, did you find these remnants or evidences of forests?

A. About five or six feet.

Q. How much below the sea level?

A. All these lands are now practically at sea level as they are overflowed by very high tide, by medium high tide.

Q. Then this depth was also below sea level?

A. Yes, sir, I should say these stumps would be about five feet below sea level.

Q. You have spoken of one of the stratum of this marsh land; can you give us—in lower Louisiana—more definitely what you have discovered in your borings as to the character of the different stratum as you bore down?

A. Well, I have visited, as I say, where the dredge is working on the east side in, you may say, practically the same soil to this soil, that is part of the Terre Boeuf marsh country, Saint Bernard marsh country. Dredges at Pointe à la Hache below this, on the east bank of the river in the marsh country, dredges in the Mexican Gulf canal which is also a part of the Saint Bernard country, dredges belonging to the Barrow Company and dredges belonging to the
574 Barrataria Canal Company, dredges at Harvey's canal, dredges that have been working for my brother, dredges working for my own company, the dredges of Mess. Dowdle & Wimdelli working below there, a dredge belonging to Mr. Aymer, and also dredges belonging to the Louisiana Navigation and Fisheries Company. I have been very much interested in the excavation work going on at these different places and have visited, as I say, where these dredges are working, and have been very much interested in that work, and in the soils of the State and have made it more or less a matter of observation and there seems to be in all the marshes I have seen dug into, three kinds of three strata that you go into. The first or top soil is a soil composed of the matted roots of sea grass, sometimes wild cane, and they are matted together very closely and those roots extend to a depth of about 12 to 15 inches; below that is a decayed mass of vegetation resembling coffee grounds, not quite so red as coffee grounds, more of a mud color, but they are when dried very light and they will almost float in water particularly in a current. They look very much like old rotten wood; then below that stratum of coffee grounds as I call it, there is either blue clay or sand, varying at depths of between five and nine feet. There are some places that you can go, for instance, on the shores, the eastern shores of Lake Salvador, to a depth of about nine feet before you strike that blue clay or sand. On the eastern shore of the Mississippi river, however, I noticed you strike it quicker.

Q. You mean the eastern shore or the east of the shore?

A. I mean on the eastern side of the Mississippi river, the hard bottom is closer to the surface than on the west side, as far as I have been able to judge, and I have looked at it pretty carefully.

Q. Have you ever been out in any of these great storms which have visited southern Louisiana?

A. Yes sir. I was out in the last storm that visited this coast. I was out in the prairies at the time.

Q. What year was that?

A. I think that was 1901, I think, in October 1901, if I recollect right.

Q. Were you out in any other storm?

A. Not in the prairies, but I have been in the storms themselves, in fact, in the storm of October 1st 1893 which is the worst storm in point of violence that I ever knew pass over that country. I was in that storm in company with yourself and Mr. Estopinal and if you recollect we had to get the furniture in the rooms and put it against the wall, we three propped up a wall with our bodies to keep from being blown into the river; the fury of that storm was something indescribable.

Q. Where were you then?

A. At Pointe à la Hache.

Q. This bears what relation to this disputed territory?

A. That is on the same side of the Mississippi river, on the east side of the Mississippi at a distance of about I suppose varying between 20 miles or 25 miles and 40 miles. That storm came from across Cheniere Caminada diagonally and passed across between Buras settlement and Pointe à la Hache. The vortex of it passed across the country in dispute, directly across it, striking the Saint Bernard club house out at shell beach on Lake Borgne, tearing it all to pieces and passed on over this section. This I know of my own knowledge.

575 Q. Have you ever noticed the effect of these storms upon these marsh lands in that section of the country?

A. Yes sir, but the effect is combined with other effects to produce, combined with other causes to produce the general effect, for instance, the lands, as I have described to you, seem to have been steadily sinking, that in itself would overflow these lands there at ordinary tide and would make ponds where originally had been solid land. The cause of that sinking, however, as far as I have been able to observe, has been—there have been four reasons for it. The first reason is, that originally, before the levees were put up, each year we had annual overflow from the Mississippi river which left a modicum of deposits of silt on these lands and continually renewed them and kept them above tide level; my reason for believing that is, that at the Bell crevasse in the rear of the Bell crevasse, the Davis crevasse, the Ames crevasse, the Bonnet Carre crevasse——

Q. Describe where those crevasses were on the east or west bank of the Mississippi river?

A. The Davis crevasse and the Bell crevasse were both above the city of New Orleans on the west bank of the river. I think the Davis crevasse was about 15 or 20 miles above the city, the Bell crevasse was below that, the Ames crevasse was almost opposite the city, the upper part of the city. The Myrtle Grove crevasse was below the city, 25 miles by rail and 35 miles by water; the Live Oak crevasse was 25 miles by water or 15 miles by rail.

Q. Those were all on the west side of the river?

A. Yes sir.

Q. Now, then on the east side?

A. On the east side you had the Bonnet Carre crevasse which was closed, I think, in 1882 or 1884, it ran for nearly ten years, then, or for a number of years, I don't remember exactly how long, then you had the Sauve crevasse which existed about the same time as the Bell crevasse, then you had the Story crevasse below the city, and some crevasses further down. I noticed that in the vicinity——

A Q. The Story and Sauve crevasses were on the east bank?

A. Yes sir, and so was the Bonnet Carre crevasse.

Q. Did any of these crevasses deposit any alluvium in this disputed area?

A. I am going to come to that. I noticed that these crevasses deposited, made deposits only within a radius of a few miles of the crevasses. The grass, the twigs, the foliage generally caught the silt and as the water spread out it deposited all of the silt, so much so, that at the Myrtle Grove crevasse with which I am more familiar than any of the others, as I went through the waters while the crevasse was running and measured the depth of water, that although the crevasse was 1300 feet wide, nearly as wide — the river, flowing with tremendous force, I do not think that any of the silt—it was only 25 miles from there to tide water—I do not think any of the silt escaped over two miles away from the crevasse's mouth.

Q. How was it about the crevasses on the east bank?

A. The crevasses on the east bank, I do not think, from anything I could observe around the Story crevasse, that any of that silt escaped any further distance. Now, I went down in the Bonnet Carre crevasse in 1880, in a boat, and I do not think that the silt went any distance at all. It might have gone as far as the
576 water did, probably ten miles back, but there were no evidences of it at all on the shores of Lake Pontchartrain and that is way 60 miles this side of the disputed territory, 70 miles northwest of the disputed territory.

Q. In these storms which you have described——

A. Excuse me. I was giving you the reasons—I started to give the reasons why, and what effect these storms have had on this territory. I say the first cause is, that these levees are being kept up now and none of this silt at all escapes; it used to escape generally, before the levees were kept up, all along that territory, but none

escapes at all, therefore these is no possibility of these lands being raised. The second reason is, there is a continual decomposition of vegetable matter underlying the top surface or top crust which is all live vegetable matter and the vegetable matter below, dead vegetable matter, and the constant decomposition causes constant disintegration of that vegetable matter. I have taken a dredge and thrown that vegetable matter out on the bank and in two years there was nothing of it left at all. It would absolutely vanish, therefore, I take it, that it is the decaying of the vegetable matter. Then again, there is another pest that for the last 20 years has had a very serious effect. Originally we had a great many alligators, the alligators were supposed to have caught the musk rats; in fact, there is an ordinance of the parish that prevents you shooting alligators because they do catch these muskrats. But recently you see the alligators have been entirely—where there used to be thousands and thousands of them in our bayous, the alligator hunters have killed them all for their skins which are very valuable and to day there are a million muskrats over these prairies that cut the land down, cut all the roots up and at the same time destroy vegetation on the prairies, that you could walk over dry shod almost on account of this crust being so firm; to day if you endeavored to walk over them for miles, you would go up to your arm pits in mud and slush and decomposed destroyed vegetation.

Q. While you are on that point, in addition to the muskrats devouring the vegetable roots and matter——

A. They are herbivorous.

Q. What, if anything else, do they do to this ground to weaken it?

A. They cut holes in our soil, under the soil, very much like a mole does on dry land, so that the water flows in and out through those holes. I have known them to fill canals by the slush and mud that flows out as the water rushes into them. As I was going to say, these terrific storms, as a general rule, came up first from the east, the wind blows from the east, blows in a vortex, but nearly always begins in the east and fills up these countries with tremendous tides.

Q. By what do you mean by these countries?

A. These marshes. The wind then swings around in a vortex, swings from the northwest, that is, blows from the northwest and takes out with a tremendous rush this marsh interior, digs out the interior bays and interior waters, the sea of course falls on account of the northwest winds, very rapidly, it is like water flowing on an inclined plane with the wind behind it, so that it goes to sea,
577 with terrific force. We felt that force in Grand pass just after the storm of 1893. The water swept through that pass with such force that it swept the banks away and undermined Fort Livingston so that the walls fell into the water, that is on Grand Terre island just south of New Orleans. There is a photograph taken of it. (Witness produces photograph.) As I was going to say, this current then swept across these denuded prairies where

this vegetation has all been chopped up, plowed this vegetation up and carried off the surface of these lands and just swept them right out to sea. I have seen patches of floating prairie grass and floating trash, and floating nests of these muskrats larger than this room, swept out. Now, here is the shore between Bay Batiste and Barrataria bay, that was fearfully cut up by the storm of 1893——

By Mr. McCLURG:

Q. Those are places west of the Mississippi river?

A. Yes sir; but the topography of the country is practically the same as far as the lands are concerned, these storms have far more effect where the water is blown across a certain area from one body of water into another, there the water has greater sweep. If the water is blown up against a high bank and remains quiescent, then there is not this fearful current there to bear of this detritus and floating soil and scour holes in the land.

Q. Go on?

A. Now, the country back of Pointe à la Hache on the east bank was also very badly cut up by this storm of October 1893.

By Mr. ZACHARIE:

Q. You have spoken of these holes created in this prairie or marsh land, how deep have you seen these holes and how large in circumference?

A. I have seen holes that would be, well, large ponds, almost the surface would be taken off, denuded, I have seen holes cut, and a number of them are there yet on Grand island south of New Orleans where the storm of 1893, October 1893, swept around obstructions and cut holes in the solid land nearly 20 feet deep like a great bomb shell had exploded there; the beach fronting the sea was terribly cut up so you couldn't pass up and down the beach, but gradually the continual inrushing of the waters from the sea has thrown sand up and made the beach like it always was. If you put your head down close to the beach on the sea front of any of these lands, when the wind is blowing in from the sea, you will notice a thin veil of sand moving towards the land all the time, and if you put up a fence or any obstruction you will instantly make a sand mound behind that fence; the waves throw the sand up on the beach, it dries and the winds blow it up into these mounds. I have noticed in trips out to Ship island just at the eastern extremity of the island that there were sand banks there, I think 20 or 30 feet high, blown up there by the winds. But this phenomena does not take place upon the shoreward side of the islands or lands there, the lands are——

Q. When you say shoreward you mean on the northern side?

A. Yes sir. On that part of these islands away from the sea that phenomena does not take place. There there is a systematic
578 erosion going on almost all the time, because the top crust being harder than just underneath, between the blue clay and the top crust——

By Mr. McCLURG:

Q. May I interrupt you to ask you if you are speaking generally or specifically with reference to that erosion going on on the northern side of that coast between Malheureux point and Isle à Pitre?

A. I spoke generally of these lands, as I have noticed them, over and over again.

Q. You made this statement that there was an erosion going on there all the time. I want to *to* know whether you stated that as a positive fact, or from the general theories you have been discussing in regard to this question——

A. There has been an erosion going on all the time, when there has been any sea or waves. It is a matter of fact and general knowledge that the action of the waves on these lands, these marsh lands, has an erosive effect at all times.

Q. Don't think I am trying to interrupt you, but you made a damaging statement to my side of the question by saying there is a constant erosion going on — that shore, I don't want to interrupt——

A. I say that all along the shore of Lake Pontchartrain which is very similar to the shore along the northern side of this tract of land in question, that there has been a constant erosion going on at all times, so much so that the Northeastern railroad where it crosses over at Lake Pontchartrain there has to build bulkheads to protect this track from the erosion which is constantly going on.

By Mr. ZACHARIE:

Q. How about Lake Borgne?

A. I say the soil, as far as I can observe, is precisely similar.

Q. How about this northern shore or coast of the territory in dispute, you say you have sailed along there and noticed that, how does that compare, the shore of Lake Borgne and the shore of Lake Pontchartrain?

A. Of course I have not been along there often enough or made enough comparative observations, but the soil being similar the action of the water the same, I consider that like causes would produce like effects.

Q. Now, have you ever noticed the effects of the storm in the Chinch just immediately adjoining this territory near your brother's former plantation?

A. I never was there during any of these storms. I only remember the storm of October 1st 1893 because it destroyed down there a club house that I had been——

Q. Did you see any effects of it in the Chinch or this land adjoining your brother's place?

A. No sir, I did not notice any, I did not notice the effect of that particular storm beyond the destruction of this club house, tearing it all to pieces, and I knew the whole country down there was overflowed, I knew that. I was personally aware of that, but beyond that—you have other witnesses here that are more conversant with that than I am.

579 Cross-examination.

By Mr. McCLURG:

Q. You are a practising attorney, I understand?

A. Yes sir.

Q. And were district attorney in Saint Bernard parish from 1884 to 1892?

A. Yes sir; I began to practice there in 1881.

Q. I believe Bayou Terre Bœuf is the dividing line between those two parishes, the parish of Saint Bernard and the parish of Plaquemines?

A. Yes sir. It is supposed to be, but I do not think that that line that I know of has been very well delineated. I know that from hearsay.

Q. You are more familiar with the topography and geography and geology of the country south of Bayou Terre Bœuf than you — with the country north of it?

A. Yes sir.

Q. And still more familiar with that portion of the country west of the river than the country east of the river?

A. Yes sir.

Q. And you spoke of only a few days ago finding those oak stumps?

A. I didn't say a few days ago. I explained the additional cost of dredging to the board of directors of this company, a few days ago, by saying that oak forests had formerly sunk and that we had to cut right through them.

Q. You attribute the building up of that country along the Mississippi river to the overflows of the river and the deposits that it drops down and throws out on either side?

A. Yes sir; of course I think the whole country from Baton Rouge down to the sea is entirely made by deposits of the Mississippi river before we had levees. Of course now, a small amount of water goes out in one of these crevasses, those deposits are made very close to the crevasse because the amount of water that goes out is not near so great as when the whole country was submerged by the water when there were no levees.

Q. And you attribute the sinking of this country to the levees and the decomposition of vegetable matter, alligators, muskrats and the storms?

A. Not the alligators; the fact that the alligators have been killed, they used to keep down the muskrats.

Q. The loss of alligators and the increase of muskrats?

A. The destruction of vegetation on the face of the prairies.

Q. If the levees hold long enough and the decomposition of vegetation continues and the muskrats multiply and the storms go on, that country will be badly off, it will continually sink?

A. I think so; but it may not sink so much that a piece of it will not be there about the time we have some further use for it. There

will be this remedy; if it should sink so bad, we can take down the levees and let the river deposits fill it up again.

Q. You spoke of Grand pass; I believe that is the place you had your club house?

A. No sir, on Grand island we had the Ocean Club hotel there.

Q. That is on the west side of the Mississippi river?

580 A. Yes sir, 46 miles south of New Orleans.

Q. I asked that because we have a Grand pass over in this territory.

A. Yes sir, that is the pass between——

Q. You do not undertake to speak as a scientist or geologist about these matters, but from personal knowledge only?

A. Yes sir.

Q. And you cannot undertake to say that there has been no material changes on the coast from Malheureux point to Isle à Pitre, since 1812 or 1817?

A. Not from any personal observation at all, and my only statement is as to what effect the storms and various causes have had upon other sections of the district which are similar in soil and bearing the same distinctions as that section of the country there.

Q. That is, you presume it is similar?

A. I say it is similar because I have seen that the character of the soil is the same.

Q. But, I mean the destruction of the coast line. You do not testify that, as a matter of fact, while your reasoning may hold good in principle yet in fact it may not have had the effect of destroying that coast line from Malheureux point to Isle à Pitre, that is what——

A. I think, if anything, that section of land in question is more liable to destruction from the causes that I have enumerated than the section that we are in, because it is more exposed to the fury of the elements You have a very large body of water to the northward——

Q. But you do not answer my question. I understand your theories on that proposition, but what I am trying to get you down to is this, as a matter of actual fact can you say that those causes have produced, as a matter of fact, these results, on that shore line from Malheureux point to Isle à Pitre?

A. No, I cannot. I can only swear that they produced certain effects in the country similar to this country and less exposed to the fury of the elements than this section is.

Q. Have you any idea at what rate that country has sunk down there, at what rate it is sinking?

A. As far as I can see, since my earliest recollection, I do not think it has sunk more than about 10 or 12 inches, that is, not the front, I don't refer to the front lands, I refer to the rear or swamp lands; the front lands have not to my observation, where there is hard soil and cultivable lands, sunk at all, that I can see. But the only way that I can tell, from my observation is, by a comparison of the height

that these lands were above tide water or sea water.' Of course we have no tide water or sea water in front to compare it by and it is only the extreme rear that I testify to.

581 JOSEPH C. GILMORE, witness sworn and examined on behalf of the State of Louisiana, testifies as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I reside in New Orleans.
Q. How old a man are you?
A. I am 55.
Q. What is your profession?
A. I am a lawyer.
Q. Are you the owner of Isle à Pitre, or interested in any company that owns Isle à Pitre?
A. I am the owner and with me is interested my brother William and we had organized a company to take possession of the property and develop it along commercial lines.
Q. What is the name of that company?
A. The Louisiana Navigation Company.
Q. Is that company organized under the laws of Louisiana?
A. Yes sir, it is chartered under the laws of Louisiana.
Q. Domiciled in Louisiana?
A. Yes sir, in New Orleans, but we have never been able to go into business in consequence of the property being overrun by fishermen and boats from Biloxi and the Mississippi coast, and also I believe, but more remotely, the Louisiana shore the Lake Pontchartrain end of New Orleans.
Q. Are you the Mr. Joseph C. Gilmore who presented himself at a conference in the month of December 1902 at which Governor Longino of Mississippi and Governor Heard of Louisiana, and the Mississippi and Louisiana Oyster Commissions were present?
A. I am, yes sir, I entered a protest on that occasion.
Q. What was the purpose of your visit at that meeting?
A. It was to prevent our property being thrown into a proposed neutral territory being agreed upon at that time between the Louisiana Commission and the Mississippi Oyster Commission.
Q. Did you make a protest to that assembly?
A. I did make a protest, an emphatic protest on that occasion?
Q. Why did you protest?
A. We had been led to believe that we would be protected against the visits of the Mississippi boatmen and fishermen and it developed that the Mississippi fishermen requested as an additional margin of territory that they should be allowed to take their boats into the inlets or moorings places of Isle à Pitre, to which, of course, we could have had no objection, but later it was proposed to enlarge the

neutral territory and embrace our property within this neutral territory against which we emphatically protested claiming that we had suffered already considerable damage for years by lack of protection, and that we were prevented, in a measure, from obtaining capital to develop the ground and the property properly because protection both from the courts and the police jury was lacking.

Q. Have you ever had occasion, in connection with this Isle à Pitre property, to visit that section?

A. I have had occasion to visit it about eight times I think.

582 Q. When did you first visit it?

A. I first visited it with gentlemen from Pass Christian upon yachting expeditions.

Q. How many years ago?

A. That was about 1881.

Q. When did you last visit it?

A. I could not say exactly what was our last visit; we had been there periodically during the yachting season.

Q. About how long a period of time intervened between your first and last visit?

A. About, I suppose about ten years, but we had visited it in the meantime.

Q. I understand, but did you, or did you not, notice any difference in the topography of the country between the first and last visits?

A. Yes sir.

Q. I am speaking with reference particularly to the property known as Isle à Pitre?

A. Yes sir. It appeared to me to be perfectly safe, in a measure, against sea encroachment inasmuch as it is surrounded almost, in a large measure, by a natural ridge of broken oyster shells which would act, in conjunction with the soil, the mud, clay, putty soil there, as a sort of sea wall I supposed against general encroachment, but in places where there had been anything like a cut made through the land, of course a channel would be apt to make through there as there is constant ebb and flow of the tide there.

Q. Did you observe whether or not there was any change in these cuts?

A. There might have been some imperceptible change in those particular cuts, but it was hardly observable; but the tradition is that these cuts had enlarged from the time they were made, one of them particularly, called Creole gap, had been enlarged from the time it was originally made. A fishing smack named the Creole had gone in on the north shore on an inlet or bight where the distance through the land was short and she had gone up into the land and in order to get her out they dug a ditch on the south side through to the water on the south side and took her through. That is said to be the origin of Creole gap and it was a shoal cut originally and the current made it something of a channel there and widened it, though it is not much of a channel. I had a sloop,

that was the occasion of my going over there as often as I did, I had a 30 foot sloop at Pass Christian and we used to go over there and spend a night or two there, there is a very good harbor there almost from any direction, and going through this Creole gap I have gone aground in there with this boat drawing three feet of water and I observed, one day, aground there, a schooner going by and passed, ostensibly, almost through, but just as she was getting through she went aground, and we got off about 11 o'clock at night, earlier than she did, with the rise of the tide. On another occasion—we often chartered a schooner and went on yachting expeditions—on another occasion we had a party aboard and provided ourselves with three or four sections, I think three sections of gas pipe, in order to make soundings in the land, we had an idea we could find phosphate deposit there; a gentleman from South Carolina had suggested to me, he had been in the phosphate business in the marshes of South Carolina, he said nearly all the phosphate was taken from sea marsh. Orig-
583 inally they had taken it from the river bottom, and he said to me, Mr. Gilmore you ought to find that phosphate in the salt marshes of Louisiana, he did not know that I had any land in the salt marshes of Louisiana, and I said that is very aptly suggested and we will make investigation as we control a body of that description of sea marsh land, and with that object we made these borings, and we had a long handle spade and dug the length of the spade and then bore down with the gas pipe and it was fully 30 feet before we touched anything that was different from the putty like soil, we went through this grassy or fibrous matter and about two layers of oyster shells possibly a distance under the soil of eight feet, then we touched a substance like sand or alluvium, at that depth of about 30 feet, we brought away a box full of the soil and afterwards threw it into a fire and it made up a soft red brick, so it looked like good firm substantial alluvial soil. Then I amused the party by saying here is what we have been looking for right on top of the soil here; there was some huge lumps of concrete matter there and it appeared to us that parties must have been burning lime there. There is a large mound that is a land mark before you see the coast, you see this mound looming up and that mound is a large column of shell work, they had evidently been making concrete in there perhaps during the Civil war with the shell matter they had obtained there, in a pit. We made these borings for awhile and then left, although it was a day in February the mosquitoes were so bad that they drove us out.

Q. What is the top soil on Isle à Pitre?

A. In the places on which we walked, we walked with facility from the shore to this mound which is some distance into the interior of the island, and where there was not a cut the soil appeared to be quite free firm. In places I walked over it there was a slight tide over it covering the soil and yet the soil was so firm so as to hardly sink at all.

Q. Any vegetation on it?

A. Just sea grass, nothing of any consequence except fine prairie grass and sea grass and on this mound are some Spanish needle bushes, a clump, and the island I believe takes it name from that circumstance of Spanish needle growing there.

Q. Will you please look at this sample No. 1 and state whether or not you recognize it to be similar in character to the soil concerning which you have just been testifying?

A. There is vegetation on it, that looks similar to the surface there, that appears to be as near as I can identify it the same soil as on Isle à Pitre.

Q. What do you know about the Louisiana marshes. Do you know anything about the Louisiana marshes southwest of Isle à Pitre, from your personal knowledge?

A. On one of these occasions we went down as far as Point Chico on the coast in Chandeleur sound intending to go through Cubitas gap into the Mississippi river but the weather was very squally and we laid at anchor in a place called Rigolets at Point Chico. My general observation was that this country from Grand pass there on the west of Isle à Pitre around Point Chico was, in a large measure, protected by the immense shell deposit constantly being washed from the bottom of the sea on to the shore there.

584 Q. You are referring now to the eastern shore running south from Isle à Pitre to Point Chico?

A. Yes sir, and Isle à Pitre itself.

Q. Do you know anything about the country from Grand pass westward towards Malheureux point?

A. Nothing except that I have been along there in a boat.

Q. Do you know anything about the interior of the Louisiana marshes?

A. Except that knowing the coast in a large measure to consist if not continuously, in large stretches, of shell matter, the coast would be higher possibly than the interior.

Q. Have you ever been in the interior yourself?

A. No sir, except for a short distance into the bayous there.

Q. How far?

A. We went up a bayou called Bayou Grecque which is south of Isle à Pitre, in the interior, it is shoal at the mouth, but a very fine and deep and wide bayou and I had an idea I saw an immense object up there the day we were out in a yawl; we had not our guns with us and we went back to the schooner. Two or three years afterwards it was ascertained that a whale had been about there and found stranded upon the shoal and I came to the conclusion that I was the only man that had seen that whale alive.

By Judge GUION:

Q. You spoke of making some borings and going down about 30 feet?

A. Yes sir, 30 feet or more, with a gas pipe.

Q. Was that on Isle à Pitre?

A. Right alongside of the south side of this mound, Indian mound.

Q. On the mound itself?

A. No sir, on the low land south of the mound, so as to get nearer to a deposit of any sort, a lower deposit, that mound I believe is at least three and a half or four feet, apparently, above the country, that looms up at a distance to such an extent that you see it before you see the shore, coming from Pass Christian, with these Spanish daggers growing on it.

Cross-examination.

By Mr. McCLURG:

Q. Creole gap as you understand it is an artificial water way?

A. In this sense, that it cuts through, it is; but it was naturally an indentation, I think——

Q. But it did not go clear across until it was cut across?

A. No sir, it did not.

Q. About when was that cut made in it?

A. I could not say. The Biloxi witnesses could testify on that point.

Q. There are several bayous that cut through that coast from the northern shore?

A. Yes sir, natural bayous.

Q. Do you remember the names of them?

A. Well, there is one called Pinton on Isle à Pitre and Bayou Pierre.

585 Q. I mean to the west of Isle à Pitre, Grand pass?

A. Grand pass, I never got beyond Grand pass.

Q. You mean to the west of Grand pass?

A. Yes sir, west of Grand pass.

Q. You are not familiar with the country west of Grand pass?

A. No sir, except from distant observation.

Q. How far was it from Grand pass that you saw the whale?

A. It was just in the bayou, south from Grand pass. It goes by several names. Bayou La Fannier, or Bayou Grecque.

Q. When was your Louisiana Navigation Company organized?

A. I couldn't say the year now, I think about 1893.

Q. About ten years ago?

A. Yes sir. But it never has been completely organized, gone into business on account of not being able to bring this property within commercial development.

Q. The Mississippians claiming rights over there disturbed you?

A. They disturbed us without claiming the right, and we planted oysters there at one time and put up a sign, and the signs were torn down and they put up signs which read plant bigger ones next time.

Q. That is just like a Mississippian?

A. I can't say it was a Mississippian.

Q. What did your signs say?

A. I was not there when they were put up, but a gentleman at Biloxi who owns a piece adjoining there, Mr. Mulholland, he explained to me, I understood from him that was the result.

Q. I mean what was your sign?

A. Oh, my sign read private ownership, private planting ground.

Q. When you made this protest against the agreement entered into between the Mississippi Oyster Commission and the Louisiana Oyster Commission, the governors of the States were not present when the agreement was made, were they, with reference——

A. No, only at this meeting they were present.

Q. This was at a meeting subsequent to the one——

A. You were present, I believe.

Q. They didn't make——

A. We had no notice of the agreement until they made it.

Q. I want to ask you this. Is it not a matter of fact that neither of the governors nor the attorneys general of the two States were present when the two commissions made that agreement with reference to this neutral ground?

A. I don't think they were. I would like to say that we purchased Isle à Pitre from Mr. Henry J. Leovy who was a well known lawyer of New Orleans.

Q. Have you noticed since you have been passing out there, any violent changes in the conformation of that coast?

A. I have not. No, I could not say, I never directed my attention to it. I was not familiar enough with the coast line to mark any changes.

Q. Don't you think that if there had been any violent changes in the conformation of the coast of Isle à Pitre that you would have noticed them?

A. We would have heard of them.

Q. They would have been called to your attention?

A. Yes sir, they would have been called to the public's attention, I think.

Q. And you know nothing of that kind?

A. No sir; I saw little places by the shore where the grass held a piece of this putty like clay that might wash and undermine and let go in places.

586 At this stage of the proceedings, the hearing was adjourned until the 16th day of April 1904, to be resumed at the same place and at the hour of 10 30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 13th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y gen. of Louisiana.
Mess. John Dymond, Jr., F. C. Zacharie and Alfred Estopinal, Jr., associate counsel for *for* Louisiana.
Hon. Monroe McClurg, associate counsel for Mississippi.

Captain A. S. COWAND, witness sworn and examined on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND :

Q. Where do you live?

A. I am—for the last ten or 15 years I have lived aboard a schooner, my family live in the city and Bay Saint Louis.

Q. City of New Orleans?

A. Yes sir.

Q. Where were you born?

A. Bay Saint Louis, Mississippi.

Q. How old are you?

A. I am 65 years old.

Q. Did you spend any great part of your life living in Bay Saint Louis, Mississippi?

A. Well, I was educated at the Kentucky Military institute near Frankfort Kentucky, I spent from the time of my birth until I was about —, at Bay Saint Louis.

Q. What is your present occupation?

A. Well, I have been a contractor for the last 15 or 20 years, and latterly I have been putting up some mills, mill right, and now I have quit all that business because it didn't pay, now I am in the oyster business, planting oysters.

Q. Were you ever in the oyster business before?

A. Yes sir, I ran on a schooner about, well, for six or seven years.

Q. About what year, can you identify it, as to the time that you were running on a schooner in the oyster business?

A. Now, in that disputed territory, I have been there off and on, running on a pleasure yacht of mine; I ran down there the first time when I was about 14 years old, in 1853 up to 1857.

Q. Are you acquainted with the territory in dispute in this case between the States of Louisiana and Mississippi?

A. Yes sir; I know every ditch, bayou, and all the waters in that section of the country.

387 Q. When did you first visit that territory?

A. As far as my recollection goes, the first visit I made to that territory was on a goose hunt on what is called Goose point at Cat island, that was in the year 1853.

Q. How old were you then?

A. I was about 14 years of age.

Q. Have you visited that territory frequently since then?

A. Yes sir; I visited it, I spent, you may say, years right in there, I went down there and spent months at a time.

Q. When was the last time you visited this territory?

A. About 1902.

Q. In the years which elapsed between 1853 and 1902 was I, or was I not correct in understanding that you had visited frequently the area in dispute between Louisiana and Mississippi.

A. Yes sir; I have been down there frequently, and not only went on pleasure trips, but in about 1890 I was in Texas in the cotton business and I got hemorrhages out there and I returned to the city here and was examined by a specialist here at the Charity hospital and he told me I had consumption, that my left lung was entirely gone and I could only live four months and I went over to Bay Saint Louis and the physician Dr. Champlain over there couldn't tell me what was the matter with me, but I noticed in the time I was there the more I was out in the open air the better I felt, so I chartered a boat that had a nice cabin on it and everything comfortable and I went out to the islands.

Q. Which islands?

A. All of them, Chandeleur and all through that section of the country, hunting and fishing, and as I was not a millionaire I went into the oyster business, fishing oysters, tongued oysters for four or five years, staid in the marsh, what is called the Louisiana marsh, this disputed territory, I staid there for months, and instead of carrying my oysters to Dunbar's factory I sold them to the freighters.

Q. Are you familiar with the territory from Saint Joseph island as far south as Mosambique point or Point La Fortuna?

A. Yes sir; I know every particle of that country.

Q. When you were a child, did I understand you to say that you had a boat of your own?

A. Yes sir, called the West Wind.

Q. Did you, or did you not, frequently visit that territory as a boy?

A. Yes sir. I laid there in a storm once, during the storm of 1857 when the whole marsh was covered over.

Q. Where did you lie?

A. At Point Nigger, right behind Three Mile bay; I went in Three Mile bayou and went in behind and lay at Point Nigger.

Q. Have you, or have you not had an opportunity of knowing the changes, if any, which have occurred in this section of the country from 1853 to 1902?

A. Yes sir, I have noted the changes.

Q. Will you please start at Saint Joseph island just south of the Mississippi main land and tell us of the various changes which you know to have occurred there on the islands in the Mississippi sound, in the bayous leading from Mississippi sound, into the Louisiana marshes and down through the Louisiana marshes, take it up from 1857?

A. Don't give me this map. I don't require any map. I know it better than a map. I will take it up from 1857, that is, when I used to go, of course, in my early days, I didn't go down there except in the fall of the year to hunt geese and ducks, but after
588 that from 1857 I used to go down fishing and hunting and especially in that country, hunting terrapins; in the month of May we used to go down there and camp right on Half Moon island and get terrapins and then during the gull season we used to go down and get gulls. Half Moon island, in those days, comprised about four acres, between what is called Heron point, they call it Lake Borgne light but it is really Heron light, on Heron bay, between Saint Joe island where the light house then stood and Heron point there was a slough running between there where a boat drawing two and a half and 3 feet of water could go through.

Q. You stated a moment ago about an island having four acres?

A. That was Saint Joe.

Q. You said Half Moon island, you didn't mean to say Half Moon island?

A. No sir; I meant to say Saint Joe island where the lighthouse stood, that was about four acres. Now, as I told you there was a slough between there and where the lighthouse then stood, of course, on Saint Joe island where this four acres was. The difference in that country now, is that Saint Joe island has disappeared, there is no light house there.

Q. When you say it was four acres, do you mean that it was four square acres or four acres long and four acres wide?

A. About four acres in extent, square acres.

Q. And that island has entirely disappeared?

A. Yes sir. There is a beacon built on a shoal which you can see during very low tide, and northwest there is about half an acre of shells that you can see. Now, between Heron point and Saint Joe island, where there used to be this slough there is a mile of water and vessels drawing seven feet can go through there; I went through there drawing five feet many and many a time, that is between where Saint Joe island used to be.

By Mr. McCLURG:

Q. Is that south of Saint Joe?

A. It is due west of Saint Joe.

Q. Going south?

A. This slough——

Q. I mean the deep water was in a due south course west of Saint Joe?

A. This slough runs north and south, runs into what we call Pearl River channel, runs into South pass.

By Mr. DYMOND:

Q. What change, if any, has occurred on Half Moon island?

A. Half Moon island, at that time, I can tell you very particularly about that because I built a little shanty and used to live in it, and Half Moon island, at that time what was called Northeast point, the difference — it, at that time and now, is, that there is at least ¾ of a mile of Northeast point gone entirely, where inside of Northeast point there was a shell bank, clam shells, I suppose millions of barrels of shells, that shell bank is entirely gone and the island has, I suppose, lost at least one quarter of its size.

Q. What about Grassy island, has any change occurred there?

A. Grassy island has almost disappeared too; I suppose it has lost two or three acres, that has almost gone.

Q. Any of Grassy island left there?

589 A. Yes sir, some of it. Round island has disappeared entirely except at low tide you can see the top of it. Round island, too, had, at that time, I suppose about an acre and a half in extent and it was high out of the water.

Q. What change, if any, has occurred on Petite Pass island?

A. That island is cut a little. Now, when I first went through Petite pass, that section of the country was a great terrapin country and I visited it very often, staid down there for weeks, and when I first visited Petite pass it was a bayou cut through there I suppose about 25 feet in width, and six or seven feet in depth.

Q. When was that?

A. That was in the years 1857, 1858, 1859.

Q. How wide is that Petite pass now.

A. I suppose it is 150 feet and there is about 18 feet of water there. And at that time there were several islands that had the name of Malheureux islands and they have entirely disappeared, there is not one of those islands there.

Q. Were they in the neighborhood of Petite pass?

A. They were in the neighborhood of Malheureux point, right on the corner of Petite pass, on the Lake Borgne side.

Q. Have you ever sounded the depth of water at the deepest point in Petite pass?

A. I have a map of the survey made by the Fish Hawk in 1899 and some of their depths struck me so that I went over them because I had known that right where they had 8 and 9 feet of water, there was 16 feet, I couldn't reach the bottom with my 16 foot tong, right between Malheureux point and Half Moon island, and I found the depth of water there 18 and 20 feet.

Q. What about Petite pass, I am asking you if you have noticed the depth of water in Petite pass?

A. It runs through there about 7 or 8 feet; in some holes it is ten feet.

Q. If you were shown the United States chart and the United States chart said there was 57 feet of water in Petite pass, would you contradict that statement?

A. Yes sir, I would. I sounded all through that pass and I never found 57 feet of water there. I know there are some holes there. That whole country, you know, is cut up with holes.

Q. If you will look at Petite pass on this map, you will find 27, 52, and 37, 52, being right between the point of Petite Pass island and the main land. Are you prepared to contradict the correctness of that chart?

A. I couldn't do that because I know all the bottom of that place is cut up. Now, you will find seven feet down in the marsh, way in the marsh you will find some places where there is seven feet and you jump right off into 23 and 24 feet. What causes those holes I can't imagine, except they have been cut in there by the action of the waves, storms. When I was sounding in there around 1901 or 1902 when I made those soundings there, why, I might have just made soundings right off from a hole and the Government might have made soundings right in a hole. Now, the same way in Grand pass.

Q. Let us follow in some consecutive order. Will you now follow the coast line from Malheureux point eastward and tell us what changes, if any, have occurred along that coast line beginning nearest Malheureux point?

A. Well, all this coast has been washed considerably. When you strike Nine Mile bayou which is the first main bayou you strike there, Nine Mile bayou has widened considerably, it is about
590 double the width that it was in 1853 and 1857, and there is more of an indentation in there than there was at that time. The coast ran pretty near straight along there and now it is cut in a great deal.

Q. What occurred in regard to Three Mile bayou?

A. That is cut up worse than Nine Mile bayou caused by the action of the northeast storms, especially the northeast storms, it is the one that cuts it out.

Q. What do you mean by cuts it out?

A. It is cut away, the current widens the mouth and cuts away the front. When I used to leave Bay Saint Louis when I got to Southwest bouy where the Pearl River channel strikes Pass Marianne that is one of the channels to the eastward of Pearl river, why we could see, that is a distance of about 15 miles I suppose from Three Mile bayou, we could see the mouth of Three Mile bayou by a large bluff bank of shells, clam shells, we could see it shining white and we would steer by that. Three Mile bayou, I suppose was about 100 feet wide and bluffed on both sides; now that whole bank has disappeared. And inside of Three Mile bayou where they used to be a little slough running up in there there is a deep lagoon and runs nearly out into what we call Half Moon bay. Another storm will

take off the whole front of Three Mile bayou and leave that point only about 50 feet wide whereas it used to be I suppose 300 feet.

Q. What change, in width has occurred in Three Mile bayou?

A. It has widened, I suppose 150 feet to what it used to be, and every vestige of tree and every vestige of high bank has disappeared, there is nothing but a low marsh there.

Q. Coming back for a moment to the Petite pass at Malheureux point, did you ever have any talk with the keeper of the light house at Cat island concerning the tradition in regard to that pass?

A. Yes sir.

Q. Is that party dead with whom you had this talk?

A. Yes sir; he is dead.

Q. What was the tradition concerning this pass which you learned from that party?

A. We were talking about the changes——

Mr. McCLURG: How long ago has he been dead?

A. About 15 or 20 years. That is the lighthouse keeper at Cat island.

Q. When was it you had this conversation?

A. Along about 1858.

By Mr. DYMOND:

Q. What did he tell you at that time?

A. We were talking about the changes around Cat island; he was talking about the changes, he had property on the island you know.

Q. Who was he?

A. He was the lighthouse keeper there.

Q. Was there any incident connected with his history with which you are acquainted?

591 A. His father was the lighthouse keeper there during—well, before the war of 1812, and the British forces they landed there and tried to get him to pilot them to Bayou Bienvenu up in through Lake Borgne and they offered to pay him a big sum to do it and he refused to do it, and on account of that, when the war was over, the Government gave him nearly all of that island and they made him light house keeper until the war of 1861, then his son was lighthouse keeper.

By Mr. McCLURG:

Q. Do you know whether there is any record of that gift, or not?

A. Yes sir; there is a record of it. His name is Cuevas.

Q. Do you know whether there is a record of the history of that transaction?

A. Yes sir; there is a complete record of that whole thing, in the State of Mississippi, everybody knows of it there.

A. I mean a written history?

A. There is in the department at Washington a record of that, a record of the gift; the reason I know that is because there has been

a controversy about some of the land, part of that land was claimed I think by Duggan and there is some controversy about it.

Q. Where was that controversy?

A. I don't know whether it was in Mississippi or in this State.

By Mr. DYMOND:

Q. What was the tradition in regard to this Petite pass?

A. Well, as I was telling you, we were speaking about how the islands were being washed away and disappearing and we were speaking about that country, Half Moon island especially because I had been down there to Half Moon island just before that; he said, well I recollect when there was no cut through Petite pass at all, it was main land all through there.

Mr. MCCLURG: Counsel for the State of Mississippi reserves an exception to this testimony because it is hearsay and incompetent, it is a matter of history or a matter which can be proved otherwise than in this manner.

Q. Will you notice the scale of this map No. 17 according to statute miles. Have you noticed that scale?

A. No sir.

A. Well, do you notice it now?

A. Yes sir.

Q. Do you understand that the first section means a mile divided into four quarters?

A. Yes sir.

Q. Will you take this scale and apply it to this Petite pass and state, according to that scale, what is the width of Petite pass?

A. When was this map made, what is the date of this map?

Q. This particular map is the latest one, but whether it contains——

592 A. March 1904; was there any survey made in 1904?

Q. I am not asking you anything about that. I am asking you to measure what this distance is on this chart?

A. It appears to be a little over a quarter of a mile.

Q. According to map 17?

A. Yes sir.

Q. How wide was Petite pass from the northern water edge of the main land to the southern edge of Petite Pass island, the last time you saw it? The distance across?

A. Well, I suppose it was about a quarter of a mile, now, at least in 1902.

Q. And how wide was it when you first saw it?

A. It was a mere bayou when I first saw it.

Q. About how wide?

A. I suppose 75 or 80 feet.

Q. Now, coming eastward along the coast, from Malheureux point to Isle à Pitre, what change did you next notice to have occurred east of Three Mile bayou?

A. Well, more directly east of Three Mile bayou it was a kind of bluff bank, I suppose about five or six feet above mean high tide and at the mouth of Johnson bayou, on the west side of the mouth of Johnson bayou there was another immense shell bank that you could see a distance of five miles of it; we used to steer by that, you know, as a beacon.

Q. Are either of those shell mounds on the east of the mouth of Three Mile bayou or the west——

A. There was no shell mound on the east of Three Mile bayou, there was merely a bank.

Q. Is the bluff bank on the east of the mouth of Three Mile bayou still there?

A. No sir, it has disappeared entirely.

Q. Is the shell mound on the west of the mouth of Johnson bayou still there?

A. No, sir; it has disappeared.

Q. What other changes, progressing eastward did you notice?

A. Well, from Johnson bayou, at the mouth of Turkey bayou, there was another shell bank that has disappeared and the land has, I should judge, and I am pretty good at observing things, I should judge there has at least 50 feet of the main land that has been washed away there.

Q. What change next, progressing eastward did you notice?

A. The next greatest change is right opposite the mouth of Grand pass; there were several shell islands that lay off the mouth of Grand pass, right immediately north of the mouth of Grand pass and coming into Grand pass coming from Bay Saint Louis or Pass Christian, you could not sail directly south, you had to either go down to the westward and run along the marsh up east to get into Grand pass or you had to go down by Creole gap and go down west into it. Immediately in the mouth of Grand pass was a shell island that was about three feet above mean high water and you had to steer to the eastward of that shell island to get in there; you couldn't go between that shell island and the mainland. Now, by the Government chart, which is wrong, there, there is seven or eight feet of water, you can go from Bay Saint Louis, and steer right square, south of it, of where these islands were, and the island in the mouth has entirely disappeared, there is eight feet of water over
593 where that island was; that was a little island in the mouth of Grand pass. Now, on the left of Grand pass, or east of Grand pass, there were three oaks that stood there, Live Oaks, on a mound that Mr. Gilmore spoke about yesterday and when we would come from Bay Saint Louis, when we passed Southwest buoy which is about 12 or 13 miles from there, we didn't steer by the compass at all, we saw those oaks on that rise there and steered by those oaks coming into Grand pass.

Q. When was that, about what year?

A. Those oaks disappeared in the storm of February, I went around to Marshall's to get the date of this storm, Mr. Marshall of

the L. and N. road; it was the time the L. and N. from Michaud to the Rigolets was washed away; it was the only easterly storm we had had in February, to my recollection, it was about 1880. I tried to ask Cline about it, he didn't mention that storm in his report of storms there.

Q. When you say Cline do you refer to Isaac N. Cline the forecast official of the U. S. Weather Bureau, who testified here yesterday?

A. Yes sir.

Q. How does the height of that mound to which you refer compare to day, to what it was when you first saw it?

A. The mound, of course, has disappeared a little, that mound is a kind of concrete, the mound itself and it does not wash like the balance of the marsh has there. The trees have disappeared entirely.

Q. Has it, or has it not, settled any, so far as you have been able to observe?

A. It has settled some, but not as much as the marsh country has, but it has settled some.

Q. What changes, going eastward, did you next observe, if any?

A. Well, all that country has washed some. The only two bayous that I didn't see any change in their width or anything, is Bayou Pierre and Elephant bayou, between Grand pass and Creole gap; they don't appear to have changed entirely; the bay where Bayou Pierre enters into, eastward, has widened and enlarged but the bayou itself appears to be about the same.

Q. What do you know about Creole gap?

A. That has changed entirely. In 1857 Creole gap—there was no Creole gap, it was a lagoon, Creole gap didn't go through at all into the Gulf.

Q. When you speak of a lagoon, did that lagoon completely cross Isle à Pitre at Creole gap?

A. No sir; it was a small indentation; I suppose the distance there, as near as I can recollect, was three or four hundred yards through it to the gulf of Mexico,—from the lagoon to the gulf of Mexico, cutting Isle à Pitre in two.

Q. What is the condition now?

A. There is a regular big channel through there; I have gone through there drawing four feet.

Q. How wide is Creole gap today?

A. Well, the lagoon, the gap of itself is about, I suppose 50 or 75 or 100 feet, that is, the gap, but the lagoon is a kind of bay in there now, it has cut away and washed out a good deal.

Q. Do you know of any other changes which have occurred on this coast line, between Malheureux point and Isle à Pitre?

594 A. Well, both points, the point of Cat island and the point of Isle à Pitre have both washed away considerably, I suppose at least, well, when I first went down to Goose point, that is the most southern point of Cat island, why, there were several big sand

banks there, I suppose 25 or 30 feet in length, we used to make goose blinds there, and I suppose ten or 12 feet above the average part of the island, sand hills had been blown up something like the sand hills of Cat island, 10 or 12 feet above tide level; all of those sand hills have disappeared on Goose point entirely, there is nothing but a level sand point.

Q. Have you ever travelled along, or in the course of your travels had occasion to examine the coast line from Malheureux point to Isle à Pitre, I don't mean at one time?

A. I have been there, I suppose, thousands of times, I have walked it and sailed it.

Q. Is there or is there not a distinct coast line between Malheureux point and Isle à Pitre, south of the Mississippi sound?

A. I tell you Mr. Dymond, when I first walked that marsh you could walk dry shod, except crossing the bayous, from Malheureux point to Grand pass, because, of course, right in behind there was a ring extending along that whole front, of shells and muck from the marshes and you could walk dry shod from Malheureux point to Grand pass except the bayous; but you can't do it now.

Q. How do you know you can't?

A. Because I have been there.

Q. Do you mean to say you could not walk along the coast of that Louisiana marsh, dry shod, now?

A. Not dry shod, not from Malheureux point to Grand pass.

Q. Except for the bayous?

A. The bayous are in the way.

Q. But I mean other than the bayous?

A. Other than the bayous you couldn't do it. I am talking about dry shod; I can walk from there, I admit that, but I could not walk dry shod.

Q. Suppose you were told that a witness was put on the stand who purposely walked from Malheureux point to Isle à Pitre within the last six months, and he testified that he did walk it dry shod, would you be prepared to say that that witness was not telling the truth?

Mr. McCLURG: Counsel for the State of Mississippi objects, because it tends to contradict or support the witness who has previously testified in this case, and he has not been attempted to be impeached.

Q. I desire to add that if you were further told, that this witness whenever he came to a bayou took a skiff and rowed across the bayou in a skiff, would you be prepared to say that that witness did not do what he said he did?

A. I could not tell you under what conditions that was made.
You take this season for instance, we have had an extremely
595 dry season, we have had no rains whatever down in that section of the country. Just like Quarantine bay, I can walk along that bay because we have had no rains, and Bayou Tour-

toilla, Crooked bayou, and Quarantine bay, dry shod; the tide is very low and we have had no rains or anything down there.

Q. Would the ability to walk that dry shod be dependent to any extent on the condition of the tides?

A. Of course, with very low tide why it would affect the place and latterly we have had so much southwest winds and low tide, I notice it down there at our place, we have got the river running through our place, right straight through, we have got our flood gates open all the time, and the water runs from the front back all the time, and generally at this time of the year we have high tides and we have to keep our flood gates behind closed to keep the salt water out.

Q. Is there or is there not a distinct coast line from Malheureux point to Isle à Pitre?

A. Yes sir; there is.

Q. Will you please tell us what changes, if any, you have noticed in the interior of the marsh, south of this coast line?

A. You don't want me to go all around Sundown island?

Q. Yes, go in where you please?

A. I will go right from Grand pass then——

Q. Going in what direction?

A. Going to the south, right outside of Grand pass there are Sundown islands, they have, well in the last 15 years they have decreased, at least, one half their size, that is, immediately to the southeast of Grand pass, and Door point has decreased, that point has washed away considerably.

Q. About how much in length?

A. I suppose 100 feet has gone. You come down to Brush island and that is disappearing entirely; I recollect Brush island when it was an island that stood out of the water, it was filled with what they call mesquite bushes, and it stood out of the water six or seven feet above mean high tide, and it is disappearing entirely, it is only a question of the next storm when it will disappear entirely. You come down to Martin island, that has decreased in size since that storm that I was telling you about, that I was trying to find out the year, in February, and Mitchell key, there used to be a chain of islands down here, there is nothing there now but a shell key, high water covers it entirely, that storm in February cut it entirely to pieces. Now, from Mitchell key in here we strike Drum bay; that bay when I went down there first there was a chain of islands extending nearly across there, you couldn't go into it from the east drawing four feet.

Q. How would you get into Drum bay at that time?

A. We had to go through Three Mile bayou, down through South pass, in through Cat Fish pass and Scow bayou to get into there.

Q. When was that?

A. That was along in 1857, 1858, 1859.

Q. Just proceed with the notation of the changes that have ocrurred?

A. Now, Drum bay, the quickest way to get into Drum bay, taking it from Bay Saint Louis, we came through Grand pass and come down by Brush island, southward, sail due south and you come in between Martin island and Mitchell keys and you can sail in six or seven feet of water right into Drum bay, that is, now.

Q. Well, will you proceed with the notation of any changes?

596 A. Now, Elephant pass has deepened considerably, I found 25 and 30 feet of water in Elephant pass the last time I was there.

Q. When you speak of Elephant pass you do not refer to Elephant bayou?

A. No sir; here is Elephant pass down here near Mitchell keys, and Elephant bayou is up here.

Q. About how far are these two places from each other?

A. Elephant pass is about 18 miles south, southwest.

Q. What changes have you noted north of Drum bay and more into the interior?

A. Well, nearly all those islands, every island in there has decreased in size.

Q. In where?

A. In this area here, what is called the Louisiana marshes.

Q. In the interior?

A. Yes sir. Coming south from Three Mile bayou a little to the southward of Raccoon island there used to be an island there called Tar island; I am talking about now in 1859, that island has disappeared with the exception of very low tide, the water breaks on it, you know, it shows shoal water there, that used to be a long island. Now, you take Karaho camp, that island has disappeared entirely.

Q. What island is that?

A. It is an island that laid northeast of Little Raccoon island; it is this island you see here, that island has disappeared entirely.

Q. You refer to map No. 7 when you say this island you see here?

A. Yes sir. That is on the west side of West Karako bay, that island has entirely disappeared, you can sail right over it. Now, this island here has disappeared.

Q. What island do you mean?

A. A little island in the eastern part of West Karako bay. There is two feet of water over it at mean high tide. It used to be a shell island that extended up about three or four feet above high water covered with shells.

Q. Has any change occurred in Raccoon island?

A. Raccoon island is smaller. I tell you all these islands are smaller than what they used to be.

Q. That applies as well as what you said about the islands in the interior?

A. Yes sir.

Q. What about Pirate point? Has there been any change in that?

A. Pirate point; not as much change in that. You see it is protected a good deal. Raccoon island protects Pirate point a good deal and the trend of the current is through here instead of around through there.

Q. Through where? Is through where?

A. Between Little Raccoon and Big Raccoon islands running in a direction north out of Three Mile bayou.

Q. Can you mention any other changes that have occurred in this interior section. Have there been any changes in the neighborhood of Treasure bay?

A. Not so much down there. There is one bay here that has changed a good deal, but I don't see it here, Julius bay, and there has been some changes around Morgan harbor, that is to the southwest, way down here; Julius bay you pass through Scow — and come around a chain of islands——

597 Q. We would rather you confine your testimony to changes to the area in dispute, within 18 miles of the Mississippi shore. Has there been any change in the depth of water on the interior of the Louisiana marshes and if so what change?

A. As I tell you, Elephant pass has a greater depth than ever before and you take West Karako bay, coming through this pass here, a channel lies right on this shore, you have to take this shore; in coming from East Karako camp you come into West Karako bay and you have to follow the northern shore to get out of there and that channel has deepened and so has the channel into Johnson bay deepened.

Q. Now, taking the total water area in the Louisiana marshes on the interior side of the shore line extending from Malheureux point to Isle à Pitre, has there or has there not been any change in the average depth of the water in through there and if so what change?

A. Well, in some places the water has shoaled and other places the water has deepened, places where the current is, you know, there is at least seven or eight mile current running through there and the action of the current of course deepens the water; that bottom, I found that bottom except in a few places nothing but soft mud and then you strike a hard clay bottom, but as a general thing it is soft mud. I have gone through there—you take in this bay, opening near Grand pass, Bayou Greque, I have gone into that bayou and the lagoon in front of Bayou Greque, and there was not a particle of water on it and I have had my fore sail and main sail up, wing and wing, and I have sailed through that soft mud with not a particle of water in sight and got into the deep bayou, leaving a furrow behind me on each side just like a plow.

Q. Have you noticed whether, compared to tide level, there has or has not been any change in the height of the marsh in the interior?

A. I can't say about the interior; I know that the front, that high

ridge along the front is entirely gone, but in the interior I never noticed any sinking of level. I laid there during the storm of 1857 or 1858, I got right in here behind Point Nigger, in Three Mile bayou, and we laid there during that storm, I had one of my nigger men with me, that was before the war and we were down there on a hunt and I was in this yacht called the West Wind and we lay behind that point during that storm and the whole marsh disappeared.

Q. What do you mean by disappeared?

A. It was covered with water.

Q. By water of what depth?

A. I can't tell; we swung around on to the marsh and when that wind shifted to the westward, to keep from being left on top of the marsh when the tide started out, we had to use a pole and shove ourselves off to where the grass disappeared when we knew we were in deep water.

Q. How high was this marsh covered by water during this storm?

A. It was covered, I suppose at least two feet over the top of the grass.

Q. Could you see the grass at all?

A. No sir.

Q. Was that in the day time or night time?

A. It was partly in the night; I think the wind went around to the westward, northwest, about seven o'clock in the morning,
598 the tide commenced running out and the principal part of the blow was in the night.

Q. Did you see the waves during the night?

A. Yes sir, of course, I was up all night.

Q. To what height*h* did those waves attain?

A. Of course inside the marsh the land broke them, they were not the same height*h* as they were outside, I don't suppose the height*h* of the waves was more than 8 or 10 feet.

Q. Could you see any land there as far as the eye could reach, on the occasion of that storm?

A. No sir.

Q. Were you ever down there in any other storm?

A. No sir; I have been in several, what we call blows but never in a storm; I have been out there immediately after storms.

Q. But this was the only storm which you ever went through the experience of lying in the marsh during the storm?

A. Yes sir.

Q. Now, what effect did this storm produce on the topography of this country, so far as you were able to observe?

A. Well, you know, I did not stay long enough down there after this storm, I got home as quick as I could.

Q. Did you ever have occasion to go there shortly afterwards?

A. Yes, sir, I went there shortly afterwards and I noticed there were a great many sloughs cut into the marsh, like little ditches, and I noticed especially at Three Mile bayou the two trees that stood

there had disappeared, that was on the east bank of Three Mile bayou.

Q. Were those oak trees?

A. I don't think they were oak; I think they were mesquite; the only oak tree I know in that section was at the mouth of Grand pass.

Q. Did you have occasion after any other storms to visit the locality and have an opportunity of noting the effect produced by the storms?

A. Yes sir; I have been down there after several storms.

Q. Was there any effect produced, if so, what?

A. Always, I always saw there were changes in the coast line.

Q. What about the interior?

A. Well, the interior had changed but not as much as the front or the north coast line.

Q. Are you familiar with the character of soil, south of the coast line extending from Malheurex point to Isle à Pitre?

A. Well, as far as I have seen, the soil there, it is nothing but blue mud or clay.

Q. How about the surface which is above the water, the crust?

A. The crust, well the condition now is, that the whole front that used to be a kind of little concrete mixed with sand and clay and shells, that has disappeared.

Q. I am not asking you about the coast line; I am asking you about the character of the soil in the marsh?

A. I never saw anything but blue mud, except some of the islands are shell islands.

Q. Any vegetation on the interior marsh?

A. Nothing but marsh grass.

Q. Any vegetation in the soil, are there any roots or anything of that sort in the soil?

599 A. I never saw anything but marsh.

Q. Did you ever notice the marsh grass, does it have any roots in the soil?

A. Of course it has got some roots, it couldn't live without roots.

Q. What was the character of this grass, was it soft and spongy or hard like the front shore line?

A. It was soft.

Q. Was it of a character to have been more or less affected by storms, than the shore line extending from Isle à Pitre to Malheureux point?

A. Of course it is more liable to be washed away than the front because it is softer.

Q. Captain, if you were to sail from Pearl river to the gulf of Mexico, what route would you take; what would be the nearest route from the mouth of Pearl river or the Rigolets to go into the gulf of Mexico?

A. I would go right out of Saint Joe inside of South pass between Isle à Pitre and Cat island, what is called Cat Island pass.

Q. Is that the pass between the Mississippi main land and north of Half Moon island?

A. That is the pass that vessels drawing, well from nine to ten feet of water, that is the only pass they can go through.

Q. Is there or is there not, a channel leading from the mouth of Pearl river or from the mouth of the Rigolets, eastwardly north of Half Moon island through Mississippi sound southeast between Cat island and Isle à Pitre?

A. Yes sir, there is a bouyed channel there.

Q. Do you know of any other channel between Pearl river and the gulf of Mexico following anywhere through Mississippi sound that would be of equal depth or permit you with equal facility to travel, from the mouth of Pearl river or the mouth of Rigolets to a point in the gulf of Mexico between Isle à Pitre and Cat island?

A. That is the only channel.

Q. Do you know of any channel extending through the Louisiana marshes to a point 18 miles south of the main land of Mississippi, thence eastwardly?

A. There is no channel there.

Q. What would be the average depth of water through the Louisiana marshes, or the maximum depth for any continued route?

A. Taking it at a high tide?

Q. At mean tide?

A. About 3½ feet.

Q. How would that compare with the channel which you have designated as running from the Rigolets or the mouth of Pearl river eastwardly into the gulf of Mexico?

A. I am telling——

Q. I ask you how it would compare; just listen to the question. Read the question. (Question read.)

A. There is a difference of about seven feet between the two.

Q. Have you had occasion during the numerous years with which you are familiar with this locality, to notice the sailing route pursued by vessels coming out of Pearl river and desiring to go into the gulf of Mexico by the nearest route?

A. They will always take South pass.

Q. Will you kindly state what you mean by South pass?

600 A. This is the direct line, we call this pass here at the mouth of Pearl river, at Saint Joe, that has always been called Saint Joe pass.

Q. In order to get that plain; do you refer to the line designated as the line claimed by Louisiana in her original bill of complaint, on the map marked Exhibit E?

A. Yes sir, that is the line I refer to. I will just state that before 1899, I think it is, that the depth of water through here was only six or seven feet commencing about this point here.

Q. What do you mean by this point?

A. Well, the Point Heron, what is called Heron point; and the Government worked on that for a couple of years and they deep-

ened that channel five miles until it struck the regular southwest channel between Cat island and Isle à Pitre.

Q. Let us take the period of time prior to the deepening of the channel, as you have just stated. Was that or was that not the line you have indicated the then deepest channel in use by boats?

A. Yes sir; it was the deepest and nearest channel to the Gulf.

Q. And was it or was it not most used by vessels?

A. It was used by vessels that were going east, to the eastward, and not going to Mobile and in through that section, going outside, what we called outside, always used by those vessels.

Q. Will you please look at this chart marked map No. 17 and state if the line to which you refer is the same line marked C–C–C on this chart?

A. Yes sir, that is the line.

Q. Now, how long has that channel been bouyed, to your knowledge and recollection?

A. It was bouyed in 1857; I know it was bouyed in 1857 and I suppose prior to that; I think it was bouyed the time they made the coast survey in 1852 or 1853, I think that is the time they put in the different bouys there and bouyed that channel.

Q. Has that channel been used continuously since that time?

A. By all large vessels.

Q. Is there any other channel that branches off and goes northeasterly after passing north of Half Moon island?

A. Yes sir; there are two channels, there is a channel from Saint Joe light running up in a northeasterly direction to South Pass bouy on the southwest point of the square handkerchief that is in Mississippi sound, and then directly eastward by Merrill's light leaving Merrill's light to the north through Cat Island pass or Pass Marian they call it, and thence if you are going outside, through Ship Island pass, if you are going to Biloxi of course you take the channel in there to Biloxi, there is another channel that leads right in through there to Pass Christian, but vessels can't go in there drawing over seven feet.

Q. Speaking of both of these channels, do they, or not, pass north of Half Moon island?

A. Yes sir; they all pass north of Half Moon island.

Q. Is there any channel in use that passes to the south of Half Moon island?

A. No sir.

Q. Now, this channel that you have referred to as running
601 northeast after it leaves a pass between the Mississippi main land and Half Moon island, is that channel used for the purpose of getting from Pearl river to the gulf of Mexico or is it used for the purpose of going along the Mississippi sound north of Cat island?

A. Well, it is very seldom used. I have known of instances of boats that have loaded at Lookout station at Pearl river to a certain depth there and then gone through the pass to Ship Island harbor

and finished their loading at Ship Island harbor, but invariably if they are loaded they go right out through the channel between what is called Cat Island pass—between Isle à Pitre and Cat island. The other pass is used entirely by boats going to the Mississippi shore and Mobile.

By Mr. ZACHARIE:

Q. Have you mentioned whether you had any connection with any fishermen or oystermen association for the protection——

A. Yes sir, I organized in 1889 the Gulf Fishermen Protective Association. It was organized under the laws of the State of Mississippi.

Q. What was the purpose of it?

A. The purpose was to protect the fish and oysters, to prevent the dredging and destruction of our oyster beds in Mississippi and to prevent the destruction of what you call green trout or black bass in the streams by gill netting and for the purpose of getting the Fish Commission to plant our different streams with fish.

Q. Have you occupied any official position in connection with that association?

A. I was secretary and treasurer of it and am now.

Q. Have you been brought during that time—you have been ever since 1889?

A. Yes sir.

Q. Have you been brought into contact with the oyster fishermen of Mississippi during that time?

A. Yes sir; they generally come to me and make their complaints.

Q. When did you first hear of any claim as to these Louisiana marshes and this disputed territory belonging to Mississippi, being claimed by Mississippi?

A. I can't give you—I have got letters home that I wrote here to the papers from Bay Saint Louis, but——

Q. To the best of your recollection?

A. I think it was about 1885. The oystermen came to me and complained that the dredges of Lopez and Dukate were dredging in Three Mile bayou and Half Moon bay.

Q. Who complained of that?

A. The oystermen came to me and complained.

Q. Oystermen of which State?

A. Of the State of Mississippi, Bay Saint Louis, Mississippi oystermen, and they said the year previous they had destroyed one of the finest oyster banks in Mississippi which is called Grand bank, that lies five miles northeast of Half Moon island, in Mississippi sound, that was in Mississippi territory, that these dredges had destroyed that bank entirely.

Q. Did any of these people claim that any of this territory in dispute belonged to Mississippi?

A. No, they did not claim it, but they claimed they were
602 fishing there and were destroying the oysters.

Q. When did you first hear of this claim?

A. It was after I came to the city of New Orleans.

Q. In what year?

A. I couldn't tell the exact year, it was along between 1885 and 1890.

Q. When did the Mississippi oystermen first commence, to any extent, coming to these waters for oysters?

A. Well, I was a Mississippi oysterman myself, I was one of the pirates that used to go down there and rob Gilmore in Grand pass. I was fishing oysters myself, I was running a schooner myself. When the oysters in Mississippi sound got so scarce they commenced going over there.

Q. About what time was that?

A. That was about 1886 or 1887.

Q. What was their reason for going over there in preference to fishing in their own waters?

A. They reason was they could make a load much quicker.

Q. Did any distance have——

A. Well, the distance of course, it is 23 or 24 miles from Bay Saint Louis down to Three Mile bayou and the oyster reefs in Mississippi sound were only six or seven miles and as long as oysters were there and we could fish them we preferred to go there because there was no risk, if a storm came up we could run right in Bay Saint Louis in an hour or two.

Q. Did the shortness of the distance figure in it?

A. Yes sir, the shortness of the distance had something to do with it.

Q. Can you tell us what was the cause of the extinction of the Mississippi reefs?

A. The cause was I believe, principally, dredging and not culling the oysters. I have seen oysters in the canneries where they would be opened by the shuckers and there would be 25 or 30 oysters that size steamed and killed, instead of dropping them back in the water, instead of culling the oysters and dropping them back in the water. And especially the dredges, they did more of that than the boats did.

Q. In any of your excursions to these marshes or to this disputed territory, did you accompany any body of engineers?

A. No sir.

Q. Were you there, at any time, when engineers were making surveys?

A. I was down there when the Fish Hawk made that survey for the Fish Commission. I had no connection with it; I think that was in 1899.

Q. Will you be kind enough to look at the photograph of the Lafon made in 1806, marked map No. 19, offered by Louisiana, and compare it with the map marked Mississippi Exhibit A and say

which map corresponds most nearly to the condition of that territory when you first saw it?

A. You mean the condition of that inside territory?

Q. Yes?

A. Whether there was a breaking up of land more on this than that?

Q. Yes?

A. Leaving out the distances, why that shows of course a much greater breaking up of land than this.

Q. You do not catch my question. Which one of these maps most correctly or comes nearer representing the condition of this territory when you first saw it?

603 A. Well I should say that this map does; there is more land.

By Mr. ZACHARIE:

(Witness states that the map No. 19 offered by Louisiana being the Lafon map of 1906 comes nearer representing the territory——

A. There is a great discrepancy between both of them.

—when he first saw it, than the map introduced by Mississippi.)

Q. Then you say that map No. 19 offered by the State of Louisiana more correctly represents the territory in dispute as you first saw it, more correctly than the map Exhibit A offered by the State of Mississippi?

A. It more correctly represents the amount of land that was in the marsh at that time.

Q. Now, will you examine the map of 1806 map No. 19, and see whether you can see a bayou on it which runs up from near the southern point of this disputed territory and say if any such bayou exists or existed when you saw it or now?

A. Entering Lake Borgne?

Q. No sir. In this disputed territory. You see those little red marks there?

A. Yes sir, I see this here.

Q. Do you see a little bayou in here?

A. Yes sir; I suppose that is intended to represent Nine Mile bayou.

Q. Now, I am speaking of this bayou here. You see this bayou that runs up from the southern portion of this territory; is there any such bayou there now?

A. No sir, of course not, that country is all open down there now.

Q. You have spoken about deep holes in certain portions of this territory, what do you think they were caused by?

A. They must have been caused by the action of the waves.

Q. Have you any interests in this suit, either pro or con, for either side?

A. I believe that my interests are in favor of the State of Mississippi, at least financially. I would like to see them dredge out and

ruin all their reefs in Mississippi and Louisiana both; it would make money for me.

By Mr. DYMOND:

Q. Why so?

A. Well, I am engaged in propagating and cultivating oysters, of course the scarcer the oysters get the higher prices I will get for my oysters.

By Mr. ZACHARIE:

Q. Where are you engaged in that?

A. On Quarantine bay in Louisiana, Plaquemines parish.

Q. In regard to the enlarging of the mouths of these bayous, what effect on the interior of these marshes would the enlargement of these mouths of the bayous have, especially in storms?

A. It would tend to make the action of the waters cut away
604 the islands faster, the more open it is the faster they will cut away.

Q. Do you know, by either personal knowledge or by tradition, of any cases in which the Mississippi authorities have refused to take cognizance of crimes or deaths that have occurred in this territory or any portion of it?

A. I know of two cases, of course it was just—I don't know of it positively, I did not see the dead man, but between 1857 and 1860——

By Mr. MCCLURG:

Q. I want to know whether you are going to testify from your own personal knowledge?

A. I am going to testify what was the general talk and what I heard. I didn't see the dead man.

Q. And you don't know what the refusal to take jurisdiction was, of your own knowledge?

A. I know what the talk was as to what the refusal was, yes. It was between 1857 and 1860, in the mouth of Grand pass during an Italian holiday, there were three or four luggers gathered up alongside of each other and everybody got to drinking——

Q. Where was that?

A. In the mouth of Grand pass, what they call the parish of Saint Bernard, and it ended in a fight and one of the dagoes was killed by another one and they went over to Pass Christian in Harrison county Mississippi and tried to get the sheriff to go over and arrest him——

Mr. MCCLURG: Counsel for the State of Mississippi excepts to this testimony.

A. —and the sheriff refused to go there. He said that is in the parish of Saint Bernard. And the sheriff from the parish of Saint Bernard arrested the man and he was tried I believe and convicted at Terre Bœuf. And then in another case in the storm of 1893, I

think it was, there was a man drowned on Half Moon island or Grand island I forget which, just across Pearl River pass and they went to Bay Saint Louis to get the coroner to hold an inquest and he refused to do so, he said that is in Louisiana, you go there and hold the inquest. That was the general talk I heard. I know the man that was found, the man that was found was the celebrated Robert Cole that was sent to the penitentiary. He was sent there for robbing stores and he made his escape from the pen-tentiary in Mississippi and stole a boat and got caught in this storm and drowned right in this boat.

By Mr. ZACHARIE:

Q. Drowned at what point?

A. On Half Moon island. I know the man well because he robbed two or three stores, he robbed on the whole coast there.

Q. When you first visited this territory were there any other islands along the north coast of this disputed territory, these Louisiana marshes?

A. Well, there was a chain of islands that extended from the Mississippi sound opposite Southwest pass, called the Grand Coquille.

Q. I am speaking of the north shore of this disputed territory?

605 A. I don't know of any islands except the islands in front of Grand pass, there were no other islands along there at all, that was all clear, open.

Q. As near as you can judge from your personal observation, to what extent has this northern coast of this disputed territory these Louisiana marshes, receded or advanced since you first knew that territory, about how much?

A. I should judge from 100 to 150 feet the frontage has disappeared.

Q. Is that general, or special at particular points?

A. Well, some points are worse than others. You take the mouth of Nine Mile bayou, that indentation has washed in there more than at the mouth of Johnson bayou.

Q. Has there been any general receding of the coast line?

A. Well, that whole coast line, the whole front there has disappeared; it is back now to the regular marsh.

Q. You were speaking about vessels coming out of Pearl river. There are a great many lumber mills up that river, are there not?

A. Yes sir.

Q. Do you know where that lumber is carried to?

A. It goes to Europe a great deal of it, and a great deal of it goes down to Mexico and Central America.

Q. What sort of vessels are engaged in that trade?

A. Generally, two and three masted schooners.

Q. Drawing about how much water?

A. Now and then brigs. They draw from nine to 12 or 13 feet of water.

Q. How close do these vessels approach to the mouth of Pearl river?

A. Well, some of them go right up the mouth to Pearlington and lay there. Now, I saw a bark there, she loaded outside of the bridge down to about nine feet, she loaded right outside of the bridge at Lookout station at the mouth of Pearl river and I think it was a Spanish bark. And she went outside and finished her loading at Ship Island harbor.

Q. These loads that these vessels take aboard, not going to the mouth of Pearl river, how are these loads or parts of loads carried from the mouth of Pearl river out to them?

A. They are carried in barges towed by steamers.

Q. Do you know what depth, about, these barges and steamers draw?

A. I suppose about six or seven feet loaded.

Q. What channel do these barges travel, these barges that transfer the loads, and these vessels which go up themselves into the mouth of Pearl river, what channel do they take.

A. They generally take the Pass Marianne channel because if you are going to Ship Island harbor that is the nearest channel to take.

Q. And what channel do they take when they come up to Saint Jo island and Grassy island. Is that the main channel you have spoken of?

A. They take the main channel until they get to Saint Joe island, or at least the beacon there, there is no island there now, and then they go northeast through Pass Marianne channel to Ship Island harbor, that is the nearest way to get to Ship island.

Q. I am now speaking of the channel as it approaches the mouth of Pearl river, do they take that same channel north of these islands, that you have described?

606 A. Yes sir, as far as Saint Joe.

Q. You have testified that the map of 1806 shows more nearly the condition of the interior of these marshes than the map Exhibit A offered by the State of Mississippi in connection with the cross examination of Mr. Dukate. If that correctly represents the interior of these marshes, to what cause do you attribute these great changes that have taken place in the interior of these marshes since you first saw those marshes?

A. I attribute it to the storms only, to the violent storms we have been having.

Cross-examination.

By Mr. McCLURG:

Q. If I correctly understand you, Captain Cowand, for half a century you have a general knowledge of this disputed territory on the Mississippi sound?

A. Yes sir.

Q. I will ask you to state what you understand the disputed territory to be?

A. Well, we were talking about that north shore, you know running from Malheureux point to Isle à Pitre, and down southward in the marsh as far as Treasure bay.

Q. You understand the northern boundary of the disputed territory to be the shore line from Malheureux point to Isle à Pitre?

A. Yes sir.

Q. And the boundary line to the south of Martin island?

A. Yes sir, down to Point Chico, is it not.

Q. That is your understanding?

A. Yes sir.

Q. How long have you known Isle à Pitre?

A. Since 1853.

Q. Bound Isle à Pitre?

A. Well, Isle à Pitre is bounded on the north by Cat Island pass and on the eastward by the Gulf and on the westward, well, I have always called that country down there the Grand Coquille, country, that is what we called it, and it is bounded on the south of course by the continuation of the marsh.

Q. Is Grand pass the western water boundary of Isle à Pitre. Look at the map?

A. Well, yes, of course Creole gap you know comes in there, but before Creole gap came in there, Grand pass was the western boundary.

Q. The western boundary of Isle à Pitre?

A. Yes sir.

Q. Isle à Pitre has been a separate and distinct island so long as you have known it?

A. Yes sir.

Q. And has been growing less by the action of the storms and the water?

A. Yes sir.

Q. Do you know what Isle à Pitre means?

A. Well, I have always heard, I have heard my father say—he settled in that country in 1832—when the French first landed on Cat island they saw a great many coons there and they called the island Cat island, they thought the coons were cats, they had never seen a coon, and when they got over to Isle à Pitre the whole
607 shore, it was a sand shore then, and the whole beach was covered with coon tracks and they called it Isle au Pied. They have got it on a great many maps now as Isle au Pied.

Q. What does Isle au Pied mean?

A. Island of feet.

Q. They saw coon tracks?

A. Yes sir, they saw these coon tracks and they did not know what the island was and they just called it Isle au Pied.

Q. About what time was it, according to your information, whether

by history or tradition, that these names were given to those two islands by the French?

A. It was about the time that Bienville came into the country; it was long before we owned the country.

Q. I believe that has been about 360 years ago?

A. It must have been about that. It was a long time ago; it was before I was born.

Q. Do you not think that Isle à Pitre in 1812 was a separate and distinct island as it is now, but larger?

A. Well, I can't say as far back as 1812.

Q. I ask for your opinion?

A. I have seen such great changes in that marsh by one storm that a storm might from the southward or southeast cut through there, it might have been a hurricane, just like I can tell——

Q. Don't go at great length about it; just answer the question. Read the question. (Question read.)

A. Well I wouldn't like to say that it was an island then.

Q. Isle au Pied named by the French, as you have indicated, pied being tracks; doesn't isle mean island?

A. Yes sir.

Q. Then that means island of tracks then?

A. Yes sir, of course.

Q. And do you not infer from that, that it was an island at the time the French named it?

A. Yes sir, I would have to infer that.

Q. Then can't you say that in your opinion it was an island separate and distinct from all main land in 1812. Answer that question, please sir, direct?

A. I suppose it must have been an island if they called it an island.

Q. The same as Cat island was it not?

A. Yes sir.

Q. I understand you to say that when you first knew Isle à Pitre that Creole gap had not been created entirely across the island?

A. No sir; it was a lagoon then.

Q. But a pass was cut by the Creole from the lagoon into the sound to make——

A. A passage was cut by fishermen.

Q. And that is an artificial pass in part?

A. Yes sir.

Q. So that it seems to be true as I understand the tenor of your testimony in this case and your knowledge of the island, that the island, originally, extended from Grand pass northeast towards Cat island. Is that not true?

A. There have always been two passes, as far as I can recollect, that cut through that island between Grand pass and the northeast point of Isle à Pitre, that ran, that cut right through from the north shore to the Gulf shore, called Bayou Pierre and Elephant bayou.

Q. I will ask you to put your eye on the map No. 17 and tell me

whether Isle à Pitre, notwithstanding those bayous, does not
608 extend from Grand pass to the northeast end of it?

A. Yes sir; it did when I first went there.

Q. And that it is a separate and distinct island from all the main land?

A. Leaving out the two bayous, yes.

Q. Please keep your eye on map No. 17 made by the United States Coast and Geodetic Survey, introduced in evidence on the part of Louisiana in this cause, and which I understand to be a combination of official coast charts 190, 191 and 192, and tell me what bayou you find, or water course, going westward from Grand pass; what is the first bayou or water course you find leading out of Mississippi sound southward as you go west from Grand pass?

A. Well, there are several little bayous there, there is only one marked, of any size, marked Drum bayou.

Q. How long have you known Drum bayou?

A. Since 1857.

Q. It was a distinct bayou leading across from Mississippi sound southward, then, was it not?

A. Leading from the front of the marsh southward into the marsh.

Q. Is not Mississippi sound at the front of the marsh?

A. We never called that the sound way down there.

Q. What did you call it?

A. We called it Coquille bay. I suppose it is really a part of the sound down there.

Q. What is the next one leading southward as you travel west?

A. Turkey bayou.

Q. How long have you known that bayou?

A. About the same time.

Q. It has been a distinct water course to your knowledge since that time?

A. Yes sir.

Q. Now then, the next one, please sir, going west?

A. The next one of any size is Johnson bayou.

Q. How long have you known that bayou?

A. The same time.

Q. And the next one?

A. Three Mile bayou.

Q. And the next one?

A. The next one of any size is Nine Mile bayou.

Q. And you have known all those different bayous during the same time?

A. Yes sir.

Q. And Nine Mile bayou is the larger of any of them except Grand pass?

A. Yes, I guess the mouth of it is larger.

Q. Is it not true that at any time during your knowledge of that

coast that water craft of light draft could pass southward through any of those water courses?

A. Yes sir, they could always go southward through them.

By Mr. ZACHARIE:

Q. How far south?

A. Vessels drawing three feet of water came down as far as Morgan harbor, that is about 24 miles down in the marsh, that is about the last oyster bay there is in the marsh, that is about south-
609 west from the entrance of Three Mile bayou, it don't show on this map at all, it is way south of Drum bay; mind you, I am speaking of common tide. In a northwester they couldn't go through at all.

By Mr. MCCLURG:

Q. From your first knowledge of Nile Mile bayou, Three Mile bayou, Johnson bayou and Turkey bayou, could not boats of light draft pass to the southward through what you term this marsh country?

A. They could pass through Nine Mile and Three Mile bayous, but not through Johnson or Turkey bayous.

Q. And could pass through Grand pass?

A. Yes sir, they go through Grand pass, you know, go right out into the open Gulf.

Q. And Grand pass separates Isle à Pitre from the marshland?

A. Yes sir.

Q. To the south of Isle à Pitre and to the southeast of Grand pass is the open Gulf?

A. Yes sir.

Q. I understood you to say in answer to questions propounded in chief, that you knew every ditch and bayou in the disputed territory; am I correct about that?

A. I think I did. I have spent months down there.

Q. And if I am not mistaken the substance of your testimony has been to show that these islands from Saint Joseph down through all of the disputed territory have been growing smaller because of these storms and wave actions?

A. Yes sir; that is my opinion, that after every storm they have decreased in size.

Q. They have decreased in size with every storm?

A. Yes sir.

Q. That Saint Joseph island when you first knew it, was much larger?

A. Yes sir, it was about four acres.

Q. Until it passed under the waters?

A. Yes sir.

Q. Then is it not your opinion from your general knowledge of Saint Joseph island and of Grassy island and of Round island and

of Half Moon island, that they were much larger in 1812, than they were when you first knew them?

A. Yes sir.

Q. You have spoken of Raccoon island and Little Raccoon island?

A. Yes sir.

Q. And of *Drooked* island?

A. Yes sir.

Q. You know Mud Grass island?

A. Yes sir.

Q. You have spoken of Brush island; I believe you said Brush island was covered with mesquite bushes?

A. Yes sir, it used to be, there are none there now.

Q. And you know Sundown island, Martin island and a great many other islands besides these which I have just named, within this disputed territory?

A. Yes sir.

Q. Are you of the opinion they are smaller now than when you first knew them?

A. I know it.

Q. Are you of the opinion that they are smaller when you first knew them, than in 1812?

610 A. I should judge so.

Q. You spoke of there being trees on some of these islands. My recollection, that along Three Mile bayou you spoke of some trees?

A. Yes sir, those trees existed there since 1850 to some extent. They were there in 1857.

Q. And have disappeared?

A. Yes sir.

Q. Do you not believe, Captain, that the same influences that have been reducing those islands, removing those trees, within your knowledge, the same influences existed prior to your knowledge and had the same effect upon those trees?

A. I think so.

Q. Do you not believe that these islands, all of them, within this disputed territory, were more distant in 1812 than they were in 1850?

A. My belief is——

Q. Just answer my question; listen to the question; I want you to give me a straight answer to a straight question?

By Mr. ZACHARIE: Answer, Mr. Witness, yes or no and then explain.

Mr. MCCLUNG: I object to the witness being instructed.

Q. Read the question. (Question read.)

A. I believe so, yes.

Q. Then they were, as you have stated, more distinct in 1850 than now?

A. Yes sir.

Q. What do you understand to be an island?

A. It is a body of land entirely surrounded by water.

Q. And that is what you understand these islands that we hav been designating, to be?

A. The reason I mentioned those two bayous there, it seems t me that Isle à Pitre would end about Elephant bayou, because th cuts it entirely through. Elephant bayou and Bayou Pierre alway ran there, they cut it off from Grand pass, so we have always calle Isle à Pitre extending from *from* the point opposite Cat Island pa to Elephant bayou.

Q. Then what do you call west of Elephant bayou?

A. The marsh.

Q. You never considered that Isle à Pitre went west of Elepha bayou?

A. No sir.

Q. How large a bayou is Elephant bayou?

A. It is one of the only bayous in that marsh, it and Bayou Pier that I see no changes in except directly at the mouth; it has n widened nor grown any smaller. Now, Elephant bayou is a ver crooked bayou through there, and it is about, I suppose 25 to 30 fe in width, it is a small bayou but pretty deep; there are one or tw oyster reefs going through it where the water is shoal, but a bo drawing three and a half feet in common high tide can go throug there.

Q. You have never answered my question; how large it is?

A. I say about 25 to 30 feet in width; and Bayou Pierre

611 about the same thing.

Q. That bayou is between Elephant bayou and Gran pass?

A. Yes sir.

Q. What do you call that country between Elephant bayou an Bayou Pierre; is that an island?

A. We always called it part of the Louisiana marsh.

Q. Between Bayou Pierre and Grand pass?

A. The same thing.

Q. In going south through Nine Mile bayou, in a vessel of an kind, you first go into False Mouth bay?

A. Yes sir.

Q. And then bearing to the westward where would you next g in a most southerly direction?

A. We very seldom have taken Nine Mile bayou on account of i not being as direct as Three Mile bayou; of course we go in throug False Mouth bay, into Indian Mound bay, into Treasure bay.

Q. Well, in coming out of False Mouth bay to the southward an westward, could you get into Lake Eugenie?

A. We could drawing about 2½ feet or three feet of water, goin through this chain of lakes.

Q. Do you know where Lake of the Mound is?

A. Yes sir; I know where it is.

Q. Can you reach Lake of the Mound with a craft of light draft through Nine Mile bayou, and if so, how?

A. Well, we go through Nine Mile bayou about, well, due south until we get to Mud island and then we cross to the eastward through Dutchman's pass, then we start through Indian Mound bay going to the northward of a chain of islands in Indian Mound bay, and then we start southward through Cat Fish pass going into Cat Fish pass we go into Southwest pass and around in through this pass into Lake of the Mound. But it is a country where oysters are very scarce and I have never been down there except on hunting expeditions, and I have been down there two or three times and that was the route I always took because there is deeper water that way than any other way.

Q. You spoke, in your examination in chief, of having taken refuge at Nigger point?

A. Yes sir.

Q. When was that?

A. That was in 1858, I think.

Q. How did you get into that point?

A. Well, I was fishing oysters right there at the mouth of Three Mile bayou; there used to be the finest oysters in the country there, and it commenced to blow very heavily, from the northeast and I saw by my barometer that we were about to have a blow and I had a nigger man there with me, there were two of us together on there on a hunting and fishing expedition and we hoisted sail and went in there behind Nigger point, to the eastward of Nigger point, and laid there during that gale. I think it was Friday night we got in there, the gale lasted all day Saturday and cleared up Sunday morning from the northwest; it commenced from the northeast and shifted east and then southeast.

Q. I believe you said it was the lighthouse keeper on Cat island that you talked with in 1858?

A. Yes sir, 1857 or 1858.

Q. And he was the son of the former lighthouse keeper?

A. Yes sir.

612 Q. And he spoke of the constant washing away of the island?

A. Yes sir.

Q. And that island was smaller when you talked with him in 1858 than it was in 1812?

A. We were speaking of the washing away of the end of Cat island where the lighthouse stood and he told me when he first came there he said the island extended out two miles to the westward of where the lighthouse is. Now, there is deep water between the woods and the island; that whole point is gone. I had a brother that was lighthouse keeper there for six or seven years.

Q. I don't remember exactly when it was you said that east of Three Mile bayou there was a bank five or six feet high there. When was that that you first noticed that condition?

A. That bank remained there up to that February storm; that is the only storm we ever had in February; it was about 1880; and that storm cut up that marsh and destroyed the shell front; why even at my place at Bay Saint Louis it took away a solid clay front 15 feet high, and live oak trees known to be 100 years old were washed away; it just washed the solid bank right up to the shell road; it was a most cutting storm; that was the storm you know when the L. & N. from Michaud was washed away; it was in 1880 I think.

Q. Prior to that storm, you say there were trees on that island that must have been 100 years old?

A. I couldn't say that because you know a live oak in that marsh don't grow like on the main land; they were scrub trees, you couldn't tell anything about their age; but the oldest fishermen in that country knew them.

Q. There were to the eastward of Three Mile bayou?

A. These oaks that we steered by, there were three oaks that stood to the east of the mouth of Grand pass; the next clump of trees between Grand pass and Three Mile bayou stood right here at Three Mile bayou, at the entrance of Three Mile bayou.

Q. And they have disappeared?

A. Yes sir. And here was an immense shell bank at the west side of Three Mile bayou, and at the west side of Johnson bayou there was another shell bank, up here. We would go by—when we got to the southwest buoy in Pass Marianne which is about eight or nine miles off, we used to steer in daylight by those shells, they showed up in the light, they were eight or nine feet high.

Q. Have you ever known of the time when you could not pass with a boat of light draft, southward, through Three Mile bayou, Three Mile bay, down through between Big and Little Raccoon islands and down through Indian Mound bay to the southward passing out southwest through Cat Fish pass into Southwest pass?

A. We could always go down there, but by a very tortuous route. Now we can go directly, start south and pass through between Raccoon island and Crooked — and go through Indian Mound bay, down in through Cat Fish pass into Southwest pass and go down into Drum bay and California bay. But years ago we had to start from Three Mile bayou and pass between Little Raccoon island and Nigger point, hugging the north shore of the marsh until we got to the land separating West Karako from East Karako, and then south down Cranetown bay and then we steered southwest through Southwest pass to get down to this country. There was an island there that don't show on this map, that was called Dog island, about ¾ of a mile long and about 60 feet in length, the only sign of that
613 island is that at low tide you can see the waves break on it, there is about six inches of water on it in low tide. It don't show on this map at all, but I know it is there because I camped on it and shot gulls on it; I ran aground on it at night and staid there three days.

Q. Pirate point is at the south end of an island?

A. Yes sir.

Q. What island is that?

A. I never heard any name for it. Some people call it Nine Mile island; some people call it Pirate island. You can go with a very small boat in through here into Nine Mile bayou, in through between Pirate point and this part of the marsh here; those are all parts of the marsh, they are not designated as island. Where one was entirely surrounded by water like Raccoon island you call it an island.

Q. You can sail around it?

A. Yes sir.

Q. What is this South bayou?

A. It is really a bay, it is nothing but a lagoon, there are a few scattering oysters in there; I suppose there is a foot and a half of water there with a mud bottom.

Q. I understand you to say to counsel, that there were holes to be found in all of this territory under the water; is that true?

A. Yes sir.

Q. And that these holes were constantly changing; is that correct?

A. Well, I can't say they are constantly changing. Now, there is a hole that is right in the eastern part of West Karako bay, about a quarter of a mile from the eastern shore; there is an oyster reef, what we call a dry reef, where there is 2½ feet to 3 feet of water and it is hard bottom like cement, and in 15 feet of that you can jump off into a hole 10 or 20 feet deep with a soft mud bottom. And that lies right south of Johnson bay.

Q. You can come out of Johnson bay?

A. You can in a light draft boat.

Q. Into Johnson bayou and into the Mississippi sound north?

A. Yes sir.

Q. So, then, I understand your observations to have been, and your belief is, that at the bottom of the waters in the territory about which we are now speaking, changes have occurred as well as at the surface above the water?

A. You mean that the channel changes?

Q. Yes?

A. Yes sir, the channel does change.

Q. Where the channel was yesterday it may not be today?

A. I do not say it would change in a day, but I say the channels change during a storm; I know that; I ran through one channel before a storm and a week or two weeks afterwards in going through I found a difference of two feet of water.

Q. Anyhow, these convulsions are transpiring under the water as well as above?

A. The currents and waves act on the bottom to a great extent, as well as up on the surface.

Q. What is your opinion as to the formation of these shell banks which you speak of, at Three Mile bayou and Johnson bayou?

A. My idea is that those shells were thrown up there during some violent hurricane.

Q. How long ago you have no idea?

A. No sir. My idea about this country is——

614 Q. Never mind that. I have not asked you about your idea about the country.

At this stage of the proceedings the commissioner adjourned the hearing for recess to be resumed again at the same place at 2.15 p. m. same day.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess and all parties being present the hearing was resumed at the hour of 2.15 p. m. at the same place and date.

Cross-examination of Capt. A. S. COWAND resumed.

By Mr. MCCLURG:

Q. When we adjourned for the noon hour, Captain, I understood you to say that you were of the opinion that the shell banks of which we had been speaking, were thrown up there by some action of the water?

A. Yes sir.

Q. But as to the time of such action you have no information?

A. None whatever.

Q. Then are we to understand from that that there was a time when the coast was created by the action of the waters in throwing up shells and silt and sand and other substances?

A. Well, I think that ring along the immediate coast was formed——

Q. Listen to the question and answer that. Read the question. (Question read.)

A. No; I do not think that coast was created that way.

Q. Do you think that coast was ever extended or heightened by shells or any other substance being landed upon it by the action of the waters, either in storm or by the usual——

A. You speak about the immediate front of it?

Q. Don't answer until I get through—ebb and flow of the tide?

A. Immediately in front of the coast.

Q. I mean the general coast from Malheureux point to the northeast point of Isle à Pitre?

A. Well, I was once, I think it was at the mouth of Turkey bayou, either Johnson bayou or Turkey bayou, we came out and it was after this first shell bank disappeared there, and we ran over to

Bay Saint Louis, and there was a storm occurred while we were lying in the bay, and when we went back there again there was a shell bank thrown up on the west shore of this bayou.

Q. Which bayou?

A. Either Turkey or Johnson bayou, I don't know which; they were in the immediate vicinity of the bayou and must have been six or seven schooner loads of white clam shells and they were carried away shortly afterwards by schooners and brought to the city here. It is evident that the waters do throw up shells from the bay, that is where those clam shells came from.

Q. What bay?

A. So-called Mississippi sound; the bottom of Mississippi sound is full of those clam shells and the action of the waves threw them up on the shore.

Q. Is it not a fact, and I ask it because of your long personal experience in the Mississippi sound, that while the action of the waters sometimes take away portions of the coast, that they do also make deposits along that coast?

A. They do in certain places. It depends on—now, in Bay Saint Louis there right next to me, there is a man who has built out a traverse, a board traverse in the bay and every time the wind is from the east and southeast the sand will build up along there, schooner loads and schooner loads of sand he sells from that place that was thrown there by the action of the waves.

Q. Where is that?

A. Right in Bay Saint Louis. And I have seen the same thing happen at Point Clear just this side of Half Moon island.

Q. I am asking you about the coast between Malheureux point and Isle à Pitre?

A. Nothing of the kind happened there.

Q. May it not have happened because of the influence of which you speak, without your personal knowledge, within the last 50 years?

A. No sir; I would have seen it if it had happened then; schooner men observe those things very closely, nothing of that kind passes their observation.

Q. I believe you stated to counsel for Louisiana, that in your best judgment, there had been an invasion of the coast between Malheureux point and Isle à Pitre of about 150 feet, within your own knowledge; am I correct?

A. At certain points. That was right under my observation.

Q. You do not undertake to say that that erosion has been continuous from Malheureux point to Isle à Pitre?

A. After every storm. It has only been observable after storms. After every storm this erosion is observable to anybody that was there before the storm and then came down there after the storm.

Q. My question was intended to reach from Malheureux point to Isle à Pitre as a general proposition?

A. Well I am speaking of that north shore.

Q. So I am.

A. From Malheureux point to Isle à Pitre.

Q. Let me put the question this way. You have stated that you have had general knowledge of the coast line from Malheureux point to Isle à Pitre for half a century. Now, I want to ask you this question. Has there been within that time any general marked erosion of the line between those two points?

A. Yes sir, there has.

Q. At what places?

A. Well, principally at Malheureux point, at the mouth of Nine Mile bayou, at Johnson bayou, Turkey bayou, the mouth of Grand pass.

Q. And those erosions have been the widening of those places?

A. The widening and the cutting away of the front.

Q. That is the sum total then of the important changes that have been made within half a century?

616 A. On the front, yes sir.

Q. You are reasonably certain of that are you?

A. That is all the change I have seen made.

Q. All the changes you have seen made?

A. Yes sir.

Q. When you said there had been 150 feet take- away you refer to those points?

A. Yes sir, because they came directly under my observation, because I did not notice the rest of the shore, but the washing continued the whole shore; of course the mouths of these bayous on account of the rapid current the washing away is greater.

Q. Those rapid currents are governed by the water passing southward out of Mississippi sound?

A. Well, both ways.

Q. The current flows both ways?

A. Yes sir.

Q. You mean the ebb and flow of the tide through those bayous?

A. When the easterly storm is blowing there is a strong flow, and nearly all these storms within my knowledge, the storms of 1852 and 1853, they have all cleared up from the northward and the easterly wind has banked the waters up and a heavy current runs in and then when the wind changes there is naturally a very rapid decline of the waters by the wind shifting and there is a current created of a velocity I suppose of ten miles an hour through those bayous.

Q. You think that has caused the widening of the bayous?

A. It has caused a cutting away of the bayous, a widening of them.

Q. The matter that is cut away by those influences where do you think it has been deposited, where has it rested?

A. I couldn't tell that.

Q. Did the current take it out into the Gulf?

A. It is impossible for me to say where the current took it.

Q. When did you first begin to fish oysters in the Louisiana marshes?

A. I fished oysters there in 1857, I guess that was the first.

Q. At what point?

Q. Right at Three Mile bayou.

Q. Did you fish any south of that, in 1857?

A. Yes, sir; I fished down as far as Drum bay, about nine miles south.

Q. You found oysters at all of these places marked in red on the Fish Hawk map filed with the original bill in this case, did you not, in 1857?

A. No sir, I did not.

Q. How far you say you fished, down as far as Drum bay?

A. Yes sir.

Q. Did you find oysters down there then?

A. Some few in Drum bay.

Q. Examine those points indicated on the Fish Hawk map by red markings and say where you found oysters in 1857?

A. You want me to commence at Three Mile bayou?

Q. Yes.

A. Well, immediately in the mouth of Three Mile bayou on the west side there was at that time a fine bank of oysters there which has entirely disappeared now, it is not there now. Running south along this shore between Point Nigger and Three Mile bayou
617 there was a reef running along that whole shore, of oysters.

Q. For what distance?

A. The reef was about a mile long, and it was something like a ridge, narrow, you know, about 12 or 13 feet in width. There were oysters here between Nigger point and Raccoon island, between Crooked island and Mud island, Indian Mound bay had oysters in there, they are all around Indian Mound bay at the present time, in Indian Mound bay around the edges of the island, they are scattered, not in large reefs but scattered oysters. Now, coming down to Cat Fish pass there were oysters all through there.

Q. In 1853?

A. No sir, 1857. I don't pretend that I fished oysters in 1853.

Q. Pay strict attention to my question and it will save a good deal of trouble.

Q. In 1857 I said I fished oysters; I went down there in 1853 hunting.

Q. I want to know where you found oysters when you first went down to look for them?

A. We found oysters scattered all through there, not in great quantities, in Southwest pass, Drum bay.

Q. That was when?

A. In 1857. Of course those banks have all increased, there are more oysters there in certain sections; in East and West Karako bay there are no oysters whatever over there now; same way in California bay. Now, down by Mitchell keys the oysters here have all

disappeared; Brush island used to be a big bank there, that reef has disappeared entirely.

Q. How about oysters in Cat Fish pass in 1857?

A. There were oysters there.

Q. How far is Cat Fish pass where it goes into Southwest pass, directly south of the first touch of the Mississippi shore?

A. Well, from Henderson point at Bay Saint Louis it is about 33 miles.

Q. Is that the nearest point directly north?

A. That is pretty near square north from Henderson point to Cat Fish pass.

Q. To the first touch of the Mississippi shore?

A. Yes sir.

Q. That stretch you say——

A. Is pretty near 33 miles; we call it 23 miles from the bridge at Bay Saint Louis to Three Mile bayou, and ten miles down; of course we never measured it but that is what we call it.

Q. Let us come back up here towards Creole gap. I see there are some markings there indicating oyster beds along the north shore of Isle à Pitre?

A. Yes sir.

Q. How did you find them in 1857?

A. Scattering oysters, very few. Now, right here on the North point, what is called south shore flats, that was Isle à Pitre oyster bank, that extended three miles in length and two miles in width, that was destroyed in about 1880 by the Conchs and it never has grown up.

Q. That is not considered now a very valuable oyster territory?

A. Well, this is here, from Creole gap extending south.

Q. Through the gap?

618 A. Through the gap and along the shore to the westward is all good oyster land.

Q. Is not that territory about the northward mouth of Creole gap considered one of the best oyster territories within the territory in dispute between these two States?

A. As to quality of oysters or quantity?

Q. I didn't say which. You can fix the answer like you please. Just answer the question in your own way, you understand. I don't mean to be——

A. I can say I never fished oysters on these reefs in my life. I have fished three winters steady in Grand pass on account of the fine quality of the oysters there, but these oysters were small oysters and fit only for steaming, on Creole gap. Grand pass has one of the finest oyster countries in the world, that pass through there.

Q. And to the westward of that there are large quantities of small oysters fit for canning?

A. Yes sir, that is about all. You go right in Creole gap and you find around in the mud some very fine oysters, that grow in bunches,

but they are very scattering, it don't pay a man to sell them, you get only 30 cents a barrel for steam oysters.

Q. Let us get back over here towards Malheureux point. Notice around Petite Pass island to the eastward, how are they there?

A. There are fine oysters there, what is called the Half Moon oysters.

Q. Immediately further to the east, the map seems to indicate a long reef?

A. There is a big reef here three miles in extent, some of the finest oysters in Mississippi sound are here directly between Three Mile bayou and Half Moon island, about five miles between the two places.

Q. I am trying to keep you to the west of Nine Mile bayou.

A. Here we are to the west.

Q. How is it between Nine Mile bayou and Petite pass?

A. On the shore?

Q. Where it is indicated on the Fish Hawk map that there are oyster beds?

A. There are only two places, we have already spoken of those two places, they are very good oysters.

Q. When I asked you about this place west of Nine Mile bayou you got way over here at Three Mile bayou where the map does not indicate any. I notice right north of Petite Pass island between that and Round island an indication of an oyster reef?

A. Yes sir, there is a reef there.

Q. What about that?

A. There is all about the same quality of oysters, large round oysters, fine oysters.

Q. As to quantity?

A. As to quantity, it is a very small reef.

Q. Let us travel a little further towards the mouth of Pearl river, I see the map indicates up here in the neighborhood of Grassy island and Half Moon island oyster beds?

A. Oysters all over there.

Q. And between there and Point Clear lots of oysters in there?

A. Lots of oysters all around those islands. This bay here between these two points, Half Moon bay they call it, between the southeast point of Half Moon Island and the northwest point of——

619 Q. Is it not true that between Point Clear on the Mississippi shore down to Malheureux point, for a distance extending as far east as Nine Mile bayou and to the eastern side of Half Moon island, that that is a territory rich in oysters?

A. Yes sir. It is a good oyster territory as long as Pearl river don't come into it. Every oyster was killed on that reef five years ago by the fresh water of Pearl river.

Q. Is it not true that those oysters were killed by the overflow from the Mississippi river and not Pearl river?

A. No sir; this time the Mississippi river was not overflowed; it

was from water out of Pearl river, and all the oysters was killed at Bay Saint Louis by the overflow of the Jordan river, they had three months of steady rain.

Q. At any rate when they are not killed by the overflow from Pearl river they are all right.

A. They are good oysters.

Q. And the oystermen like that territory, it is profitable.

A. Yes sir, it is a good oyster territory.

Q. And all of that territory is in dispute in this controversy?

A. I believe so; is this where you claim, from here?

Q. You said you knew where it was when you started out——

A. I heard it was from Malheureux point to Point Chico; bnt I see on this map——

Q. You didn't say anything about hearing it; you said you knew every inch——

A. I am talking about what has been claimed

Q. I am talking about what you know?

Q. I know there are oysters there, I fished them myself and they are fine oysters.

Q. Is it not true that it was the dredging introduced by Lonez and Dukate that first brought up the question as to whether these oyster gatherers were in Mississippi territory or in Louisiana territory?

A. That is my belief; of course I don't know positively.

Q. And that was introduced about when?

A. It was just after the survey that the Fish Hawk made there, she made a survey in 1899.

Q. It was just after that?

A. Yes sir, it was about 1899 or 1900.

Q. That this dredging was introduced?

A. The first I heard of it and the dispute about the line.

Q. Up to that time you had been a Mississippi oysterman?

A. Yes sir.

Q. And you had fished in all this disputed territory for oysters?

A. Yes sir.

Q. And you did so believing that you were in Mississippi territory?

A. No.

Q. Did you do it——

A. I knew, at least, to the best of my belief I knew that I was in Louisiana territory; but there was no law in Louisiana at that time prohibiting me fishing there, and all the boats from our section of the country went there and fished oysters and of course I followed them.

Q. You never asked any question about State lines, did you?

A. Never any word about State lines.

Q. You did not intend to violate any law in fishing in Louisiana, did you, as a Mississippian?

620 A. I think I quit fishing since they passed the law.

Q. I did not ask you that at all?

A. No, I had no intention of violating the law.

Q. You did not intend to violate any law of rights?

A. No sir.

Q. Did you believe, as a Mississippian, that it was right for you to go into Louisiana territory and take oysters regardless of whether there was a prohibitory law?

A. At that time the Louisiana fishermen were fishing oysters in Mississippi territory.

Q. Let me ask you this plain and square, was there ever before 1889 or 1890, any question raised as to where the State line was?

A. I never heard any question raised.

Q. How on earth can you tell us then, that you regarded it as Louisiana territory?

A. Because all my life I always heard that the deep water channel from the mouth of Pearl river out through Southwest pass into what is called Cat Island pass between Isle à Pitre and Cat island, that it was the division line between the two States. I heard that and never heard it disputed.

Q. Just tell us the name of a single man that ever told you such stuff as that.

—. ——.

By Mr. DYMOND:

Q. Did you say from the mouth of the Mississippi river or Pearl river?

A. Pearl river.

By Mr. MCCLURG:

Q. Tell the name of——

A. I never heard any one ever dispute it.

Q. Answer my question. You say that you have regarded all this time, this deep water channel as the dividing line between Louisiana and Mississippi?

A. Yes sir, all my life, I always heard it stated, I have heard my forefathers speak of it.

Q. Which one of your forefathers?

A. My father.

Q. Did your grandfather ever say anything to you about it?

A. My grandfather lived in Virginia, he never happened to come South.

Q. You had some talk with the counsel for the State of Louisiana in this case since adjournment did you not?

A. No sir.

Q. You have not heard said a word to any of them about it?

A. I have not.

Q. When we adjourned, didn't I leave you in consultation with the counsel for the State of Louisiana?

A. No sir; I went right out and got my lunch.

Q. Examining maps in this case?

A. No sir, I went right out and got my lunch.

Q. Your interest, I understand would be, financially, on the Mississippi side?

A. Yes sir.

621 Q. You live in New Orleans?

A. Yes sir.

Q. And have lived here for how long?

A. I have lived here off and on all my life.

Q. What do you mean by off and on?

A. We have a place at Bay Saint Louis, sometimes I would live there and sometimes here. I have for the last five or six years, I have been nearly entirely here, at least my family have resided in New Orleans. Now and then they go over to the bay. As to myself I am here very little.

Q. Did you ever read the act of Congress admitting the State of Mississippi into the Federal Union?

A. No sir.

Q. Did you ever read the act of Congress admitting the State of Louisiana into the Federal Union?

A. I have read synopsis from it in the paper, but I never read the act itself.

Q. Did you ever read the statutes of the State of Mississippi undertaking to define her boundary line?

A. No sir.

Q. Did you ever read the statutes of the State of Louisiana, or her constitution undertaking to define her boundary line?

A. No sir.

Q. So in saying that you regarded the deep water channel as the boundary line of the two States, that was just your own idea about it?

A. No sir, it was not my own idea.

Q. What was your idea about the dividing line of the boundary between the two States?

A. It was the opinion of every one.

Q. I asked you what was your idea about it. You said you never read the laws or the acts of Congress admitting the States or the constitutions of the States; now, I want to know what was your idea based upon?

A. It was based upon the talk of the general public. Whenever they spoke of this disputed territory they spoke of it as the Louisiana marshes, Mississippians did. I can bring you 20 Mississippians, members of Congress, who have always called that the Louisiana marsh and always said that the dividing line was from the mouth of Pearl river out through Cat Island pass.

Q. Twenty members of Congress said that?

A. No sir, some of them were members of Congress.

Q. Name a man that told you that.

Q. They have always spoken of it as the dividing line.

Q. I want you to tell me what member of Congress ever said to

you that that was the dividing line between the two States, just give me one out of the 20?

A. They have always spoken of it.

Q. Well, they, who do you mean by they. Listen to me Captain, I don't want to be captious but you are on precious ground now and I must know your authority if you have it. And to warn you against it, I am going to inquire of the man that you give me to see whether he was committing himself intelligently.

A. I am trying to think of the man's name now. I think he is on the school board there now, he is a member of Congress. But I can't recall his name.

622 Q. Don't you think you are mistaken about the fact, that you have spoken hastily because of my rashness?

A. No sir. I don't think there is a man in that section of the country, that ever mentioned that country that did not call it the Louisiana shore; I never did.

Q. Call it the Louisiana marshes you mean?

A. Yes sir, the Louisiana marshes.

Q. Now, speaking to you patiently about it. You have often heard of the Mississippi sound?

A. Yes sir.

Q. And that reaches right down to the mouth of Nine Mile bayou and Three Mile bayou and Turkey bayou and Grand pass and right along that shore, does it not? If you give to Louisiana that territory simply because it has been called the Louisiana marshes, ought you not to give Mississippi that sound because it has been called Mississippi sound?

A. I don't see that that follows.

Q. Why does it not follow; because the Louisiana marshes——

A. Well, the name of the sound was a name just like Pearl river, it was given to that body of water as a sound and called Mississippi sound because most of it was along the shore of the State of Mississippi.

Q. But it does not belong to Mississippi because it is named that?

A. No sir. I don't think the whole sound; neither does all of Pearl river belong — Mississippi, only half of Pearl river belongs to Mississippi and only half of the Mississippi——

Q. Have you not got what you call Florida parishes?

A. Yes sir.

Q. Do they belong to Florida because they are called Florida parishes?

A. No sir.

Q. I do not want you to be led off from my inquiry by these generalities; that is what I am striving against, and when you say that it is generally understood that this deep water channel has been the dividing line, you speak generally. Now, then, I want to hold you as close as I can to the proposition that the law fixes the lines between States and not the talk of the general public. And

you say you have not read any constitution or statute or article on that subject?

A. I always thought, until this controversy came up, that on account of that channel being bouyed, it had been bouyed by the Government and marked out as a dividing line there, that was always my supposition.

Q. You are an old sailor and captain of your schooner and the like of that. On these Government maps is not that channel marked as the sailing channel from the mouth of Pearl river into the gulf of Mexico, a sailing channel?

A. I don't know that I ever noticed that; I noticed the bouys and have from time to time examined the difference between the charts and the actual depth of water, made soundings through there, but I never on any map noticed whether it said that; I have got a map of 1890.

Q. Who made that map?

A. The Coast Survey made it, it don't say on that sailing channel.

Q. Have you examined the maps introduced in evidence by the State of Louisiana, in this case?

A. No sir.

623 Q. You are not prepared to say that on one of the prominent maps seeking to establish that deep water channel as the dividing line, that it is marked as a sailing channel?

A. I have not seen that map.

Q. And you have not heard the witnesses testify in this case that it was put there for navigation purposes and in no instance has it been intended to mark a line between those two States?

A. I heard one witness testify to that, a Government witness.

Q. Now, then coming back to you as a practical man interested in both States, do you not think that that deep water channel was put there by the Federal Government for navigation and commercial purposes, rather than as marking the line the dividing boundary line between the two States?

A. I have been told since by Government officers that is what those bouys were placed there for.

Q. For what?

A. To mark the channel, depth of water.

Q. For what purpose?

A. For marking the channel and depth of water for vessels going through it.

Q. For navigation purposes?

A. Yes sir.

Q. And not to undertake to fix the boundary line between these two States?

A. That is what I have been told, yes.

Q. I want to thoroughly understand you, Captain. When you were taking oysters down south of this line running around the coast from Malheureux point to Isle à Pitre, and when you were

anchored at Nigger point to save yourself from that storm and on down to West Karaho and Indian Mound, that far, was there ever at that time any mention of the locality of the boundary line between these two States?

A. I never heard of any.

Q. That dredging business sprung that question?

A. That is the first I heard of any dispute.

Q. Mississippi allowed it under certain conditions and Louisiana made it a felony?

A. Yes sir.

Q. And that was comparatively of recent years?

A. Yes sir. I think it was right after the Fish Hawk survey. I was down there when the Fish Hawk made that survey.

Q. When you stated that you were a Mississippi pirate on the lands of Mr. Gilmore, you meant that that was since this controversy arose as to where this land was, did you not?

A. I spoke in general terms, because I met Mr. Gilmore when I came to the city and he said I heard you have been down there stealing my oysters and he said you are a regular Mississippi pirate. But, I don't think, as far as I can recollect that I have fished oysters in the marsh since the passage of that oyster law.

Q. You have been afraid to do it?

A. No sir, I was not afraid, but I don't care about risking my schooner and risking my own individual liberty at it, as far as being any wrong about it.

Q. If that is the distinction I will accept it. You commenced going into the marshes, I understood you to say about 1886 or 1887?

624 A. No sir; I first went down there in 1857.

Q. For oysters?

A. Yes sir, after oysters.

Q. And from the Mississippi shore?

A. From Bay Saint Louis.

Q. It may be that you stated that the oystermen began to go down there in the marshes about 1886 or 1887, because of the p-verty of the reefs that you had been previously fishing on, you were looking for new fields. Is that correct?

A. Yes sir.

Q. And you found them there more abundant, down in the marshes?

A. Yes sir.

Q. And I mean by that, those places indicated by the red markings on the Fish Hawk map, down in the marshes?

A. Yes sir, all through that section.

Q. And you went down in there on schooners?

A. There were two reasons that made us go down there, the first was we could load a schooner with 200 or 300 barrels, they generally carrying four hundred barrels on a schooner, and we could get a load of 200 or 300 barrels in a day and a half or two days, whereas

on the Mississippi reefs the oysters got scarce and it took us a week to get that load; then another consideration was safety, we could lay in there just like a harbor with perfect safety and we could fish no matter how rough it was outside; but up here on the reefs on the Mississippi sound, every time the wind crept to the east or northeast we would have to up anchor and sail into Bay Saint Louis for harbor, quit the reefs and lay there and maybe lose a day waiting for the wind to go down. Those were the two considerations that made us go down in the marshes to fish oysters; then we got a finer oyster too.

Q. You have stated in answer to the question by counsel for Louisiana, that the map of 1806 more clearly exhibits that coast as you first knew it, than the map exhibited with Mr. Dukate's testimony and marked Exhibit A presented by the State of Mississippi. And if I am not mistaken your reason for stating that was, that the map A with Mr. Dukate's testimony, shows, on its face, more water in this disputed territory than the photograph of map Exhibit No. 19, map of 1806, filed by the State of Louisiana. I understand that that is a mere opinion which you arrived at from an observation of these maps and a comparison of one with the other. I do not understand that you undertake to testify to the correctness of either map?

A. No; I am speaking about the difference between the two maps, as to the quantity of land that is in there. As to the lines and correctness of the maps there, I can't say anything about.

Q. Now, Captain, listen to this question, please, and I have no doubt you will testify honestly and correctly according to your judgment about it. You testified that these islands and these shore lines are constantly disintegrating because of the action of the storms and waves constantly beating against their shores; that is correct?

A. That is correct.

Q. And for that same reason they are being washed away and some of them entirely gone and some submerged, and that in your judgment the bottom under these waters *ungoes* changes the same as the land at the surface of the water. I think you have
625 stated your belief that——

A. I think there is a disintegration of those lands all the time, greater in storms of course; but I do not think that there is much change at the bottom of the waters there except during storms; I think the storms and the rapid current created by the storms makes those holes I spoke about and makes the changes of channels.

Q. In other words you are more familiar with the surface changes than you are with the bottoms?

A. No sir; I have to be familiar with the bottom changes there too. I have to go through that marsh with a sounding pole.

Q. Do you undertake to say you are as familiar with the bottoms as you are with the surface?

A. Very near. I never have gone through that marsh that I didn't have to have a sounding pole and I found constant changes.

Q. And that these islands, where there were once trees, have been decreasing and the trees have been swept away?

A. Well, as I told you once before, the only trees, as far as my recollection extends, down in that part of the country, were at the mouth of Grand pass, at the mouth of Three Mile bayou, and there were three scrub trees on Mud Grass island; those are the only trees I have any recollection of.

Q. They are gone?

A. Yes sir, all of them.

Q. And you said something about some mesquite bushes that were on Brush island?

A. Those all gone; Brush island is gradually disappearing.

Q. You spoke of an Italian being murdered at Creole gap in 1857 or at some time between that date and 1860. Your knowledge of that is purely tradition. You have no personal knowledge of it; it is purely tradition?

A. I did not see the man killed, nor I was not there; but it was common talk around the place you know.

Q. You never read anything in any book about it?

A. I can't say that I read it in the paper.

Q. I asked you if you read it in any book?

A. No sir.

Q. And you never read it in any court record, you never read anything about it in any court record?

A. No sir.

A. No sir.

Q. It was just common talk?

A. That was all.

Q. And therefore tradition. You do not undertake to vouch for its truth under your oath?

A. No sir; I wouldn't swear to the truth of it; I didn't mention it as anything I could swear to.

Q. You know we are pretty touchy over on this side and we have to find out the true facts. Now, you said the robber Cole that escaped from the Mississippi penitentiary was drowned down there by——

A. By the storm in 1890 I think it was.

Q. Where?

A. It was either on Half Moon island or Grassy island the body was found.

Q. You know that of your personal knowledge to be a fact that he was drowned there?

626 A. I heard it from the man who found the boat and took the body out of the boat, I didn't see it.

Q. You wouldn't swear it was so?

A. I saw the boat.

Q. Did you see the man?

A. No sir.

Q. Could you swear it was Cole?

A. No sir, I couldn't swear that because I didn't see him.

Q. Are you willing to swear that was Cole that was drowned?

A. No sir.

Q. And you are just going by hearsay about that fact?

A. I didn't tell it as a fact, positive fact; I told you I heard it.

Q. I want to make the record clear on that point. I am trying to find out what your knowledge is, what knowledge you have separated from general hearsay.

A. That was only common talk.

Q. And we are not always willing to swear that common talk is the truth, are we?

A. No sir.

Q. You said that the Mississippi coroner refused to hold an inquest over the body. That was common talk too?

A. Yes sir, I was told that by the owner of the boat.

Q. Are you willing to swear of your own knowledge, as a witness on the stand, that a coroner from the State of Mississippi refused to take jurisdiction of the dead body of Mr. Cole?

A. No sir.

Q. And you only say because it was common talk?

A. Yes sir.

Q. We can't afford, you understand, to settle a court question like a controversy between two sovereign States by common talk. That is the reason I want to get you to the point. So, then, so far as the question of jurisdiction is concerned you are not prepared to state anything of your own knowledge or information?

A. No sir.

Q. And so far as the location of the actual line between the two States is concerned, speaking from your own observation for the last half century, if you were called upon to go and put your finger on the line between these two States as it was intended to be put by Congress when they admitted these States into the Union, you couldn't do it?

A. I couldn't, because I don't know what Congress intended.

Q. That is what we are trying to get at?

A. That dividing line is only—my opinion of that dividing line is only from the talk of every one; of course I have no positive knowledge.

Q. You don't want to leave the question as to whether you own property or not to common talk?

A. No sir.

Q. We don't want to leave that question about the oyster beds to common talk either.

Q. It will not be decided by common talk.

Q. You stated you were in the neighborhood of the Fish Hawk when she was making these soundings down there?

A. No; I said I was down in the marsh when she was down there making those soundings.

Q. You took no part in it?

A. No sir.

627 Q. I understand you to say that your soundings did not agree with the soundings of the Fish Hawk in some respects?

A. In some places.

Q. And the Fish Hawk was only there once, and they made those general soundings on one visit?

A. Yes, sir; she made one visit, that I know of.

Q. And you sounded along there in fishing for oysters during a chain of continuous years, did you not?

A. Yes sir.

Q. You discovered that the Fish Hawk had made some mistakes about it?

A. I discovered it, yes, sir, and I attribute it not through any mistakes the Fish Hawk made, between Half Moon island and Grassy island——

Q. And the oysters were pretty rich there?

A. Yes, sir, the oysters were rich. Why she has got places marked 10, 14 feet, depth of water there; well it is easy enough you know, on account, as I told you, the bottom is in ridges, you might put your sounding pole down and find nine feet of water, and then ten feet further you will find 18 feet of water; and it might have been that in making these soundings she happened to hit on a shallow spot and I happened to hit in a hole.

Q. At all events you are prepared to state that the report made by the Fish Hawk is not perfectly accurate?

A. It is as accurate as possible, as far as they found the depths.

Q. Did it correspond with the soundings you made?

A. No sir.

Q. And the soundings you made were of a greater depth than those reported by the Fish Hawk?

A. Yes sir.

Q. Tell me about these two channels, the one that goes up to Biloxi and the one that goes out into the Gulf out of the Rigolets and the mouth of Pearl river? They are called deep water channels, as I understand it, because vessels drawing as I understand you to say, nine or ten feet could not get too far away from that channel, deep water channel. Now, is it not true that lighter draft vessels could pass over Mississippi sound most anywhere between the Mississippi shore from Biloxi westward to the mouth of Pearl river, extending down to the northern coast between Malheureux point and Isle à Pitre?

A. Do you want to know the route they take?

Q. I want to know if vessels of light draft could not pass over that sound or that water?

A. In a straight line?

Q. In any direction?

A. No sir; they cannot pass; they have to follow the channel; there is on the Square Handkerchief that lies directly north of Pass Marianne where there is only a foot of water.

Q. Where is that?

A. On the Square Handkerchief. You hav-'nt got a map of 1890 have you. This has it on. It is shown by the combination map No. 17. Now, in coming from Biloxi you have to go up through Pass Marianne channel north of Cat island; they come here to what is called Southwest bay; now, from Southwest bay they don't have to take the channel, they go right across and go down to Malheureux point. If they don't go this way, through Pass Marianne, they take the inshore, Pass Christian channel, and they go down south west to the Bay Saint Louis bridge and then they can
628 sail directly down to Malheureux point in six feet of water. Those are the two routes they generally take. In Grand Coquille there is only half a foot of water and that is immediately——

Q. That is immediately northwest of Isle à Pitre, north of the east end of Isle à Pitre?

A. Yes sir. Now a person that is well acquainted with this country, say myself, I can go out of Grand pass and I know the channel between these keys, and instead of me sailing way over to the westward and then going about northeast to strike Bay Saint Louis, I can pass through these keys and there is a cut through there ten feet, between the Square Handkerchief and this Pass Christian oyster reef, and cut right into Pass Christian channel, and I save then about five miles going around the Square Handkerchief. But it takes a person that is well acquainted to go through there.

Q. According to your knowledge and information within the last half century, how long have these Mississippi people been going down below the line between Malheureux point and Isle à Pitre into what you term the Louisiana marshes, to get oysters?

A. Well, they never did to any extent go down there to fish oysters. Now and then a boat would go down there to get very fine oysters and go down to get a few oysters, principally private boats, may be get four or five barrels to take home and throw under their wharf.

Q. How long has that been going on.

A. That is what first took me down there in 1857. I was not fishing oysters for profit, I just went down on a pleasure boat and I think it was about 1880, along about 1880 that the boats fishing oysters first commenced to go down there in any quantity.

Q. The canneries commenced their operations about 1880, do you mean to say?

A. No; I say that about 1880 the oystermen first commenced to go down in this country to any great number, to any extent.

Q. What do you mean by this country?

A. This disputed territory, below the north shore in the Louisiana marsh.

Q. What part of Mississippi did you say you lived in?

A. Bay Saint Louis.

Q. That is the place you were born?

A. Yes sir.

Q. I understand you to say that you were in Drum bay in 1857 and that you got there through Three Mile bayou with a boat of four feet draft. Please tell us how you made that trip?

A. From the mouth of Three Mile bayou?

Q. You are testifying now from Exhibit Map No. 17?

A. From the mouth of Three Mile bayou, we started across what is called Three Mile bay, passing between Little Racoon and Big Racoon islands, between Crooked island and Wild Goose island, down Indian Mound bay to the southwest through Cat Fish pass into Southwest pass into Drum bay, through this deep water pass. There is another deep water pass just like Cat Fish pass, 18 or 20 feet deep, I have forgotten the name of it.

Q. Do you observe from the map before you, the combination map, substantially the same route that you made in 1857?

A. You mean to say that I see no changes in it?

Q. Yes.

629 A. I see a great many changes. There is an island here that was called Dog island.

Q. Dog island is gone?

A. Yes, sir, it is gone entirely.

Q. But I meant to ask you this; the line that you have given me from Three Mile bayou down to Drum bay you have marked out on the map now before you?

A. Yes sir.

Q. And from this map you find the route you went in 1857; I am not asking you about the changes.

A. I can find it by that map.

Q. How is this territory that you call the marshes, east of the main shore of Saint Bernard parish, with reference to habitations; is there any animal or industrial life of any kind across there except these coons you spoke of this morning?

A. Coon- are the only living thing I know of down there.

Q. There is no industrial life of any kind from Saint Bernard parish out to the northeast point of Isle à Pitre?

A. Not that I know of.

Q. You have never seen any farm or manufactory or anything except fishing in that territory, have you?

A. That is all I have seen, fishing and hunting.

Q. There is no industrial life of any kind other than oyster fishing?

A. That is all I know of fishing and oystering.

Q. When you spoke of going dry shod, you meant between the bayous that cut the shore southward, going dry shod from Malheureux point to Isle à Pitre, you meant of course that you would have to be carried around the mouths of the bayous?

A. Of course I had to cross the mouths of these bayous.

Q. They were clearly defined, so far as your recollection goes back, that is to say, Nine Mile bayou, Three Mile bayou, Johnson bayou, and Turkey bayou, Grand pass, all of those places, have been clearly defined streams or bayous since you have known that coast?

A. Yes sir, they have all been there.

Redirect examination.

By Mr. DYMOND:

Q. For what purpose do people go into the Louisiana marshes?

A. Principally fishing oysters.

Q. In your opinion, have you had occasion to notice the routes which are used in going into the Louisiana marshes for this purpose?

A. Yes sir.

Q. How does the use of Nine Mile bayou compare to Three Mile bayou as to the number of boats going through these two bayous for oyster purposes?

A. I suppose that the vessels passing through Three Mile bayou is at least 30 or 40 times greater than those passing through Nine Mile bayou.

Q. Is it, or not, a fact that Nine Mile bayou is very infrequently used?

A. Yes sir.

Q. Are you able to state the character of vessels that are used in fishing oysters on the inside of the Louisiana marshes?

630 A. There are generally schooners and luggers; a great many small barges, schooner barges, that will carry from 80 to 100 barrels of oysters, drawing about six to eight inches of water.

Q. How do they deliver, how do these boats you have just described deliver their loads?

A. They deliver them to freighters lying in the mouth of Three Mile bayou.

Q. How much draft do these freighters have?

A. Well, loaded, about five feet, five and a half feet.

Q. Why do these freighters lie in Three Mile bayou, why don't they go further in?

A. Because there is only three and a half feet in most of the channels.

Q. Is it, or not, a fact that owing to the shallowness of the water inside of the Louisiana marshes, that the fishing of oysters is done there by comparatively shallow draft boats which deliver their cargoes to freighters lying in the deep water channel of Three Mile bayou?

A. That is a fact.

Q. Now, you have spoken on cross examination in regard to what you believe as the conditions existing in 1812, and you started a moment ago to give your ideas about the country. Will you give your ideas about what this country was in 1812?

A. I did not pretend to say what the state of the country was in 1812; but I intended to state that my idea was and belief, that that whole marsh at one time was a part of the main shore of Louisiana from what I had seen and observed; it was only an opinion of mine, that that originally was a part of the main shore of Louisiana, as I believe that Cat island was once a part of Mississippi.

Q. Was that opinion formed in any way by the observations that you yourself had made and the results that you yourself had seen extending from 1857 up to 1901?

A. It was formed by those observations.

Q. If the same results had been operating from 1812 to 1857, that you saw operating from 1857 to 1901, what in your opinion would have been the condition of the country in 1812, in a general way?

A. Well, I think the condition would have been, there would have been much more ground there than there is now.

Q. And less water?

A. And less water.

Q. Was there or was there not, much more ground when you first saw this area, known as the Louisiana marshes, in 1857, than there was in 1901?

A. A great deal more.

Q. Would you, or would you not, be prepared to say that these bodies of land which you have denominated as islands in 1901 were islands in 1812 in the interior?

A. No; I couldn't say they were islands then?

Q. What would you think they were then?

A. Well, I should judge they were a part of the main land, especially as far as that point, from Julis pass and Morgan harbor, in through that country, the marsh is not as much cut up down there as it is further in front; the nearer to the front you go to the Gulf shore of that marsh the more the land is cut up.

Q. You, on cross examination, testified in regard to changes which you stated had occurred below the water and in the channels just as changes had occurred above the surface; were your remarks
631 intended to apply to the conditions and changes in the Louisiana marshes south of the line extending from Malheureux point to Isle à Pitre, or were they applied to the open Mississippi sound.

A. It was inside of the marsh.

Q. Did or did not what you said, as to changes in the channels, have any reference to the open Mississippi sound?

A. The only change of channel that I know of in the upper sound——

Q. No; I asked, did what you stated have——

A. You can apply it to both. The changes in the channels have been greater in the marsh than the outside, but there have been changes outside.

Q. Has there been any material change in the sound north of the Louisiana marshes due to any cause of nature?

A. The only channel that I know of that has changed from the cause of nature is that channel between old Saint Joe light and Herron point.

Q. Has that any thing to do with the main channel extending from the mouth of Pearl river out through Southwest pass between Cat island and Isle à Pitre?

A. No sir.

Q. Have you known any changes due to nature which have occurred along this line marked C-C-C on map No. 17, extending from the mouth of Pearl river out through Southwest pass between Cat island and Isle à Pitre?

A. No sir; I know of no changes there except those caused by dredging of the Government north of Pearl river, no natural changes there, none in South pass, that is what we call South pass.

Q. Now, when did you stop fishing oysters, Captain, in the Louisiana marshes?

A. I think it was in 1901.

Q. In your many years' experience in the Louisiana marshes, did you ever have occasion to have the subject come up in conversation with any of the fishermen as to what State the Louisiana marshes belonged?

Mr. McCLURG: I object to that emphatically. This question is not to be settled by a discussion of Louisiana marsh fishermen.

A. I had conversations with fishermen from both States, Louisiana fishermen and Mississippi fishermen; of course the Mississippi fishermen claimed it as Mississippi territory and the Louisiana fishermen claimed it as Louisiana territory.

Q. Since what date?

A. That was along about the time this controversy came up, about 1900.

Q. Now, prior to that time, had you ever had any conversation wherein the matter came up?

A. No sir; I never had the matter to come up until this controversy was sprung. I do not think I ever heard it questioned until right after the Fish Hawk made that survey and those dredges fishing in Three Mile bayou and Half Moon bay was reported.

Q. Are you able from your experience to say what name was given this territory commonly known as the Louisiana marshes, by
632 the Mississippi fishermen?

A. Louisiana marshes.

Q. I asked if you are able to say what name was given it by the Mississippi fishermen?

A. Yes sir.

Q. What name was given to this territory by the Mississippi fishermen?

A. They always called it the Louisiana marshes.

Q. Did you ever hear it called by any other name?

A. No sir.

Q. What do you call the area immediately north of this coast line running from Malheureux point to Isle à Pitre?

A. We always called, from Malheureux point until about half way between Nine Mile bayou and Three Mile bayou, as Half Moon bay.

Q. What do you call the water area east of that.

A. South of what is called Grand Coquille, used to call it Coquille bay.

Q. What do you call the large body of water between the bodies of water you have just mentioned, and the north main line shore of the State of Mississippi?

A. We call it Mississippi sound. That is, from Half Moon island.

Q. Do you know why the Florida parishes were ever called Florida parishes?

A. I suppose they were originally a part of Florida.

Q. Is that why you understand they were so called?

A. Yes sir.

Q. Will you please look at this map marked No. 17 and follow along the line indicated in a black line between the points C-C-C and state whether you see there the words "sailing line" at any point?

A. No sir, it is not on that map.

Q. Will you look on the line which extends from the channel between Half Moon island and Point Clear, in a northwesterly direction, thence running easterly, parallel to the coast of Mississippi and state whether you see the words "sailing line" on that line?

A. No sir; it is not there.

Q. Did you ever see a house at the mouth of Three Mile bayou?

A. There was a little fisherman's hut there about eight feet square, built of blocks but it staid there a very short time.

Q. Are you prepared to say whether there is or is not now, a store built at the mouth of Three Mile bayou, erected by Aaron and Wenzel?

A. No sir.

Q. Have you ever seen that building?

A. It was not there the last time I was there. They have a schooner there and kept their store in a schooner, sold out of the schooner.

Q. The last time you were there was in 1901?

A. Yes sir, and 1902.

Q. Have you seen the building of Mr. McGraw and Mr. Charles Sanger at the mouth of Turkey bayou?

A. Yes sir; I have been there often in it.

Q. Have you ever seen the building of Mr. George Ruppel at Door Point lagoon?

A. There are only some shanties down there near Cranetown pass and near Door Point bay; I never stopped in there, you know we always passed to the southward of that.

633 Q. Have you seen the recent building put up there?
A. No sir, no recent building. Those fishermen huts th
there were several of them through the marsh, I never pretended
call them houses, some of them had nothing but thatched roofs.

Recross-examination.

By Mr. McCLURG:

Q. Please look at the chart or map Exhibit E filed by the St
of Louisiana in this case and tell me how far it is from the mou
of Pearl river, to the point where the north channel east of Saint J
lighthouse branches off towards Biloxi?

A. I think it is about, I should judge about three miles from t
mouth of Pearl river to where we generally strike off just outside
Saint Joe island.

Q. Is there any point between the mouth of Pearl river and t
point designated on this map or chart before you, where this de
water channel is as far as 18 miles from the Mississippi shore in
you get out to Ship island south of Ship island?

A. You mean running south?

Q. This line between the Mississippi shore——

A. Where is Cat island?

Q. Here it is.

A. That is nine miles from Pass Christian, Cat Island ligh
house is.

Q. How far is it from Gulfport due south to this line called dee
water line?

A. I suppose 18 or 20 miles.

Q. Do you know when the Mississippi sound first got its name?

A. No sir; I couldn't tell, it was named that as far back as 1833

Q. Why do you fix it at 1833?

A. My father settled in Mississippi, at least he bought a plac
there about in 1833 and it was called Mississippi sound; then Lak
Borgne had the same name, so the different bays have the same
name, the Rigolets had the same name.

Q. I understand you to say on re-direct examination that in you
opinion this territory that we now called the marshes, was in 1812
more solid than it is now?

Q. That is my belief.

Q. Am I mistaken in believing that you also said that these isl
ands were more distinct in 1812 than they are now?

A. Yes sir; and there were more of them in 1857 than there are
now.

Q. I did not ask you a thing in the world about 1857?

A. I know positively there are fewer islands and less ground now
than in 1857. How can I say about 1812?

A. I don't know how on earth you could say it but you did say it.
That is the reason I went back. (Read the question.)

A. My belief is, from what I have seen from 1857 to the present date, that the body of land was much larger than it is at this date.

Q. After you get through with the body of land, tell us about the islands, that is what I want to know. Is it not true from your observations and experience, since 1857, that these islands that we have gone over repeatedly in examining you, were more distinct, more clearly defined in 1812 than they were in 1857 and than they are now?

634 A. I believe they must have been from the way the ground has been gradually decreasing.

By Mr. DYMOND:

Q. Do you understand what the counsel means by the words clear and distinct and clearly defined in 1812?

A. Well, he meant by the word clearly defined that they were marked so you are bound to distinguish the lines there.

Q. Did you or did you not intend to say, that it was your opinion that there were islands in this territory in 1812?

A. Well, there might have been some islands there.

Q. When you testified in your re-direct examination as to the interior as it would exist in 1812, was that on positive information and knowledge or was it simply on your opinion?

A. It was based on my observations from 1857 to the present date.

Q. Was it based on the theory that if the same causes had been operating from 1812 to 1857, the same results would have been accomplished?

A. That is the only way I could base it.

Q. Repeat it, what is your opinion as to the condition of this country in 1812 as based upon what you yourself have seen as the causes and results extending from 1857 to 1901?

A. My opinion is, that there was a great deal more land, that most of that marsh was pretty near solid land. That if the same destructive elements have been at work from 1812 up — 1857 why the whole face of that country would be changed.

By Mr. MCCLURG:

Q. And that has been at work since the cessation of the flood, according to your best judgment?

A. No sir. Sometimes land is made. I have got a tract of land down the Mississippi river here that has made me eight acres front on the river.

At this stage of the proceedings, the commissioner adjourned the hearing until the 20th day of April 1904, to be resumed at the same place, at 10.30 a. m.

Resumption of Proceedings.

APRIL 20TH—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed.
Present: Hon. Walter Guion, att'y general for Louisiana.
Mess. John Dymond Jr., F. C. Zacharie and Albert Estopinal Jr., associate counsel for Louisiana.
Hon. Monroe McClurg, associate counsel for Mississippi.

WILLIAM BEER, recalled on behalf of the State of Louisiana, testified as follows:

635 Direct examination.

By Mr. DYMOND:

Q. You are the same gentleman who was on the stand the other day and testified in regard to maps that were part of the collection in the Howard Memorial library?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, offer in evidence the certificate of Herbert Putnam, Librarian of Congress, concerning certain maps about which the testimony of Mr. Beer will be taken, and submits to the counsel for the State of Mississippi, the said certificate for inspection, a copy of the same to be furnished him by counsel for the State of Louisiana. And counsel for the State of Louisiana now offer the said document in evidence to be known as Document No. 12.

Mr. MCCLURG: Counsel for Mississippi reserve an exception, because of the incompetency of the certificate as evidence.

Q. I understand that you are the librarian of the Howard Memorial library?

A. Yes sir.

Q. Did you receive from Mr. Herbert Putnam, Librarian of Congress, the maps from the Library of Congress at Washington, D. C. mentioned in the said Document No. 12?

A. I did.

Q. Have you examined carefully the maps which were sent to you by the Librarian of Congress, Washington, D. C.?

A. I have devoted much time to their examination.

Q. Will you please look at the map of B. Lafon of 1806, and state whether or not you have compared it with the photographic print marked map No. 19?

A. I have carefully compared it.

Q. Will you please state whether, as a photograph, it is a true and faithful reproduction of the original map of B. Lafon of 1806?

Mr. MCCLURG: Counsel for Mississippi reserve an exception be-

cause of the incompetency of this question; the maps speak for themselves.

A. There is a difference between the original and the photographic print, the photographic print has on it red lines not on the original.

It is understood between counsel for the State of Louisiana and the State of Mississippi, that the red lines referred to by the witness concerning map No. 19 were placed thereon by W. C. Hodgkins a witness in this case on cross examination by the State of Mississippi and at the request of the State of Mississippi and on redirect examination by counsel for the State of Louisiana at the request of the counsel for the State of Louisiana.

636 Q. Is there anything else, besides red lines on this map that you refer to?

A. There is lettering accompanying the red lines.

Q. What is the lettering on that map?

A. There is lettering accompanying a line running eastward marked A–C–B and accompanying a dotted line running southward marked C & D.

It is further understood between counsel that this lettering was placed thereon by the witness W. C. Hodgkins under the circumstances above detailed.

Q. With the exception just stated, how does the photograph No. 19 compare with the original map concerning which you have testified and which is now before you?

A. After examination I find it is to be a correct photographic copy.

Mr. [illegible]ND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the photographic print marked map No. 19 and tenders to counsel for the State of Mississippi a copy of said map.

Q. Do you know who B. Lafon was?

A. B. Lafon was a resident of New Orleans, an engineer and surveyor who occupied various official positions. He published other books relative to Louisiana, amongst others a Annuare de la Louisiane.

Q. Will you now please look at this original map by William Darby of 1816 and state whether or not you recognize it to be one of the maps from the Congressional Library at Washington, D. C.?

A. This is one of the maps I received from the Congressional Library.

Q. Have you carefully examined that map?

A. I have carefully examined that map.

Q. Will you please look at these photo prints which are to be marked Nos. 20 and 20–a, and state whether you have carefully com-

pared them with the original map which is now before you, named the Darby map of 1816?

A. I have examined them carefully in comparison with the original.

Q. Can you state from your examination, whether they are, or *or* not true and faithful reproductions of map No. 20 of the whole of the original map, and No. 20–*a* of the area in dispute in this case?

Mr. McCLURG: Counsel for the State of Mississippi reserve the same exception as to the introduction of map No. 19.

A. After careful examination I pronounce them to be true and faithful copies of the originals.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints of the William Darby map of 1816 marked maps Nos. 20 and 20–*a*, and tenders to the counsel for the State of Mississippi for inspection the original
637 of said Darby map and tenders to counsel for the State of Mississippi also the copies of maps Nos. 20 and 20–*a*.

Mr. DYMOND: Counsel for the State of Louisiana announce, in connection with these maps from the Library of Congress, Washington, D. C., that it is the intention of the State of Louisiana, on the hearing of this case before the Supreme Court of the United States at Washington, to produce the original maps which are now exhibited to counsel for Mississippi in connection with the photographic prints which are offered in evidence.

Q. Examine maps Nos. 20 and 20-*a* and state whether your testimony as to their being true and faithful copies, was intended to and did cover the matter of coloring?

A. It covers the matter of original printing apart from the coloring.

Q. Does it or does it not include the coloring?

A. It does not.

Q. Do you know who Mr. William Darby was and what evidence he had so far as preparing the topography of this original map of which photographic re-prints Nos. 20 and 20-*a* are offered in evidence?

A. William Darby was one of the most celebrated American geographers. He was an engineer officer under General Jackson in Louisiana.

Q. About what time?

A. About 1812, from 1812 to 1816.

Mr. McCLURG: Mississippi reserves an exception to this on the ground that it is a matter of history to be proved in that manner and not by the information of the witness.

Q. In testifying as to who the parties are who have made the vari-

ous maps concerning which you are testifying from, how have you qualified yourself to testify in regard to these people?

A. By a special study of the subject and by having in my possession all the works of the said William Darby.

Q. Mr. Beer, will you please look at the map now before you, being the map of the State of Louisiana with part of the State of Mississippi and Alabama territory, by Maxfield Ludlow, and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress, Washington, D. C.

A. This is one of the maps sent to me from the Library of Congress.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, said original map to be known as map No. 21, to the counsel for the State of Mississippi for inspection, and in connection with the said offer will present the said map on the trial of this case before the Supreme Court of the United States in Washington, D. C.

638 Mr. DYMOND: Counsel for the State of Louisiana state in connection with map No. 21, that an effort has been made to photograph the same but that owing to its yellow color the negative photographs perfectly black and therefore it is impossible to furnish a photographic copy of said map. With which statement counsel for the State of Mississippi is satisfied.

Q. Do you know who Mr. Maxfield Ludlow was?

A. Nothing except from the legend on the map which states that he was chief clerk, surveyor general's office south of Tennessee.

Q. Do you know to what surveyor general reference is made?

A. To the surveyor general of the United States.

Q. Will you please look at the map which is now before you and state whether you recognize it to be one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. I do.

Q. Whose map is that?

A. This is a map of John Melish.

Q. Of what date is that map?

A. 1820.

Q. Who was John Melish?

A. He was a geographer and map maker.

Q. Of what country?

A. Of the United States.

Q. Will you please look at this photographic print and state whether you have compared it with the map of John Melish concerning which you have just been testifying?

A. I have carefully compared it and find it to be a correct photographic copy, so far as regards outlines.

Q. Have you compared the coloring upon the photographic reprint with the coloring upon the original map?

A. I have compared the coloring.

Q. What does the comparison of the two show?
A. It represents it as nearly as recent coloring can represent ancient coloring.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the photographic re-print of said map of John Melish of 1820, the photographic re-print to be marked map No. 22, and tenders to counsel for the State of Mississippi one of the said photographic prints.

Q. Will you please look at this map which is now before you, being H. S. Tanner's map of Louisiana and Mississippi, and state whether you recognize that map to be one of the collection of maps sent to you by the Library of Congress Washington, D. C.?
A. It is one of that collection.
Q. Of what year is that map credited as being published?
A. 1820.

639 Mr. DYMOND: Counsel for the State of Louisiana now offer to the State of Mississippi, for inspection, the said original map which is to be known as map No. 23, and state in connection with this map that owing to its color, it has been impossible to photograph it because of the fact that it photographs perfectly black owing to its being yellow and that counsel is therefore unable to furnish counsel for the State of Mississippi with a photographic print of said map, but will offer the original map on the trial of this case before the Supreme Court of the United States in Washington, D. C.

Mr. MCCLURG: Counsel for Mississippi accept that statement as satisfactory.

Q. Will you look at this map which is now before you and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress Washington, D. C.?
A. It is one of the collection.
Q. What map is that?
A. It is a map of S. Augustus Mitchell, 1834.
Q. Who was S. Augustus Mitchell?
A. He was a publisher of maps of all the different States of the United States.
Q. Was he a map publisher at the time of the issuing of these maps?
A. Yes sir.
Q What is the date of that map?
A. 1834.
Q. Will you please look at those photo prints and state whether you have examined and compared them with the Mitchell map concerning which you have just been testifying?
A. I have examined and compared them and find them correct so far as regards the original print in black ink.

Q. Have you examined the coloring in the photographic reproductions of this Mitchell map?

A. I have examined the coloring and find that the outlines of the colors correctly represent the original map.

Q. What difference, if any, exists in the coloring?

A. A difference of time and care.

Q. Does any difference exist in the color of the pigments used?

A. This is technical you know. The chemical character of the photographic printing paper has altered the coloring slightly, until what is bright yellow in the original has become a dull yellow in the copy.

Q. Does the outline showing the divisions of governmental control compare correctly on the photo prints with the original map which you have now before you?

A. They do compare correctly.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer in evidence the photo prints of the said map of S. August Mitchell of 1834, to be known as map No. 24, and tenders to the counsel for the State of
640 Mississippi the said original map of S. Augustus Mitchell for inspection, with a photo print of said map.

By Mr. MCCLURG:

Q. You notice that discrepancy there don't you (to witness)?

A. Yes sir.

Mr. MCCLURG: Counsel for the State of Mississippi calls attention to a discrepancy in the map handed him in the painting of the islands and asks for a different map which is given him. And he, counsel for the State of Mississippi calls attention of the witness to the discrepancy so he can make what explanation he sees proper.

By Mr. DYMOND:

Q. Will you please examine the locality on map No. 24 to which your attention has been called, as to their being a failure to color Cat island, Grand island and Ship island, and state whether on the photo print marked 24, the islands are colored as in the original map?

A. In the copy before me the islands are colored as in the original.

Q. Will you please now look at the photo print which has been tendered to the counsel for the State of Mississippi and state whether those islands on the map tendered to counsel for Mississippi are colored similar to the coloring on the original map?

A. In the copy now before me which is the one tendered counsel for Mississippi, Malheureux islands are not colored at all, in the original they are colored red.

By Mr. CLURG:

Q. Indicating what?

A. Indicating the same color as that of St. Tammany parish.

By Mr. DYMOND:

Q. On the copy tendered to the State of Mississippi are they colored at all or is there an absence of coloring?

A. There is an absence of coloring.

Q. In the copy filed in evidence are those islands colored at all or is there an absence of coloring?

A. There is also an absence of coloring.

Q. What does the original map show as to coloring in regard to the Malheureux islands?

A. A red tint similar to that of the adjoining main land.

Q. Of what State?

A. Of the State of Louisiana, parish of St. Tammany. I think I stated in my evidence that they differed in point of care.

Q. Will you please look at the map which is now before you, and state whether you recognize it to be one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. I do.

641 It is understood and agreed between counsel for the States of Louisiana and Mississippi that the original collection of maps from the Library of Congress, Washington, D. C., now in the possession of Mr. William Beer librarian of the Howard Memorial library, shall be kept in the possession of Mr. William Beer, to be used by the State of Mississippi.

Q. Whose map is it that you now have before you?

A. It is the map published by Graham and Tanner, known as the map of Tanner.

Q Concerning what territory does it cover?

A. It is a map of the State of Louisiana and of central and southern portions of the State of Mississippi.

Q. Who was C. Graham?

A. C. Graham was a printer and publisher, of New Orleans.

Q. Was Tanner the same Tanner that published map No. 23?

A. He was the same Tanner.

Q. Will you please look at these photographic reproductions which for the purpose of identification are to be known as map No. 25 and state whether you have compared them with the original Tanner-Graham map now before you?

A. I have compared them carefully.

Q. What did you find as a result of your comparison?

A. They are a correct photographic reproduction of the original printing in black.

Q. How do they compare as to colors shown on the original and the coloring shown on the photographic reprints?

A. Generally the reproduction of color is correct. As far as regards Marianne islands, in the copy they have been colored with one stroke of the brush thereby making them appear as one island, the attempt however is to represent the same yellow color.

Mr. McClurg: The same objection is urged by the State of Mississippi to this plan of examination for the reason that the maps should speak for themselves.

Q. How does the coloring as showing the different governmental sub-divisions, compare, on the originals with the photographic reprints?

A. It is as nearly as possible a correct reproduction.

Mr. Dymond: Counsel for the State of Louisiana in connection with the testimony of the witness, now offer, produce and file in evidence, the said map No. 25, in four sections, and tenders the original of said map to counsel for the State of Mississippi for inspection, and tenders to counsel for the State of Mississippi a photographic reprint of said map in the four sections.

642 Q. Will you please examine the balance of the sections of map No. 25 and state what difference exists between those sections and the original?

A. There is no hand coloring on the other sections.

Q. Are they, as photographic reproductions, correct reproductions of the other sections of map No. 25?

A. They are correct reproductions.

Mr. McClurg: Counsel for the State of Mississippi urges the same exception as above noted.

Q. Will you please look at the map which is now before you and state whether you recognize it to be one of the collection of maps sent to you from the Library of Congress, Washington, D. C.?

A. I do recognize it to be one of the maps sent to me from the Library of Congress.

Q. Whose maps is it you have before you?

A. The map of H. S. Tanner of Philadelphia, of 1837.

Q. Is that the same Tanner that you testified about in your previous testimony?

A. Yes sir.

Q. What territory does this map cover?

A. It is the a map of the State of Louisiana together with the central and southern portions of the State of Mississippi.

Q. Will you please compare these photographic prints which for the purpose of identification, are to be numbered map No. 26, sections 1, 2, 3 and 4, and state whether you have compared them with the original map?

A. I have so compared them.

Q. What does that comparison show?

Mr. McClurg: Same exception as above noted.

A. They are correct photographic copies so far as regards the original printer matter.

Q. Have you compared the coloring on the photo prints with the coloring on the original map?

A. I have compared the coloring.

Q. How does this coloring compare on the photo prints with that on the original map?

A. The coloring on the maps is very carelessly done and differs in the three copies.

Q. Does the coloring show the governmental sub-division, correctly or incorrectly?

A. Generally, in the coloring, correctly; but in one of the copies Marianne islands are colored with one stroke of the brush making them look as one island; in another copy the color is rubbed out on Marianne islands.

Q. Where Marianne islands are colored, how does the coloring compare as to color, with the orignal map?

A. It is yellow as in the original map.

Q. According to coloring, to what State are the Marianne islands a part?

A. Of Mississippi, both on the original and photographic prints.

Mr. McCLURG: Counsel reserves exception for the reason above stated, that they show for themselves.

643 A. There is one other difference in coloring, there is red here on one of the photographic copies, the boundary between Louisiana and Mississippi is colored red. In the two others it is colored a deeper shade of yellow.

Q. Are there any other differences noted by you between the photo prints and the original, so far as coloring is concerned?

A. In coloring, the coloring of the coast in the copies has been done less carefully than in the original.

Q. Do these differences which you have noted affect in any way the Governmental divisions of territory shown by the original and by the photo prints?

A. No sir. I would state that the island of Saint Joseph colored bright yellow in the original, seems to have been colored and washed out in the photographic copies.

Q. Has it been washed out in all of the photographic copies?

A. Of the island of Saint Joseph, yes sir. I know of no other differences.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints of the said original map, the said photo prints to be marked map No. 26, sections 1, 2, 3 and 4, and offers the said original map to counsel for the State of Mississippi for inspection, and tenders to counsel for the State of Mississippi photo prints of the said four sections of map No. 26.

Q. Will you please look at the original map before you, for the purposes of identification to be known as map No. 27, and state whether it is one of the collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of those maps.

Q. Whose map is it?

A. It is the map of John La Tourrette.

Q. Of what territory is the map?

A. It is a map of the State of Mississippi with portions of Louisiana and Alabama, showing the communication by land and water between the cities of New Orleans and Mobile.

Q. Who was John La Tourrette?

A. He was a map maker of Mobile, Alabama.

Mr. McCLURG: Counsel for Mississippi reserves an exception to this method of proving the correctness of maps that have been photographed, upon the ground that they are to be judged by the court as to their correctness and not by the parole testimony of one who has examined them. The court in the opinion of the counsel, for Mississippi, will be governed by its own observation as to the correctness of these photographic copies and not by the testimony of the witness on that point.

It is understood that this objection shall apply to all testimony of like character without the necessity of repeating it.

644 Q. Will you please compare the photo prints of this map to be known as No. 27, sections 1, 2, 3, 4, 5 and 6, with the original map which you have before you?

A. I have made a comparison and find that, as far as the original printing is concerned, the photo maps are correct.

Q. How do the photographs compare with the original so far as coloring is concerned, and state in detail any differences of coloring, more particularly on section 1?

A. The coloring in the photographic copies is less carefully executed than in the case of the original. The islands unnamed off Cape Malheureux, are colored yellow in the original.

Q. That indicates that they belong to what government as indicated on the original map?

A. In the original they are of the same coloring as Saint Bernard parish.

Q. How are they colored on the photo prints?

A. They are left uncolored.

Q. How do the photo prints otherwise compare with the original as to coloring?

A. The coloring, in the main, represents the coloring on the original.

Q. How do the colors of the photo prints compare as to the colors of the original, so far as governmental divisions by differences in color?

A. They show the same distinctions of governmental divisions.

Mr. DYMOND: In connection with the testimony of the witnes counsel for the State of Louisiana, now offer, produce and file i evidence, the photo prints of the original map No. 27, sections, 1 2, 3, 4, 5 and 6, and tenders to counsel for the State of Mississipp the original map No. 27 for inspection, and tenders to counsel fo the State of Mississippi copies of the photo prints of the six sec tions of map No. 27.

Q. Will you please look at this map, which, for purposes of iden tification, will be called map No. 28, and state if it is a part of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. It is one of the maps.

Q. Whose map is it?

A. It is a map of G. W. R. Bailey.

Q. Of what year?

A. 1853.

Q. Who was G. W. R. Bailey?

A. He was a civil engineer.

Q. What territory does this map cover?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints, which, for purposes of identification are to be marked map No. 28, sections 1, & 2, and state whether you have compared them with the original map No. 28?

A. I have compared them.

Q. How do they compare as photo prints of the original map?

A. As photo copies of the original printed matter I find them correct.

645 Q. Have you compared the coloring of the photographic reprints with the coloring of the original map?

A. Yes sir.

Q. How do they compare as to coloring, the photo reprints with the original?

A. The coloring of the original is careless. The coloring of the copies is equally so, but differs slightly in the portions left uncolored.

Q. Does the coloring of the photo prints correctly or not represent the coloring of the original so far as governmental divisions of the territory are concerned?

A. Generally speaking, yes.

Q. In what particular does it not correctly represent the differences of governmental sub-divisions?

A. In slight and unintentional defects of the color lines.

Q. Will you please state whether that does, or does not, affect the correctness of the reproduction of the map so far as showing the differences in governmental sub-divisions?

A. It does not affect that representation.

Mr. DYMOND: In connection with the testimony of the witness

counsel for the State of Louisiana now offer, produce and file in evidence, the photo prints testified to, to be marked map No. 28, sections 1 and 2, and tenders to the counsel for the State of Mississippi for inspection the said original map and tenders to counsel for the State of Mississippi photo prints of the two sections of said map.

Q. Will you please look at this original map now before you, which for purposes of identification, shall be named map No. 29, and state whether you recognize it to be one of the collection of maps sent to you by the Library of Congress Washington D. C.?

A. It is one of the maps.

Q. By whom was said map made?

A. It was published by Schonberg and Company.

Q. In what year?

A. In the year 1866.

Q. Who was Schonberg and Company?

A. They were map publishers.

Q. What territory does this map represent?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints of map No. 28 and state whether you have compared them with the original?

A. Yes sir, I have compared them.

Q. How do they compare with the original so far as being reproductions of the original?

A. They are correct photographic reproductions of the original.

Q. Have you compared the coloring of the photo prints with the coloring of the original?

A. Yes sir.

Q. How does the coloring of the photo prints compare with the coloring of the original?

A. The coloring of both the original and the copies is carelessly done; the differences are slight.

Q. Do those differences or, do they not, affect, in any way, the governmental divisions as shown by the map?

A. They do not.

646 Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the photo print of the said map to be marked map No. 29, and tenders to counsel for Mississippi, the said original map for inspection and a photo print of said map.

Q. Will you please examine this map which is now before you, for purposes of identification to be called map No. 30, and state whether it is one of the original collection of maps received by you from the Library of Congress, Washington, D. C.?

A. It is one of the maps received by me.

Q. Who made that map?

A. It was made by T. S. Hardee.

Q. Who is T. S. Hardee?

A. T. S. Hardee was an engineer of New Orleans.

Q. Of what territory is the map?

A. It is a map of Louisiana, embracing portions of Arkansas, Alabama, Mississippi and Texas.

Q. Will you please examine these photo prints of map No. 30 and state whether you have compared them with the original?

A. I have compared them with the original.

Q. How do they compare with the original as to being photographic reproductions?

A. They are correct photographic reproductions so far as regards the original printed matter.

Q. Have you compared them with the original, so far as the coloring is concerned?

A. I have compared them with the original.

Q. How do they compare with the original as to coloring?

A. Two of the copies are incompletely colored. All of them are reasonably correct as to coloring.

Q. Do they, — do they not, compare with the original as to differences in colors showing the governmental sub-divisions?

A. They do.

Q. How does the coloring of the photo prints compare as to the coloring of the original in showing the differences in the governmental divisions?

A. The completely colored copy shows as in the original the differences of territorial possessions; two of the copies are uncolored, but in that uncoloring show a difference of territorial possession.

Q. In what portion of section 1 of this map does this difference of coloring exist?

A. In the eastern portion of the parish of Saint Tammany.

Q. How is it shown on the original?

A. It is colored green in the original.

Q. How is it shown on one of the three photo prints?

A. It is also colored green.

Q. How is it shown on the other two photo prints?

A. It is left almost uncolored.

Q. Is there anything to evidence the territorial line of sub-division?

A. The absence of color is to the west of the line. The Mississippi line is clearly shown.

Q. Does, or does not the absence of color on the two photo prints materially affect the evidence of political sub-division?

647 A. In no way; it is only an absence of likeness to the original.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of the witness, now offer, produce and file in evidence, the said map No. 30 in its six sections, and tenders to counsel for the State of Mississippi the said original map for inspection with copies of said six sections.

Q. Will you please look at this map which, for purposes of identification, is to be known as map No. 31, and state whether it is one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. The map before me is one of the maps sent by the Librarian of Congress to me.

Q. Whose map is it?

A. It is the map of Frank A. Gray.

Q. Who was Frank A. Gray?

A. I know nothing of him.

Q. Of what territory is it a map?

A. It is a map of Louisiana.

Q. Will you please look at these photo prints and state whether you have compared them with the original map?

A. I have compared them.

Q. How do they compare as photo prints of the original map?

A. So far as regards the reproduction of the black printed matter, the original black printed matter, they are correct photo reproductions.

Q. Have you examined the coloring of the photo prints with the original?

A. Yes sir.

Q. How does the coloring of the photo prints compare with the coloring of the original?

A. It differs in a very curious manner. In the original the portion between East Pearl river and West Pearl river, is colored very lightly. In the copies this portion is left uncolored.

Q. Do the photo reproductions show the differences in governmental sub-divisions?

A. Yes sir.

Q. How do those showings of differences compare with the showing of differences on the original map?

A. They are similar in the copy to the original.

Q. Do they, or not, correctly show the governmental subdivisions by differences in color?

A. They reproduce the differences shown in the original.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said map No. 31 and tenders to counsel for the State of Mississippi for inspection the said original map with a photo print thereof.

Q. Will you please look at the map which, for purposes of identification, will be called map No. 32, and state whether it
648 is one of the collection of maps received by you from the Library of Congress Washington, D. C.?

A. It is one of the maps so received.

Q. Whose map is it?

A. It is a map of Mississippi by E. G. Wall.

Q. Of what date?
A. Of 1882.
Q. Who was E. G. Wall?
A. He was commissioner of the State of Mississippi.
Q. Commissioner of what?
A. Of the State board of emigration and agriculture.
Q. Will you please look at these photographs and state whether you have compared them with the original map concerning which you have just been testifying?
A. I have compared them and find them correct photo copies of the parts originally printed black.
Q. Have you compared the coloring of the reproductions with the coloring of the original map?
A. I have compared the coloring.
Q. How do they compare as to coloring?
A. The coloring, both of the original and the reproduction is done carelessly. The differences are slight and immaterial.
Q. Do the differences, if any, affect the manner of the showing of governmental divisions?
A. The coloring affecting the governmental divisions is the same in both original and the copies.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the said map No. 32 and tenders the original map No. 32 to counsel for the State of Mississippi for inspection, with a photographic reprint of same.

Q. Will you please look at this map, which, for identification is to be called No. 33, and state whether it is one of the collection of maps received by you from the Library of Congress, Washington, D. C.?
A. It is one of the maps.
Q. By whom was this map made?
A. By Russel Hinman.
Q. Of what date?
A. Of 1885.
Q. Who was Russel Hinman?
A. He was a maker of school geography-s.
Q. Of what territory is that a map?
A. Of Louisiana.
Q. Will you please look at these photographs and state whether you have compared them with the original map?
A. I have compared them.
Q. What did you find as a result of your comparison so far as their being photographs of the original map?
A. They are correct photographic copies of the original map.
Q. Have you compared the coloring of the original with the coloring of the photographic copies?
A. I have compared the coloring.

649 Q. What did you find as a result of the comparison of the coloring?

A. The coloring of two of the copies reproduce almost precisely the coloring of the original; the third represents it in the main but is less carefully done.

Q. Do the colors show the governmental sub-divisions?

A. They do.

Q. How do the photographs compare with the original in showing the differences of governmental divisions?

A. They represent them correctly.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the said map No. 33, and tenders the original map No. 33 to the counsel for the State of Mississippi for inspection with a photograph thereof.

At this stage of the proceedings the hearing was adjourned by the commissioner for recess, to be resumed again at 2.30 p. m.

Resumption of Proceedings.

Pursuant to adjournment for recess the hearing was resumed at the same place and date, at the hour of 2.30 p. m. all parties being present.

Examination of WILLIAM BEER resumed.

By Mr. DYMOND:

Q. Will you kindly look at the map now before you, which, for purposes of identification we will call map No. 34, and state what that map is.

A. It is a general map of the seat of war in Louisiana and West Florida.

Q. Of what war?

A. Of the war of 1812. But this particular map illustrates the attack of the British on New Orleans in 1814 and 1815.

Q. Where did this map come from?

A. It is out of a book known as the War in West Florida by Lacarrier Latour.

Q. Who was Lacarrier Latour?

A. He was an engineer officer who served as engineer for General Jackson at the battle of New Orleans.

Q. Who is it made by?

A. It is the map of Lacarrier Latour taken from the B. Lafon map.

Q. Is that the same Lafon concerning whom you testified previously in this case?

A. Yes sir.

Q. Did B. Lafon have anything to do with the battle of New Orleans?

A. He was also in the battle.

Q. In what capacity, if you know?

A. I do not knew.

Q. Will you please look at these photographs of the map now before you which are for identification to be marked maps Nos. 34 and 34–*a*, and state whether you have compared them with the original map?

A. I have compared them.

650 Q. What did you find as a result of your comparison, so far as their being photographs of the original maps?

A. They are correct photographic reproductions of the original map.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence, the said maps marked Nos 34 and 34–*a*, and tenders the said original map to counsel for the State of Mississippi for inspection, together with the said photographic copies marked 34 and 34–*a*.

Q. Will you please look at the map which is now for the purpose of identification to be marked No. 35, and state what map it is?

A. It is a map of the State of Louisiana.

Q. Issued by whom?

A. Issued by the Department of the Interior through the Land Office and compiled by C. Roeser.

Q. Of what territory is that — map?

A. Of the State of Louisiana.

Q. And of what year?

A. 1879.

Q. Of what government or bureau was the department that issued this map?

A. Of the Government of the United States.

Q. Will you please look at the two photo prints and state whether or not you have compared them with the original map?

A. I have compared them and find them to be correct photographic prints.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence the said original map to be marked map No. 35 and tenders to counsel for the State of Mississippi the photographic prints of the whole of said map and of the area in dispute.

Q. Will you please look at this map which is now presented to you and for the purposes of identification is to be marked map No. 36, and state what map it is?

A. It is a map of the State of Louisiana issued by the Department of the Interior through the General Land Office and under the supervision of G. U. Mayo.

Q. Is that map issued by the same department of Government as the one concerning which you have just testified, marked map No. 35?

A. Yes sir, issued by the same department that issued map No. 35.

Q. And bears what date as to the date of issuance?

A. Bears the date of 1886.

Q. Will you please look at these photo prints and state whether you have compared them with the original map?

A. Yes sir, I have examined and compared them.

Q. How do they compare as photographic reproductions of the original map?

A. I find them to be correct photographic reproductions of the original map.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said original map marked map 36 and tenders
651 to counsel for the State of Mississippi photographic reproductions of the whole of said map and of the disputed area.

Q. Will you please look at this map which is now before you and for purposes of identification is to be marked map 37, and state of what State it is a map and by whom it was issued?

A. It is a map of the State of Mississippi and issued by the Department of the Interior of the United States through the General Land Office.

Q. In what year?

A. In the year 1890.

Q. Will you please look at these photo prints of this map and state whether you have compared them with the original map?

A. I have examined and compared them and find them to be faithful photographic reprints.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, the said original map to be marked map No. 37, and tenders to counsel for the State of Mississippi photographic reprints of the whole of said map and of the disputed area.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence in this case, and tender to counsel for the State of Mississippi copies of the following maps, to-wit:

The Century atlas map of Louisiana, copyrighted 1897 and 1902 by the Century Company, to be marked map No. 38.

Map of the State of Louisiana issued by the Department of the Interior, General Land Office, Hon. S. W. Lamoreux Commissioner, compiled from the official records of the General Land Office and other sources under the direction of Harry King C. E. chief of drafting division, G. L. O. 1896, to be marked map No. 39.

Matthews and Northrup up to date map of Louisiana, copyrighted

1901 by the Matthews-Northrup Company, to be marked map No. 40.

Map of Louisiana by the Kenyon Printing and Manufacturing Company, copyrighted February 24 1903 to be known as map No. 41.

The Rand-McNally new county township and railroad map of Mississippi with complete index of all post offices and railroads with 1900 census. Copyrighted 1903 by the Rand-McNally Guide Company, to be marked No. 42.

The Rand-McNally new county, township and railroad map of Louisiana, with complete index of all post offices and railroads with 1900 census. Copyrighted by Rand-McNally and Company. To be known as map No. 43.

Rand-McNally Company sectional map of Mississippi compiled
from the records of the offices of the surveyor general and of
652 the board of emigration and agriculture, Jackson, Mississippi. Copyrighted by the Rand-McNally Company in 1896, to be known as map No. 44.

Tunison's new railway, post office and distance map of Arkansas, Mississippi and Louisiana, from latest surveys by H. C. Tunison, publisher, Jacksonville, Illinois. Copyrighted 1901 by H. C. Tunison. To be known and marked as map No. 45.

Hardee's geographical and historical and statistical map of Mississippi, embracing portions of Louisiana, Tennessee, Arkansas and Alabama, from recent surveys and investigations, officially compiled under authority from the State of Mississippi by T. S. Hardee State engineer A. D. 1871, approved under an act of the legislature of Mississippi approved May 10th 1871, J. L. Alcorn governor of Mississippi. To be known and marked map No. 46.

Mr. McCLURG: Counsel for the State of Mississippi agrees if he can get a map like this he will relieve the counsel of the State of Louisiana from the necessity of furnishing a copy of said map. Map of the United States Territories and insular possessions issued by the Department of the Interior, United States General Land Office, Hon. Binger Hermann Commissioner, showing the extent of public surveys, Indian, military and forest reservations, railroads canals and other details, compiled from official surveys of the General Land Office and other authentic sources. Harry King C. E. chief, drafting division, 1889. To be known and marked as map No. 47.

At this stage of the proceedings, the hearing was adjourned by the commissioner until tomorrow, to be resumed at the same place and at the hour of 2 p. m.

Resumption of Proceedings.

NEW ORLEANS, April 21st, 1904—2 p. m.

Pursuant to adjournment the hearing was this day resumed at the same place, at the hour of 2 p. m.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y general State of Louisiana, Mess. John Dymond, Jr., F. C. Zacharie, and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

653 Examination of Mr. WILLIAM BEER resumed.

Cross-examination.

By Mr. MCCLURG:

Q. Mr. Beer, it was my misfortune not to hear your original examination in this case and if I should ask you a question that you have already answered you will please accept this as an apology for so doing. I take it for granted that you have read the two acts of Congress creating the State of Louisiana and of admitting her into the Union?

A. Yes sir.

Q. And also the act of Congress admitting the State of Mississippi into the Union?

A. Yes sir; but I have not read them for this purpose. I am not as familiar with them as on the date I read them, I have not read them recently.

Q. You found in neither of those acts, I take it, any reference to a deep water channel?

A. Should I not have the acts of Congress before me. I don't remember—I am prepared to say that I don't remember any such reference.

Q. The act admitting the State of Mississippi, in describing her southern boundary from Alabama westward reads "thence westwardly including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne." I want to ask you to do us the kindness to examine the map of B. Lafon 1806, and tell us what islands you find on that map within six leagues of the Mississippi shore. Let us begin at the mouth of Pearl river and travel eastward.

A. We have to begin by discussing, or, by stating that this map is not necessarily correct. You are asking me now about a special distance which I can measure correctly. Now, it may so happen that that was not truly at that distance. This Lafon map, is Lafon's presentation of the coast at that time. All I can say is that on

Lafon's map, as measured by the scale given on it, there are certain islands within six leagues, that is all I can say.

Q. That is all I want you to say. Just tell us what that map shows?

A. Going eastward from the point where Pearl river enters the gulf of Mexico, the line of six leagues takes in on Lafon's map, Isle au Pied, Malheureux, Isle Saint Joseph and—how far do you want me to go?

Q. Out to the Alabama line?

A. Isle Saint Marie. Now, you take the political and physical——

Q. Just what the map shows?

A. I do not see any political and physical distinctions on the map.

Q. Just what the map shows, that is all I want.

A. Isle au Chat, Isle au Chevreux, Isle au Vaseux, an island unnamed, Isle au Chien, Isle à Corne. That is the end.

Q. Does it not also take in a little group of islands——

A. South of Isle au Chat it takes in three small islands unnamed.

Q. Do you see on this map any indications of a deep water channel such as that claimed by Louisiana to be the dividing line between the two States?

654 A. I see no indication of channel. I would put it in this way, I see no channel marked; I see soundings that give depths——

Q. Just answer as I ask you then we will get through quicker. Do you see any distinctive markings of the Mississippi sound?

A. Any limitations of Mississippi sound?

Q. Distinctive marks, names?

A. I see no name of Mississippi sound.

Q. Now Mr. Beer, I will ask you to begin with this map of 1806 and go, at least to 1860 which is half a century, through these maps that were introduced on yesterday and which you said you had examined and tell me whether upon a single one of them there is any marking of the deep water channel now claimed by Louisiana to be the dividing line between the two States, or any such thing as a Mississippi sound designated as separate from the gulf of Mexico?

Mr. DYMOND: Counsel for the State of Louisiana notes an exception to this question and for cause of exception says that the maps are the best evidence of whether they do or do not show any channel line and that in connection with the maps about which the witness was examined yesterday, April 20th, he was examined solely for the purpose of identifying the maps with photo prints and not as an expert in connection with the maps concerning which he was testifying, and that if counsel for Mississippi desires to examine him on these points that he should make the witness a witness for the State of Mississippi, at the proper time.

A. From memory I am certain there is a marking of it on one of them.

Q. Now, listen to my question. I am talking about the maps and

exclusively about the maps, exclusively what the maps show, there is no memory about it, I just want what the maps show.

A. Then I require each one of them to be shown to me in succession.

Q. Well, I will show them to you if it takes me a week. Here they are. Now, you have looked at the map of 1806?

A. Yes sir.

Q. You find any markings of the deep water channel of Mississippi sound on that map?

A. No sir.

Q. Please look, at the map of William Darby shown to you yesterday and answer the same question?

A. When you ask me whether there is a deep water channel, you mean the words "deep water channel" attached to a line?

Q. You ought to be able to understand my question. It is put as plain as I can make the English language state it, and I will ask the stenographer to read my original question about the deep water channel that Louisiana now claims to be the dividing line between the two States, whether it is indicated on these maps or not?

A. It is indicated on this map by soundings, I am referring to the Darby map.

By Mr. DYMOND:

Q. Give the year so as to define it as we go along?

A. Darby, 1816.

655 By Mr. MCCLURG:

Q. State the course of it. If you say that that is the same deep water channel that Louisiana now claims to be the dividing line between the two States, state what the Darby map shows about it?

A. The Darby shows a succession of soundings starting at the extreme east of Lake Borgne.

Q. Name the point?

A. A point where Bayou Bienvenu enters the lake and runs to a point near Isle Saint Joseph; there are then shown soundings of 10, 12 and again 10 fathoms, as far as Buck island; then there are soundings of 15 fathoms as far as the mouth of the Pascagoula river.

Q. Are not these last soundings you have mentioned north of Cat island and Ship island?

A. They are.

Q. And north of Marianne islands?

A. Yes sir. When I stated fathoms I was taking the figures on the map and assuming them to be fathoms; it may be incorrect. I am taking them relatively to other figures there, that 36 cannot be 36 fathoms, therefore I must take it that these are feet.

Q. Do you not find these fathoms marked from Cat island between Chandeleur islands and the coast of Louisiana, also down to Black lake?

A. Fortunately I find one entry which gives the distinction. These are feet, there are five feet and the feet are left out in the other places; I do find six feet; I find figures which mean feet.

Q. Then you find a deep water channel lying between the Mississippi shore, Marianne islands, Cat island and Ship island Dog island and Horn island, do you not?

A. I find soundings marked along that distance. I do not claim it to be a deep water channel.

Mr. DYMOND: It is understood that the same objection of counsel for Louisiana as to the incompetency of this testimony when the maps speak for themselves, shall apply to all similar questions propounded to the witness on cross examination on this subject.

Q. I wish you would tell me to what State Darby's map gives Malheureux islands?

A. It has the same coloring as Hancock county.

Q. And Marianne islands have the coloring——

A. Of Saint Bernard parish.

Q. Do you find Saint Bernard parish on that map?

A. I do not. I find parish of Plaquemine.

Q. And Cat island is given——

A. Cat island is also, given to Plaquemine parish.

Q. And the Chandeleurs?

A. The Chandeleurs also.

Q. Referring to my previous question, I now show you the map of Mr. Maxfield Ludlow of 1815 and will ask you to please state whether there is a deep water channel following the course of the one that Louisiana now claims to be the dividing line be-
656 tween the two States, marked on this map?

A. I am under the impression that the line shown on this map indicate- a track taken by the British ships of war, but it is so indistinct that I cannot be clear, the British ships of war anchored at Ship island. But there is no distinctive marked deep water channel on this map.

Q. This map shows a navigation thread like line does it not, from Bay Saint Louis around north of Cat island and Ship island and Horn island on, to the Mobile bay?

A. I think there is a navigation line.

Q. And it also shows a navigation line from Bayou Bienvenu to the south of this——

A. Yes sir.

Q. That passes close to the south side of Cat island?

A. Yes sir.

Q. And Ship island?

A. Yes sir.

Q. Horn island?

A. Yes sir.

Q. Petite Bois island?

A. Yes sir.

Q. And Dauphin island into the bay of Mobile?

A. But it states that it is the track of the British barges which were boats.

Q. We have here a map of John Melish. See if there is any navigation track shown on this map?

A. There is a track shown to the north of Cat island which has no legend, and a track shown to the south of Cat island which is marked "Track of the British barges."

Q. And it goes no further east than east of Cat island?

A. It stops at Cat island.

Q. And then turns north around Cat island?

A. Yes sir.

Q. There is no Mississippi sound on the maps which you have examined as distinct from the waters of the Gulf, is there?

A. None. Is it fair to me——

Q. I want you to answer my questions.

Q. May I say—I would like to say in this case the map maker has called that whole body of water—he has not called it technically Mississippi sound but he has called it Lake Borgne. Is it fair for me to tell Mr. Dymond or you——

Q. He can ask you that on re-direct examination. I show you now the first map that we have had made by Mr. H. S. Tanner.

A. Shall I assume the question? There is no channel whatever.

Q. No mark of Mississippi sound?

A. And no mark indicating that a particular piece of water is called Mississippi sound.

Q. The same question, please sir, as to the map of Mr. S. Augustus Mitchell of 1834.

A. There is no mark of navigation and there is no body of water called Mississippi sound.

Q. Answer the same question, please, with reference to a map made by C. Graham and H. S. Tanner in 1834?.

A. There is no marked channel and no body of water separately called Mississippi sound.

Q. I show you now, the map of Mr. H. S. Tanner of 1837 and ask you the same question?

A. There is no channel marked and no body of water called Mississippi sound.

657 Q. Now, I show you the map of John La Tourette of 1839, and ask you the same question?

A. There is an indication with a legend on the La Tourette map of "Steamboat route from New Orleans."

Q. And the map indicates with it, between the cities of New Orleans and Mobile?

A. Yes sir.

Q. Please state from what point to the westward, that channel leads?

A. It starts from the Rigolets.

Q. And ends where, to the eastward?

A. At Mobile itself.

Q. It passes north of Round island near Saint Joseph island, north of Cat island, north of Ship island and north of Horn island?

A. Yes sir.

Q. And there is no indication of any deep water channel to the south of that one, marked on this map?

A. No sir.

Q. And no distinctive mark of the Mississippi sound?

A. No sir.

Q. I show you the map of Mr. G. W. R. Bayley, civil engineer, 1855 and will ask you the same question?

A. There is no channel marked on this map. There is no body of water marked Mississippi sound.

Q. Look at that map and see if Half Moon island, Cat island, Ship island, Horn island, are not given to the State of Louisiana by the map maker?

A. They are colored in the same way as the parish of Saint Bernard.

Q. This is Schonberg's map of Louisiana dated 1866. I see on this map, marked Mississippi sound; is that not the first time that these maps show the Mississippi sound as a separate body of water from the gulf of Mexico?

A. It is the first time that these maps show that.

Q. And these maps show no deep water channel as that proposed by the State of Louisiana to be the dividing line between Mississippi and this State?

A. It is not a map that professes to show deep channels, it is an ordinary map.

Q. Does not this map indicate that Cat island, north end of Chandeleur island, as well as Ship and Horn islands, belong to the State of Mississippi?

A. They are uncolored as is the State of Mississippi.

Q. And the Louisiana islands are colored after the color of Louisiana?

A. Many of them not; these are not colored you see?

Q. Is it not true that the whole of the Chandeleur islands are uncolored, as the State of Mississippi is?

A. It is true.

Q. We look now at the map of T. S. Hardee, 1868, published in 1871, approved by authority of act of the legislature of 1868. H. C. Warmouth, governor.

A. It shows no channel.

Q. But shows a Mississippi sound?

A. It does show the Mississippi sound.

Q. And it shows Saint Joseph island, Marsh and Half Moon islands and Round island, as well as Cat island and Ship island, to belong to the State of Mississippi, does it not?

658 A. I do not think so. The coloring of Saint Bernard and of Mississippi are pretty much the same.

Q. Then, does it not show, as a matter of fact, by the coloring, that the islands that I have named, belong to the State of Louisiana. Are not those islands of the same color as Saint Bernard parish?

A. I cannot tell from the coloring. I can't explain that, owing to the etching to show the margins; in coloring Saint Bernard, the same yellow color that looks gray in Saint Bernard is there, clear, therefore it is impossible to say what that may mean.

Q. It may mean either State then?

A. Yes sir.

Q. Then, so far as we can have gone, these maps show, alternately, that some of these islands belong to one State while other maps show that some islands belong to the other State and we now find one that gives them to either State?

A. They don't show belongings at all; they show conceptions of belongings.

Q. We next come to Mr. Gray's new map of Louisiana?

A. This is out of an atlas in the Library of Congress; the map itself bears no marked date; the date given is the date given by the Library of Congress in their certificate.

Q. I would be glad if you would refer to that affidavit and give us the date of this map?

A. 1878.

Q. Tell us now, whether there is any marking of the deep water channel now claimed by Louisiana to be the dividing line between the two States, on this map?

A. There is no marking.

Q. The next thing I wish you would look at are leaves from Hinman's history, and ask you whether there is any marking on that map which indicates the deep water channel now claimed by Louisiana to be the dividing line between the two States?

A. There is no channel line marked on this map.

Q. Mississippi sound is on the last three maps we have examined, is it not?

A. Yes sir.

Q. Now, look at the map of Mr. E. G. Wall made by the board of emigration and agriculture and tell us if you can see on that map any indication of the marking of the deep water channel——

A. I would not expect to find it.

Q. And anything else you say in regard to that map will not be taken as an affront.

A. I would not expect to find it on any ordinary map.

Q. But on an extraordinary map you would?

A. On a chart I would, on a sailing chart.

Q. You find the Mississippi sound marked there?

A. Yes sir.

Q. And you find also, on this map, about 271,180 acres of land for sale in Hancock county?

A. Yes, sir, I see that.

Q. So then, is it not true that from the Exhibit No. 19, the Lafon

map of 1806, up, through all of these maps that have been introduced, there is nothing to indicate the deep water channel that is now claimed by Louisiana to be the dividing line between the two States? Give me a straight answer?

A. I am not acquainted with the whole coast. I have not gone into——

659 Q. You have stated that you are acquainted with these maps and I am only asking you about these maps?

A. No, you are asking me whether they show the deep water channel?

Q. No sir, I did not ask you that. Do they show the presence of the deep water channel now claimed by Louisiana to be the dividing line between these two States, any of these maps?

A. I think no one but the three associate counsel know exactly what is the channel they claim.

Q. You know too.

A. No sir, I am not a partisan. I am simply giving you evidence about those maps.

Q. I understand.

A. On the face of them, they show, in one case, what I would take to be an indication of a deep water channel, but whether it is precisely the deep water channel they claim to run along a boundary line, I don't know. Mr. Dymond am I supposed to know what deep water channel they are referring to.

Q. I object to your referring to counsel until I get through with you. The deep water channel named by the State of Louisiana to be the dividing line between that State and the State of Mississippi enters at the eastern mouth of Pearl river into Lake Borgne, thence through Lake Borgne north of Half Moon island, through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat island through Chandeleur sound, northeast of Chandeleur islands to the gulf of Mexico. Do you find any deep water channel following that route, upon any of these maps that we have just gone over?

A. If I had had a tracing before me that shows that exact thing, I think I could have shown you by the soundings that it was a fair channel; that is all I can say. I find no channel marked "deep water channel claimed by Louisiana."

Q. I think with the aid of the court's inspection we have made that plain enough. Going back to Lafon's map of 1806 I wish you would give me, as near as you can, the distance from Isle Malheureux south to the shore line at Point aux Assiettes.

A. The distance as shown on this map, which may not be the true distance, is exactly three leagues, three marine leagues. I have no scale of miles on this map. I have to give it in leagues.

Q. I notice you say now, as you said awhile ago, that this map may not be correct. Do you doubt its accuracy?

A. All maps on paper are subject to all sorts of changes, of shrinking, of spreading, as was explained by the map expert on the stand,

Mr. Hodgkins. In this particular case, where you ask me to give you the exact distance, a spreading of a very little of the paper by dampness or shrinking by dryness, will make a difference in my estimate, perhaps of a mile. It is not that I doubt the correctness of a map but all maps are subject to changes and measurements on maps, therefore, are subject to correction.

Q. How far is it, please sir, from what is marked on this map Seven isles, due north, to the Mississippi shore near Biloxi?

A. As shown on this map, six leagues and a quarter. That is, marine leagues.

Q. I notice on this Lafon map some thread like lines in Lake Pontchartrain; do they not indicate—state what they indicate?

A. I believe they indicate specially, shallow water, land that at certain times when the wind is outward is left bare.

Q. Now, we find one of those lines coming out of Pass Chef Menteur and turning southward——

660 A. But not continuous, only coming to the mouth of that bayou.

Q. Mouth of what bayou?

A. This little bayou there. Then it starts again and comes along to there.

Q. What is that point?

A. Point of Three Bayous.

Q. And then it goes on——

A. To Point Saint Malo.

Q. And enters what there? The north prong——

A. The north prong of Bayou Guillemard.

Q. And then continues to the northward——

A. As far as the entrance of a bayou without name, on the eastern shore.

Q. Then don't you find it on down the eastern coast to Baye de la Raux Chenes?

A. I find this mark indicating shallow water all along the eastern shore.

Q. This map of 1806 shows the seven islands that you have mentioned does it not?

A. Yes sir.

Q. Now, please look at the Darby map of 1816 and say whether it shows those islands?

A. It does not.

Q. The map before that of Mr. Ludlow, shows them?

A. Yes sir.

Q. But without name?

A. Yes sir.

Q. And it shows the indications of channel between Chandeleur island and the Mason islands and the Louisiana shore?

A. Yes sir.

Q. And the seven islands are also shown on the map of Melish are they not?

A. They are shown on the map of Melish; they are also shown on first map of Tanner; they are also shown on the Mitchell map.

Q. Can you tell from any indication on the Mitchell map whether they are credited to Louisiana?

A. They are colored the same as Saint Bernard parish.

Q. Does not Darby state that the section northeast of Bayou Terre Bœuf had never been surveyed previous to the date of this map in 1816?

A. He states this peninsula northeast of Bayou Terre Bœuf has never been surveyed.

Q. Bayou Terre Bœuf is the southern line of what is now Saint Bernard parish, is it not?

A. Yes sir.

Q. This map (referring to map of Mississippi, Louisiana and Alabama by La Tourrette 1839) colors Grand island and the islands north of that near Pearl river, Cat island and Ship island, to Mississippi, does it not?

A. It gives the same color as Hancock county.

Q. While, as you have already indicated, the map of Mr. Bayley in 1853, gives those islands the same coloring as Louisiana?

A. Yes sir, it does.

Q. There is no effort to show to which territory in 1806, the islands were supposed to belong?

A. No sir.

Q. The first colored map is the Darby map, of 1816, and he colors Cat island and Marianne island, to Louisiana?

661 A. He does.

Q. And Malheureux islands?

A. To Hancock county, Mississippi, territory.

Q. The next map then, by Mr. Ludlow, in 1820, does not undertake to color those islands to either State?

A. No sir.

Q. I want to ask you now, to look at Lafon's map of 1806, at Lake Pontchartrain and Lake Borgne, with reference to their physical appearance and conformation and compare that map with the Darby map of 1816 and see if there is not a very marked difference in the conformation of those lakes?

A. Yes sir, there is.

Q. Now, compare the Darby map of 1816 to the map of Ludlow of 1820 and see if there is not a marked difference——

A. There is a marked difference between the Ludlow and Darby maps.

Q. And also the Melish map, compare the Ludlow map, with reference to the shape of those lakes, with the shape of Lake Borgne and say if there is not a very marked difference?

A. They are on different scales but I think they are taken one from another, this is the same family.

Q. That is Tanner's map?

A. Yes sir, the first Tanner map.

Q. Now, on Mr. Tanner's first map, does not the coloring indicate that Chandeleur islands, Round island, Ship island, Cat island, St. Marie island, Malheureux islands, the same color as Mississippi?

A. The same color also as Saint Tammany, as parts of Louisiana.

Q. But they are not of the same color as that portion of Louisiana nearest to those islands?

A. The ground work you see, if this was etched and covered with little black spots as this, they would look exactly the same.

Q. Can you tell from that map to which territory or State those islands are most alike?

A. You couldn't tell to which parish they are most alike because there are parishes in both States left uncolored.

Q. I believe we have seen that Mitchell's map credits Round island, Ship island and Cat island and Malheureux islands to the State of Mississippi?

A. Not necessarily. It colors them the same as Jackson county, but Saint Tammany county is colored in exactly the same way, they are not colored the same way as Saint Bernard.

Q. They are nearer to Jackson county than they are to Saint Tammany?

A. But as to a question of coloring they use three colors.

Q. Mr. Tanner's map of 1834, with Graham's, gives Cat island to Louisiana, according to color?

A. Yes sir.

Q. I will ask you, if it is not true, that prior to 1812 Chef Menteur was not the principal water way out of Lake Pontchartrain to Lake Borgne? And whether it is not a fact that those English forts were built on Chef Menteur?

A. I believe that statement to be correct—oh, Chef Menteur, I merely answered the question as to Chef Menteur.

By Mr. DYMOND:

Q. Did I understand you to say that the forts were built on Chef Menteur?

A. I did not answer that. I answered the first part of the question, that the principal water way out of Lake Pontchartrain was Chef Menteur.

662 Q. Do I understand that it is simply your belief?

A. Yes sir, I stated that.

By Mr. MCCLURG:

Q. The English built those old forts out there; they were built before 1812 were they not?

A. I do not know.

Q. By the English or French government?

A. Can you ask me that question again, about Chef Menteur?

Q. Yes?

A. Well, one of the maps we have seen shows that there was

entry that the steamboats followed, that was through the Rigolets, that however I think was subsequent to the date you name.

Q. But, prior to 1812 can't you say that Chef Menteur was the principal passage between Lake Pontchartrain and Lake Borgne?

A. I cannot say so, distinctly; I could find out.

At this stage of the proceedings, the hearing was adjourned by the commissioner until the 22nd day of April 1904, to be resumed at the same place at the hour of 10.30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 22, 1904—10.30 a. m.

Pursuant to adjournment the hearing was resumed at the same place and at the hour of 10.30 a. m.

Present: Frank H. Mortimer, Esq., commissioner.
Hon. Walter Guion, att'y gen. of Louisiana.
Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Cross-examination of Mr. WILLIAM BEER resumed.

By Mr. MCCLURG:

Q. I desire to call your attention to Document No. 11 filed by the State of Louisiana which seems to be a report made from the Department of Commerce and Labor at Washington, D. C. dated January 30th 1901, accompanied by sketches made by Mr. Hodgkins who has testified in this case. I notice sketch No. 1, undertakes to show the original boundary between Louisiana and Mississippi by a line drawn through Lake Pontchartrain into Lake Borgne. I will be glad for you to look at it and tell me the channel, if you can, it is not marked on the sketch, to which that line is drawn in passing from Lake Pontchartrain to Lake Borgne?

A. To answer the question I require to be shown a recent map, any map with names upon it, showing the opening to Lake Pontchartrain.

Q. I will ask the commissioner to show you the combination map taken from charts 190, 191 and 192, prepared by the State of Louisiana for this cause.

(Witness is shown map No. 17 being made of the charts 190, 191 and 192.)

A. It is the Rigolets.

663 Q. From an examination of the maps on yesterday, from map No. 19 produced by Louisiana, up to the map of 1866 I

believe it was, you found no markings which indicated the deep water channel which Louisiana now claims to be the dividing line between that State and Mississippi. I find on sketch No. 3, in connection with this report that we are now examining, a line which I presume to be the deep water channel mentioned and notice that it is stated on this sketch made by Mr. Hodgkins as "showing the deep water sailing line from Pearl river to the gulf of Mexico from the United States Coast and Geodetic Survey charts 190, & 191." Please look at this sketch and see if you agree with me as to that fact?

A. I agree with you on the fact that there is indicated on this map a deep water channel from Pearl river eastward.

Q. And that is intended to indicate what?

A. The legend indicates that this line shows deep water sailing line from Pearl river to the gulf of Mexico from the United States Coast and Geodetic Survey charts 190 and 191.

Q. Do you find anything on either of the three sketches attached to that report which indicates that that sailing line is intended, in any manner, to mark the boundaries between Louisiana and Mississippi?

A. On sketch No. 1 I find a line which terminates in Lake Borgne.

Q. Through the Rigolets?

A. Through the Rigolets and does not continue. On sketch No. 2 I find no channel line whatever.

Q. I show you Exhibit E which is marked coast chart 191, Lakes Borgne and Pontchartrain of Louisiana, and call your attention to the red line marking out of the Rigolets is it not?

A. Yes sir.

Q. And the most eastern mouth of Pearl river to the eastward. Tell me what that line seems to indicate?

A. The legend states that the line, as far as its junction with the second line, is the boundary line of Louisiana purchase 1803. The continuation, after the junction, is called the boundary line between the States of Louisiana and Mississippi.

Q. Is there any difference which appears upon the face of this legend, to distinguish it from the legend which seems to have been written an that line by the Coast and Geodetic Survey; in other words, if there is another legend on that line tell us what it is?

A. There is no legend up to the junction.

Q. And the junction is just southeast of the mouth of Pearl river?

A. Just southeast of the mouth of Pearl river.

Q. Eastward from that what is the legend originally placed on the map by the Coast and Geodetic Survey?

A. The first legend I find is a sailing direction coming just before the word south which is, west $\frac{3}{8}$ south, indicating a course. Under the word Louisiana in red, I find southwest by west $\frac{3}{8}$ west. Between the words and, and Mississippi I find the letters northwest by west $\frac{1}{4}$ west. Following the word Mississippi I find west $\frac{1}{8}$ north.

Q. Can you tell me whether the red line marking which indicate- that that is the boundary line between the two States, was placed there by the Coast and Geodetic Survey in the original making of these charts, or whether it has been placed there under the the direction of the Louisiana authorities or by the attorneys in this cause?

664 A. All I could state is, that it seems to have been added to the original map; by whom there is nothing to show.

Q. Is it not true that this chart or map, Exhibit E, to the testimony introduced by the State of Louisiana in this case, is the first map or chart that you have seen among all of the maps and charts that have been introduced in this case, which undertakes to write on that deep water sailing line, the legend that it is the boundary between the two States?

A. I have seen a great many but I believe this is the first; this is the first chart submitted to me; all the others have been maps.

Q. But you have seen no legend, that is the point, as regards our present investigation?

A. My answers to your questions have all been according to the face of this chart.

Redirect examination.

By Mr. ZACHARIE:

Q. Will you please examine again the maps which you examined yesterday and state on which maps, if any, the body of water between the north coast of this disputed territory from Mississippi is denominated the Mississippi sound and I would call your particular attention to the lettering in order to say whether or not the lettering, the words Mississippi sound extend to the body of water lying between the shore of the disputed territory and Mississippi and west of Isle à Pitre?

A. Will you, for the purpose of comparison, let me begin these in reverse order of date?

Q. Yes. You understand the purport of the question fully?

A. Yes sir, fully. In the map of Hinman identified as map No. 33, the word Mississippi sound is present; the begin-ing of the first letter M is about mid-way between Point Malheureux and the western extremity of Isle à Pitre; in map of Wall identified as map No. 32, the words Mississippi sound appear, the first letter is midway between Malheureux point and the eastern extremity of Isle à Pitre; in the map of Gray of 1878, identified as map No. 31, the words Mississippi sound occur, the first letter is immediately over the eastern extremity of Isle à Pitre; in the map of Hardee of 1871, identified as map No. 30, the words Mississippi sound occurs, the first letter is opposite a point about ¼ of the distance between Malheureux point and the eastern extremity of Isle à Pitre; in the map of Schonberg of 1866, identified as map No. 29, the words Missis-

sippi sound appear, the first letter is just beyond the eastern extremity of Cat island.

Q. My question is to draw out whether upon these maps, the Mississippi sound is marked as extending into the water between this coast, between Malheureux point and Isle à Pitre, and the main land of Mississippi? Read the first question.

(Question read.)

A. It seems to me that is the best answer by my giving you the place of where the first letter occurs. I do not see how I can more clearly answer your question.

Q. I meant to ask you, Mr. Beer, to designate on these maps, whether the Mississippi sound, by lettering, on the maps, is
665 shown to extend westward of a line drawn from Isle à Pitre north and south to the Mississippi shore?

A. The statement that the first letter is opposite a portion of territory within that, is the answer to your question, the only answer that appears on the map itself.

By Mr. DYMOND:

Q. We desire to know specifically from each map, whether the word Mississippi sound extends westward of a line drawn north and south through Isle à Pitre?

A. Oh, yes, well of course, will I have to give you the reasons for such an answer?

Q. Understand, we simply want to get the specific answer, does it or does it not?

A. In the Hinman map of 1885, identified as No. 33, it does; in the map of Wall of 1882, identified as map No. 32 it does; in the map of Gray of 1878 identified as map No. 31, the word commences within a few miles of the boundary asked for, a few miles to the west of the boundary asked for; in the map of Hardee of 1871, identified as map No. 30, it is indicated to the west of the boundary named; in the map of Schonberg of 1866, identified as map No. 29, it is indicated to the east of the boundary named; in the map of Bayley of 1853, identified as map No. 28, it is not indicated at all.

Q. Does the name Mississippi sound appear on this map in any way?

A. It does not. In the map of La Tourrette, of 1839, identified as map No. 27, it is not indicated.

Q. What is not indicated?

A. The words Mississippi sound.

Q. Do they appear at any point upon that map?

A. They do not. In the map of H. S. Tanner of 1837, identified as map No. 26, the Mississippi sound is not indicated. In Graham and Tanner's map of 1834, identified as map No. 25, it is not indicated.

Q. When you say it is not indicated what do you mean by it?

A. I mean the words Mississippi sound as the name of a body of

water do not appear on this map. In the map of Mitchell of 1834 identified as map No. 24, the words Mississippi sound do not appear. In the map of Tanner of 1820, identified as map No. 23, the words Mississippi sound do not appear. In the map of Melish of 1820, identified as map No. 22, the words Mississippi sound do not appear. In the map of Ludlow of 1819–1820, identified as map No. 21, the words Mississippi sound do not appear. In the map of Darby of 1816, identified as map No. 20, the words Mississippi sound do not appear. In the map of B. Lafon of 1806, identified as map No. 19, the words Mississippi sound do not appear.

By Mr. ZACHARIE:

Q. You have stated that you consider yourself an expert in regard to the maps of the State of Louisiana. Will you please state what time and experience you have had in connection—will you please state what associations, if any, first, you are a member of or an officer of?

A. I am a member of the American Historical Association and represent in this State the Historical Manuscript Commission
666 which is a part of the American Historical Association. I am a member of the Historical Association of Texas, of Louisiana of Mississippi, and of the Southern Historical Association.

Q. Before you came to this country, were you a member of any historical association, and if so what?

A. I was a member of the Antiquarian Society of New Castle on Tyne in England.

Q. When did you first commence your researches in regard to the maps and geography of Louisiana?

A. When I was appointed librarian of the Howard Memorial library, in 1891.

Q. What researches did you make and where?

A. When my collection of maps of Louisiana became important I was asked to make an exhibit at the Louisiana Purchase Exposition and in 1902 I visited Europe and saw all the great map collections in the British museum in London and in the Universities of Oxford and Cambridge. I saw the great collection in the Bibliotheke Nationale in Paris. And in the archives of the departments of the army and navy, specially to see the manuscript maps of this district. In the year 1903, I, especially for this purpose, visited the map department of the Library of Congress, of the New York public library deposited in the Lenox library of the New York Geographical Society, and of the New York Historical Society. I also went through the collections in the Boston public library and of the Universities of Oxford and Cambridge, the collection of the American Antiquarian Society, and that of the New York State library at Albany. These collections, I should say combined——

Q. Wait a moment, did you, at any time, visit London in connection with this work?

A. With the historical work, I saw all of the collections of maps

in the map department of the British museum. I also, in London, paid special attention to the history of the Florida parishes which I discovered in the record office in London.

Q. Are you now preparing any work in connection with Louisiana?

A. I am preparing a bibliograph of the history of Louisiana for publication by the American Historical Association.

Q. How many maps do you suppose you have examined in connection with this subject?

A. I have examined at least 1,000 different maps and atlases, not all different articles, some of them being duplicates of those previously examined.

Q. Did you, at any time, visit the Universities of Oxford and Cambridge?

A. I visited both of them in 1902.

Q. For what purpose?

A. For the purpose of examining whatever material they might have bearing on the history of Louisiana.

Q. Did you, at any time, visit the great geographical exposition held at Antwerp?

A. I had the good fortune at Antwerp to see a special exhibit of geographical works which, on account of the Netherlands and Belgium having been the great centers of atlas printing, contained the greatest collection of geographical matter ever shown under one roof.

667 Q. You have spoken of your preparation of maps for the Saint Louis Exposition. How many maps in regard to Louisiana and its cartography have you in that collection?

A. Beginning with the map of Juan de la Cosa in the year 1500 which only indicates the gulf of Mexico, up to the year 1839, they number 190, the exhibit numbers 190 maps and atlases.

By Mr. McCLURG:

Q. From 1500 to when?

A. To 1839. The reason for showing the map of 1839, the collection was intended to get at the State formation of 1812, but two maps are included in the collection, one of Melish and one of the maps on which it is called Fredonia, the only map of the kind known.

By Mr. ZACHARIE:

Q. What was called Fredonia?

A. The United States called—it was the name originally proposed as a name for Louisiana.

Q. For Louisiana?

A. Yes sir.

Q. Now, in regard to the testimony that you have given in regard to the authors of these maps, whence has your information been derived?

A. It is very difficult to obtain information regarding map mak-

ers and has needed great study in the special cartographical works of the countries and periods; those I have consulted for the purpose of gaining information.

Q. Now, Mr. Beer, in all of the maps which you have examined, of Louisiana and Mississippi, have you ever found a map which gave this archipelago or peninsula here in dispute, to any other State than Louisiana; if so state what map?

A. I cannot answer that question. It is too great a call on my memory. I have seen too many maps.

Q. State according to the best of your recollection.

A. The greater number of earlier maps, especially in my collection, antedate division into States, antedate the acquisition by the United States.

Q. I am only speaking now, of those since?

A. I have not paid special attention to those since.

Q. Now, Mr. Beer, will you examine the Lafon map and the other earlier maps up to about 1830, and state, if you can, how long the distance is, as shown upon these maps, between the Mississippi river and the most easterly projection of Isle à Pitre?

A. By the scales of the respective maps?

Q. Yes?

A. You say between the Mississippi river?

Q. Yes?

A. You mean at New Orleans.

Q. No sir, I mean in the parish of Saint Bernard, the nearest point——

A. The parish of Saint Bernard is not indicated on these maps.

Q. Well, where the Bayou Terre Bœuf enters the Mississippi river?

A. That is more definite. I shall give my evidence as to all distances, as regards the particular map, not as to the Lafon map but as to the particular map on which I have measured it.

Q. Of course?

A. And it is therefore susceptible, of course I can deduct any differences. It is 13½ marine leagues on the particular map of Lafon.

668 By Mr. DYMOND:

Q. Mr. Beer, before you measure the Darby map will you please return to the Lafon map and state what the distance is in land leagues if there be such a scale on that map?

A. There is a scale called Lieues Communes 25 au Degre.

Q. That is it?

A. It is 16½ on the scale with the title Lieues Commune 25 au degre.

Q. Will you please now look at the Darby map and give us the distance as shown by it?

A. It is 36 English miles, from the point where Bayou Terre Bœuf is shown as entering the Mississippi river to the extreme eastern point of the peninsula.

Q. Now, the next?

A. In the Ludlow map Bayou Terre aux Bœuf does not form a junction with the Mississippi.

Q. Well, prolong the lines to the Mississippi and then start out towards the east?

A. From the point at which the line to the Mississippi from the nearest extension of Bayou Terre Bœuf, to the extreme eastern point of the territory the map of Ludlow shows 44 miles.

Q. What year is the Ludlow map?

A. 1819–1820.

Q. Take the next one?

A. In the map of Melish of 1820 the distance shown is about 42 miles. In the first Tanner there are three scales, American, geographical miles and French leagues; which will you take?

A. Take the American miles?

A. The distance shown is 52 miles.

Q. That is the Tanner map of 1820, 52 miles?

A. Yes sir. In the map of Mitchell of 1834, the distance shown 52 miles.

Q. Will you turn to some of the recent charts, say two of the most recent maps and give me the same measurement on their scales. Will you please look at the United States Coast and Geodetic chart No. 19, marked map No. 7, and give the distance as shown on this map?

A. There is no junction shown there.

Q. Will you please look at this map No. 7 and state whether the point thereon marked Poydras is the point from which you have commenced your measurements going eastward?

A. As nearly as possible the scale being much larger.

Q. Will you please designate the distance between the point marked Poydras on this chart and the most eastern extremity of Isle à Pitre, according to the scale on the chart, namely map No. 7?

A. Yes sir; just 50 miles.

Recross-examination.

By Mr. McCLURG:

Q. These measurements that you have been taking disclosing a distance from the junction of Bayou Terre Bœuf to the most eastern end of Isle à Pitre, have been roughly made by a piece of yellow blank paper and pencil, gave they not?

A. Yes sir. You put in the question measured to the extreme point of Isle à Pitre. Isle à Pitre is not designated in all of these maps, itself.

Q. That was the question, was it not?

A. Yes sir, that was the question. I have taken it to the point which might be assumed to represent Isle à Pitre; the distances are approximate.

Q. And Isle à Pitre, by that name, appears first on what map?

A. Do you mean the words Isle à Pitre?

Q. Yes?

A. For there is a territory which is clearly indicated to be Isle à Pitre. In chronological order, in all of the maps examined during this examination, I find the words Isle au Pied. Isle au Pitre first appears on the map of Schonberg of 1866. It next appears under the name of Isle au Pitre on the map of Gray of 1878.

Q. Do you not find it stated in one of Mr. Tanner's maps, that prior to the date of that map, that that territory had never been surveyed, I mean what we now know as the Isle à Pitre territory?

A. There is such a statement, but I do not think it is on there; I think it is on the Darby map.

Q. Yes, the Darby map of 1816?

A. I find a statement that it has never been surveyed, that the coast and interior are but imperfectly known. It does not mean that they are not known at all, but imperfectly known.

Q. These measurements you have made, are also uncertain, are they not, as to the scale used, whether of American miles, geographical miles or marine leagues?

A. So far as regards what is represented by the map itself, they are comparatively correct.

Q. To be brief on this point, your measurements seem to indicate a lengthening of the space between the junction of Bayou Terre Bœuf with the Mississippi river and the most eastern extremity of what is now called Isle à Pitre?

A. They show that delineation on the maps has lengthened.

Q. And don't you think, as a matter of fact, that these measurements which you have just been taking are somewhat uncertain; do they not lack in precision?

A. As the maps do.

Q. I mean to say, that because of the fact that the territory in the Isle à Pitre country was prior to 1816, as you have stated, not well known, that the maps may be more or less uncertain?

A. Certainly. The correct measurement is the measurement made on the last chart from actual survey.

Q. And that is the only one that you consider reliable, is it not?

A. That is the only one that can be verified to day.

Q. The cause of this lengthening of the line about which we have been speaking, may have originated at either end of the line may it not, or at both ends. I mean to say, may not the junction point between Bayou Terre aux Bœuf and the Mississippi river have moved somewhat westward as well as the territory to the eastward moved eastward?

A. The delineation on the map depended on the information in the possession of the map maker.

Q. And what that information was we cannot say.

A. We have nothing to show.

Q. You have been examined at some length, Mr. Beer, about the

Mississippi sound, with reference to its western end. You
670 seem to indicate its western boundary by the first letter M. I will ask you on that point to begin with Hinman's map No. 33 of 1885, and tell me, if you can, whether that map indicates the junction between Lake Borgne and the Mississippi sound. Would you take the last E in lake to mean the eastern boundary of Lake Borgne or the last letter E in the word Borgne to mean the eastern boundary of that lake?

A. I understood the question of counsel to mean, not to put my opinion of the commencement of the waters called the Mississippi sound, but where for certain, the legend Mississippi sound began.

Q. Now, tell me where the legend of Lake Borgne ends?

A. The word lake ends at a point west of Pearl river.

Q. You have qualified yourself as an expert on these subjects, and I will ask you to indicate what you judge to be the dividing line between Mississippi sound and Lake Borgne on the Hinman map?

A. As indicated in the Hinman map, it is intended to show the body of water Lake Borgne terminated by the Pearl river and Point Malheureux. Beyond that it is intended to show a commencement of Mississippi sound.

Q. You mean beyond that, to the eastward?

A. To the eastward, yes sir.

Q. And that leaves Half Moon island in the Mississippi sound?

A. On this map, yes.

Q. And that is indicated by the coloring, to belong to the Louisiana coast?

A. Geographical divisions of water are divided by head lands; there is a head land which indicates that.

Q. Now, please look at Wall's map of 1882 and answer the same question?

A. The end of the name Borgne terminates north of Point Malheureux perhaps slightly to the east.

A. The end of the name Borgne terminates north of Point Malheureux perhaps slightly to the east.

Q. Then does not the Wall map of 1882 place the dividing line between Lake Borgne and Mississippi sound some distance further to the eastward than the Hinman map of 1885?

A. The terminal letter of this word, in this case, depends on the size of type used and not on a geographical conception.

Q. Is it not true that you do not place any particular significance upon the terminal letter or the initial letter in those two words, Lake Borgne and Mississippi sound?

A. Quite true.

Q. And so please, with Gray's map of 1878?

A. The position of the end of the word Lake Borgne is almost the same as in the Hinman map it is the same practically, *apreatly* indicating a body of water terminating about Point Malheureux.

Q. But differs from the Wall map?

A. Differs from the Wall map distinctly.

Q. Now, look, please, at the map of Schonberg of 1866?

A. The position of Lake Borgne is similar to that in the last map.

Q. I will call your attention to the Hardee map of 1871 prepared under the administration of Governor Warmouth of the State of Louisiana?

671 A. The position of Lake Borgne is similar, in that it is within Point Malheureux and the point at the mouth of Pearl river.

Q. And differs does it not, from the maps you have previously examined?

A. It differs from one of them. It does not differ from the last but it does differ from Wall. The difference which I name, in speaking of this map was, that in this map the word Mississippi sound begins furthest westward.

Q. Now, see if it does not differ with the beginning of the M, from the Schonberg map?

A. I was speaking about Lake Borgne. The beginning of the M does differ from all the other maps.

Q. And in the Schonberg map the M is to the east of Cat island?

A. Far east, yes sir. I was alluding then to Lake Borgne.

Q. Yes, I beg your pardon. I believe you stated there was no lettering on the Bayley map and those previous to that on up to B. Lafon's map of 1806, indicating the Mississippi sound?

A. I did so state.

Q. Then I put this question to you. Are not these maps uncertain in defining the junction between Lake Borgne and the Mississippi sound?

A. These maps indicate the information that was in the possession of the makers and varied with that information.

Q. And they do indicate that the different makers had different information?

A. Yes sir.

Q. Now then, I will ask you to do me the kindness to take your compass, if you have one, and give me some measurements of the Mississippi sound beginning at the Lafon map of 1806?

A. The measurement by the compass in my hands is not as certain as the measurement by paper. I will do what you wish.

Q. We want the most correct measurement.

A. A measurement by the paper in my hands will be the most correct.

Q. Well, what is the matter with the compass?

A. It depends on the sight very much as to whether a particular line—when you are measuring a small thing it depends on the weakness of the sight.

Q. I prefer the compass to paper?

A. You may have the compass.

Q. I will be glad to have you give me on these maps up to 1885,

a measurement of the distance from the center of the most eastern or southern mouth of Pearl river due south to the main shore of Saint Bernard parish or what appears to be now Saint Bernard parish.

A. It is less than six leagues as given on the map of Lafon.

Q. Now, try the Darby map, please, on the same measurement?

A. You see here there is no distinction at all between the end of the mouth, but we can take it from that center, and then we can go a little, it was a little that way. Nearly 15 English miles, as shown on the map of Darby.

Mr. DYMOND: Counsel for the State of Louisiana now requests counsel for the State of Mississippi to make his measurements on some such basis as would be intelligible to the Supreme Court and along a definite line, defining a similar line in regard to
672 each map.

Q. I ask that my original question be read to the witness indicating the points where I desire the measurements taken.

(Question read:) From the center of the most eastern or southern mouth of Pearl river, due south, to the Louisiana shore?

A. As represented in each map?

Q. Yes. Refer now to the map of Ludlow?

A. Almost exactly 18 miles.

Q. The same question as to the Melish map?

A. Slightly over 18 miles.

Q. The same question as to the Tanner map of 1820?

A. Almost exactly 18 miles.

Q. The same question as to Mitchell's map of 1834?

A. Twenty-two miles.

By Mr. DYMOND: Counsel for the State of Louisiana now asks the witness if he is measuring in a north and south direction on the map last measured.

A. In each case I have——

Q. I am not asking you as to each case. I am asking you as to the particular map of Mitchell which you have just measured, whether you measured it on a line in a north and south direction?

A. No sir, it varied slightly to the east.

Q. Why did you vary it to the east?

A. Because I am asked to take it to the nearest point of land as shown by the map.

Q. You certainly don't answer the question then. The question stated on a line directly north and south?

A. No, to the nearest point of land.

Q. That is not what he said. His question will be repeated to you. His question was on a line directly north and south?

A. I must have a ruler then.

Q. All right?

A. I would like to have the question read to me please, the origi-

nal question. (Question read.) You said nothing about the nearest land.

By Mr. McCLURG:

Q. Nearest land due south?

A. In the case of the Mitchell map, that gives 29 miles. I understood your question to mean to the nearest land, and therefore have varied from the southern line. I must request to be allowed to take these measurements over because they all go right down into the bay here. That will give for the Tanner map, 23 miles—oh, that will change the whole of the measurements. The southern line on this map comes right on that line there and it is very difficult point to determine. On the Melish map it will give 22 miles. It is a hair's breadth in going due south, whether it will follow that line to there. Without very fine measurements it is impossible to decide on that map.

Q. You mean the Ludlow map? It is about the same as you took before?

A. Yes.

673 Q. Perhaps you had better look at the Lafon map, and get Darby's, you may examine that again if you like?

A. It is 16 miles on the Darby map. Now, owing to the map maker drawing this further to the east (referring to the Lafon map)——

Q. Drawing what further to the east?

A. Drawing this shore further to the east.

Q. The Louisiana shore?

A. The shore of Lake Borgne. It is 7 leagues, about 21 statute miles.

Q. With reference to those measurements which you have just taken, are not these maps uncertain as to the distance?

A. They are.

Q. You spoke of being a member of the Mississippi Historical Society. Will you tell us how you became a member of that association?

A. By election.

Q. Have you ever participated in any of its deliberations?

A. Never.

Q. You stated, when questioned by Mr. Zacharie a while ago, that you had examined certain maps from 1500 to 1839, I believe, that those examinations were made for the purpose of your——

A. For the purpose of more clearly and correctly cataloguing the collection in the Louisiana Purchase Exposition.

Q. But in all of those maps you made no critical examination of the exact contour or configuration of the Mississippi and Louisiana shores along this disputed territory?

A. In all that examination I paid special attention to the delta of the Mississippi.

Q. And that means by the mouth of the Mississippi river, does it?

A. The delta of the Mississippi includes from the mouth of the Mississippi I will say including the island of Orleans which commences at Manchac.

Q. Where does that delta strike the eastern coast of Louisiana northward?

A. The alluvial formation of the Mississippi commences on the north shore of Lake Pontchartrain and extends to the mouths of the Mississippi river.

By Mr. DYMOND:

Q. Will you please look at the map of B. Lafon, for identification called map No. 19, and published in 1806, and will you notice on this the peninsula called Orleans extending from the Mississippi eastward. I wish now, you would measure the distance from the most northern point of that peninsula, directly north to the Mississippi main land?

A. It is four and a half leagues.

Q. Will you now, please look at the Darby map of 1816, called map No. 20 and measure the distance on what you take to be in that locality the nearest point or the shortest distance between the points you have just measured from, and the shore line of Mississippi?

A. It is impossible to identify it on these maps.

Q. Will you therefore, then, please look at the Darby map and measure the distance from the most northern projection of the peninsula concerning which we have just spoken, the distance
674 between that and the shore line of what is now the State of Mississippi.

A. I am measuring on the outlines shown in black and not in color. It is nearly 14 miles, 14 English miles.

Q. Will you please now look at the Tanner map of 1819–1820 known as map No. 21, measure the distance from the most northern extremity of the peninsula which you have just measured from there to the southern shore of what is now the State of Mississippi and give the distance.

A. Approximately, 14½ miles.

Q. Referring again now to the Lafon map of 1806, map No. 16, and the Tanner map of 1819–1820 and maps marked respectively maps No-. 19, 20 and 21, will you please state whether the point from which you measured on the peninsula was or was not part of the main body of land as shown by the respective maps?

A. I measured from the most northern part of the main land as shown by the maps named.

Q. Did you, in any of these measurements, from these points, find a distance of 18 miles between the most northern point of the peninsula and the southern shore of what is now the Mississippi territory?

A. I did not so find.

By Mr. McCLURG:

Q. These last measurements that you made in answer to Mr. Dymond's question, you do not undertake to vouch for the accuracy of those either?

A. They are approximately correct, as shown by the maps.

Q. But the accuracy of those maps, as you stated before, depend on the information that the map maker had?

A. Yes sir.

By Mr. DYMOND:

Q. Were they as correct and as approximate as the measurements which you made in your cross examination by counsel for the State of Mississippi?

A. They were equally correct.

By Mr. McCLURG:

Q. You do not vouch for the correctness of any of them?

A. I do not vouch for the exactness of any of them.

At this stage of the proceedings, the hearing was adjourned by the commissioner, for recess, until 2 p. m., to be resumed again at the same place.

Resumption of Proceedings.

2 P. M.

Pursuant to adjournment, the hearing was resumed at the same place and date at the hour of 2 p. m.

All parties present.

675 Col. H. M. ADAMS, witness sworn and examined on behalf of the State of Louisiana, testifies as follows:—

Direct examination.

By Mr. DYMOND:

Q. What is your present employment?

A. I have charge of this engineering district, the work at the mouth of the river, work at the forts, work at Plaquemine.

Q. In the employment of what government are you?

A. United States Government.

Q. When you speak of this district, do you refer to the southern district of Louisiana?

A. No; I refer to the engineering district with the office here in this building.

Q. What territory does this embrace?

A. Not so much territory as works, as I stated before, the work at the mouth of the river, work at the forts, work at Plaquemine Bayou Teche, Bayou Lafourche.

Q. I believe you — a colonel in the corps of engineers of the United States Army?

A. Lieutenant colonel.

Q. How long have you been in Louisiana, Colonel, and connected with the work at the mouth of the Mississippi river?

A. I came here first in 1869; I was here five years.

Q. Where were you then located?

A. Here in New Orleans?

Q. When did you return after your absence?

A. Four years ago.

Q. Have you been in charge of the work at the mouth of the river during those last four years?

A. Yes sir.

Q. Did you have any connection with the work at the mouth of the river while you were here first?

A. Yes sir.

Q. Are you in any way acquainted with the Eads jetties which were constructed at South pass in the mouth of the Mississippi river?

A. Yes sir.

Q. What connection did you have with these jetties?

A. Since I came here in 1899 first I had charge of the inspection of the work done by the Eads estate.

Q. Was that before 1899?

A. 1899, yes, since the work was turned over to the United States I have had charge of the maintenance of that channel through South pass.

Q. Did you have any connection with this work when you first came to New Orleans?

A. At that time the United States was improving Pass à l'Outre by dredging; that was before the work on the Eads jetty began.

Q. When did the work on the Eads jetty begin?

A. About 1875, about that date.

Q. Did you have any connection with the work at that time?

A. No sir.

Q. As I understand then, your direct connection began about 1899?

A. With the work in South pass, yes sir.

676 Q. Have you ever had any occasion to notice any change in the surface level of the country in the neighborhood of the mouth of the Mississippi river, or of South pass and if so what have you noticed?

A. As to the general level of the country, no sir.

Q. Do you know whether or not, in connection with the Eads jetties there was any plane of reference by which Mr. Eads had to keep a certain depth of water in the channel of South pass?

A. Yes sir.

Q. Do you know whether there has been any change in the plane of reference used by Mr. Eads?

A. The plane of reference was defined by the act giving the work to Mr. Eads. He was to maintain a certain depth. There was a matter of construction of the law and the opinion was given by the Attorney General. At the time the work was turned over to me he was required to maintain a certain depth with respect to average high water.

Q. Was there any point established on the shore by which the depth was to be determined?

A. He had tide guage at South pass, he had bench marks on shore.

Q. Was there ever any re-determination of the location of those bench marks or tide guages in connection with the depth of water that Mr. Eads had to maintain, so far as you know, within your experience?

A. Why, our annual reports show just what was done, I didn't see it done. I don't know personally that it was done; but I understand that it was done.

Q. If it was done by some one else, who would it have been done by?

A. Mr. C. Donovan who was stationed there.

Q. Who was Mr. C. Donovan?

A. He is assistant engineer of the engineer's department.

Q. Of the United States Government?

A. Yes sir.

Q. How long has he been in the employ of the Government?

A. To my knowledge, since 1874.

Q. What is his reputation as a careful and painstaking man, so far as you know?

A. He is a very careful, accurate, painstaking man.

Q. Was he in immediate charge of the execution of your orders in regard to the work at South pass, while you have been in command there, or while this work has been in your charge?

A. He was, for two years, from 1899 to 1901; but for the past two years he has been here in the city most of the time.

Q. Well prior to 1899 was he in charge down there, locally, at the head of the passes, or at Port Eads?

A. At Port Eads, yes sir.

Q. Is Mr. Donovan well skilled in the avocation and duties with which he was by his office called upon to discharge?

A. He is.

Q. Do you know the direction that the Mississippi river current takes when it leaves the mouth of South pass and these other passes, whether it goes eastward or westward?

A. The indications on all of our charts are, that it trends to the eastward, after leaving the jetties.

Q. How far to the eastward. Have you ever had any personal observation of it to determine whether it did go to the eastward or westward?

A. I have never made observations myself, no sir.

677 Cross-examination.

By Mr. McCLURG:

Q. That is the general information, however, that you gather, from your position, that it tends towards the eastward after it passes out?

A. Yes sir.

Q. What was the occasion for Mr. Eads putting in those jetties?

A. The—to deepen the channel over the bar at the mouth of the pass.

Q. Is it not true, Colonel, that the channel is deeper up by Baton Rouge than it is at the mouth of the river?

A. Oh, yes sir.

Q. Is it not deeper by New Orleans than at the mouth of the river?

A. Yes sir.

Q. Is there any difference of opinion as to the effect of the levees along the banks of the Mississippi river with reference to scouring and deepening or filling the bottom of the river?

A. A great deal has been said and written about it.

Q. On both sides of the question?

A. On both sides, yes sir.

Q. Do you not know that eminent statesmen and scientists differ on that subject as to the effect of the levees with reference to the deepening or causing the bottom of the river to fill?

A. Engineers do not differ very much about that; statesmen may.

Q. They are governed largely by the reports of the Mississippi River Commission are they not, as to their sources of information?

A. I suppose they must be; the annual reports are made and printed and are laid before Congress every year.

Q. Are you familiar with the dates of the overflows of the Mississippi river south of Baton Rouge?

A. I have only general information; I know that we have had two recent high waters.

Q. When?

A. 1897 and 1903.

Q. Well, before that time?

A. I am not familiar with the dates, no.

Q. Are you not familiar with the fact, with the historical fact that between 1880 and 1890 there were one or two very great overflows, especially in 1882?

A. That is all of record; but the dates I do not carry in my mind. I would not like to speak positively about these dates.

C. DONOVAN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Redirect examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live in New Orleans at present.
Q. How long have you lived in New Orleans?
A. Since the 1st of July 1902.
678 Q. Where did you live prior to that?
A. I lived at Port Eads.
Q. Is that Port Eads, Louisiana, at the mouth of the Mississippi river?
A. Yes sir.
Q. How long did you live there?
A. Twenty five and a half years.
Q. What is your present employment?
A. I am civil engineer in the employ of the Government, known as assistant engineer.
Q. Of what Government are you in the employ?
A. The United States.
Q. How long have you been in the United States Government's employ?
A. Thirty years.
Q. In that space of time have you been continuously in the neighborhood or connected with the works at the mouth of the Mississippi river?
A. For twenty seven and a quarter years I have.
Q. How long have you been a civil engineer?
A. Thirty two years.
Q. How old a man are you?
A. I am fifty three.
Q. What is your present duty, in a general way?
A. Well, I am the principle assistant engineer under Colonel Adams. I have to do, more or less, with all the work under his charge, but principally the work at the mouth of the river, South pass and Southwest pass.
Q. Now, during the twenty five and a half years that you were located at Port Eads, what work did you have charge of then?
A. I had the inspection of the work done by Mr. Eads.
Q. What work was that?
A. Construction of jetties.
Q. At what point?
A. At the mouth of the passes, mouth of South pass.
Q. For what purpose were those jetties constructed?
A. For deepening the channel across the bar.
Q. Was that a shallow channel prior to the construction of the jetties?

A. Yes sir.

Q. What results did the construction of the jetties accomplish?

A. It deepened the channel from nine to 30 feet.

Q. Now, have you had, during your 25½ years' experience at Port Eads, occasion to notice the topography of that section of the country and the general surface level of the tide?

A. Yes sir.

Q. Did the construction work of Captain Eads come under your jurisdiction as the engineer in charge at Port Eads?

A. No; we had nothing to do with the construction work, only to keep a record of what was done, that is all.

Q. How was the depth of water to be maintained by Captain Eads to be determined, or, rather, how was the actual water that he did maintain, how was it determined as to depth?

A. Well, it was determined by reference to the planes of average flood tide. The law required that depths should be measured by the average flood tide.

Q. When was the first measurement taken, if you have any recollection?

679 A. In, sometime in 1875.

Q. Was that measurement taken under your supervision?

A. No sir. I was not there then.

Q. When was your first measurement taken?

A. We have had measurements from time to time since 1875. I went to Port Eads the 17th of December 1876 and ever since that the measurements were taken and they are being taken yet.

Q. In taking those measurements, is that done by sounding or is that done by sounding and also a reference to some particular established point?

A. What do you mean, measurements of depth?

Q. Yes?

A. That is done by soundings and then the soundings are reduced to a certain plane of reference. At the time we sound the tide may be a foot above that plane; we add a foot to the soundings to arrive at that plane; on the other hand the tide may be a foot below that plane, we subtract a foot to reduce to that plane. So that all our charts represent the depth of water at the same plane of reference all the time.

Q. Was this plane of reference a physical plane, or was it a calculated plane?

A. It was a plane fixed, on the start, by three months' observations of the tide and taking an average as the term implies, average flood tide, the average flow, the flood tides during three months.

Q. Was there ever any change in that plane of reference between the time you first visited that locality and began your duties of supervision, and the time you finally left?

A. Yes sir.

Q. What changes, if any, occurred and what produced them?

A. At the time I went there, the plane of reference was indicated

by a reading of 2 76/100 feet on a certain tide guage. When I left there that same plane indicated by a reading, 4 3/10 feet on the same guage.

Q. During what period of time was that, in years?

A. That was from 1876 to 1902.

Q. What difference in feet was there shown by that?

A. That would be a difference between 2 76/100 and 4 3/10, that is, a foot and 54/100.

Q. What was the cause of that difference, so far as you, from your observation, were able to determine?

A. The cause, so far as we have determined, was due to the settlement of the tide guage.

Q. Did the tide guage settle of itself, or, did it settle with the land which held it?

A. It settled with the land.

Q. How was that fact determined?

A. It was determined by running a line of levels, what is known as precise levels, from somewhere in the locality of Baton Rouge, the high land there, down to the end of the jetties and they were repeated five years afterwards. I first made the determination myself finding a variation in the average flood tide from year to year and undertook to account for it, I thought possibly it was due to some extent to back water caused by building the jetties, and that if I put a tide guage out in the bay and determined the absolute Gulf level, if it was due to back water it would show on that guage because I should not get then the same reading on that guage that I got on this guage that showed variation. I found, however, that I got the same average flood tide in the Gulf as I did in the river, thus showing that it was not due to back water and consequently must be due to one or two causes, that is, to subsid-
680 ence of the delta or change in the plane of Gulf level.

Q. Was there anything to indicate to you, any change in the plane of Gulf level?

A. No sir, and the changes in the average flood tide from year to year were such as to indicate that it was entirely unlikely that the surface of the Gulf, the Gulf level, would change in that way; it was more some years than others.

Q. As I understand you, then, in a period of about 25 years, you noticed a subsidence of 1 54/100 feet in the delta of the Mississippi river at the point you made your observations?

A. Yes sir.

Q. Am I, or am I not correct, in understanding that it was your conclusion this resulted from a subsidence of the land at that point?

A. Yes sir.

Q. Is that correct?

A. That is correct.

Q. Now, have you seen any other evidence that would indicate to you that the land in the neighborhood of Port Eads is settling so far as tide level is concerned, the tide level of the Gulf?

A. There is evidence to me, aside from any determination we would make. The water level bears the same relation to the banks, as far as our observation is concerned, now, as it did 27 years ago. But the banks are built up each year by the overflow on them. My opinion is and always has been that the subsidence of the delta keeps pace with the deposit from year to year. Other evidence is manifest. At the head of the passes when I first went there, there was a storehouse known as the lighthouse establishment. They had a little railroad and a truck on it that ran between two large buildings from a wharf between the two large buildings, to haul heavy materials on. That was abandoned after a while, but this track and the truck were left there. I dug the truck out of the mud. I suppose that was perhaps ten years ago. The last I saw of the track was about two years ago, and then it was about a foot and a half, possibly a little more, below the surface of the land. The land had formed over it. You could just see the railroad track sticking out of the bank. The bank was washed away, it is all gone now, the track has gone into the river but it was a foot and a half under the bank, the bank had formed over it.

Q. From your observations, did, or did not, that indicate a subsidence of the soil at that point, of a foot and a half?

A. Yes sir; it certainly did.

Q. Now, these observations that you have referred to, in determining the change of the plane of reference at the jetties, were those made with mathematical precision and accuracy?

A. Yes sir. We have there a self registering tide *guage* which gives a continuous record of the tide, an apparatus run by clock work, so we can get the tide for every second of time if we wish. When we take off those rolls the record is made, up and down hill and valley arrangement, high tide and low tide. We take off from that record every day the high tide and low tide readings, and at the end of the month we take the average of the high tides and the average of the low tides and at the end of the year we determine the average flood tide for that year.

Q. As a practical result of these observations, were there any changes in the plane of reference, under the contract of Captain Eads?

681 A. Yes sir; the plane of reference was changed in 1895. Let us see, it was '95 or '96, I think, but it was applicable back as far as 1890.

Q. Were these observations to which you have referred made in any wise under the supervision of the Mississippi River Commission?

A. No sir.

Q. Were they reported to that body?

A. The Mississippi River Commission has had all our records. These sheets that are taken from this apparatus have been sent to the commission since some years ago so it has all of them.

Q. Was this change in the plane of reference, as a result of sub-

sidence recognized by the United States Government as a fact, and did it, as a fact, affect the contract of Captain Eads in any change, of your own knowledge?

A. I do not know that the Government of the United States recognized the matter of the subsidence of the entire territory but they recognized the subsidence of the tide guage to such an extent that they changed the plane of reference one foot, because they considered that on account of the settlement, Mr. Eads was maintaining one foot more of water than, according to law, he was required to do.

Q. Are you familiar with the geological formation of that section of the country, in a general way?

A. Well, in a general way I may say I am.

Q. What is its geological formation, how was it made?

A. It was made by the deposit of sediment brought down in the water of the Mississippi river.

Q. To what, Mr. Donovan, do you attribute this subsidence as a geological phenomenon?

A. I attribute it principally to the fact that there is no foundation to that country, and any weight put upon it, causes a settlement, the greater the weight the greater the settlement. We have no evidence of any foundation there at all.

Q. When you say you have no evidence of a foundation, what do you mean; that you have no evidence of a foundation reasonably near the surface or do you mean that 1500 feet below the present surface level you would not find a solid bottom there?

A. I don't know about that. That is too deep for me.

Q. What do you mean then in regard to no foundation?

A. For example. I built a lighthouse out at the end of the east jetty; we built it right in the quick sand on a foundation of pilings, then 12 by 12 timbers laid closely on those pilings, two tiers of them, one tier crossing the other, giving a large bearing. That lighthouse settled nearly a foot in five years, and for all I know, I have no doubt it is settling yet.

Q. Do you or do you not, attribute this settlement to the fact that the land is becoming more and more compact as time passes?

A. Do I attribute the settlement to that?

Q. Yes?

A. That would be due to compression then?

Q. Of its own weight?

A. Compression of its own weight?

Q. Yes?

A. Its own weight because if that weight was removed, the settlement might possibly, in time, cease or become very small. The great weight we have on an area, for instance, to illustrate, we have a concrete wall of about two thousand feet to the end of the
682 west jetty, that wall was built at an elevation of three feet above average flood tide. The surface of it now, is, about four feet under the mud, so that it has gone down about seven feet

in the mud. You can find that wall there yet, but you would not know that there was a wall there from any surface indications, the mud has formed over it and sea grass has grown.

Q. If you were to be asked what was the youngest part of the State of Louisiana, so far as its geological birth is concerned, where would you say the newest and youngest land would be found?

A. As far as my knowledge is concerned, it would be found at the mouth of the river.

Q. Why?

A. Why, because there is the greatest reason for land built processes there, due to the great volume of water going out there that is discharged by the Mississippi river.

Q. Is it, or is it not a fact, that there is a large annual increase in that vicinity, of the land that forms itself above water by the extending of the Louisiana Southern peninsula out into the Gulf?

A. Yes, sir, there is a large increase.

Q. Have you any knowledge as to the geological formation of the other portions of Louisiana?

A. No, I could not say anything at all from my own knowledge.

Q. Would you consider that other portions similarly formed and affected by the same influences, would be subjected to similar results?

A. I think they would be identical.

By Mr. ZACHARIE:

Q. You have testified in regard to the subsidence of the land in the immediate neighborhood of the jetties. Do you, or do you not, know, whether that subsidence extends further to the eastward in the Mississippi delta?

A. No sir. We don't know anything about it, only the determinations that we have made right along the banks of the river.

Q. Would it lead you to believe that it extends to the same character of soil?

A. It would lead me to believe that it extends wherever the sediment of the Mississippi river reaches.

Q. Or has reached?

A. Yes sir.

Q. This case involves territory 70 odd miles northeast of the mouths of the Mississippi, that peninsula of Saint Bernard which juts out to the eastward. Do you, or do you not believe that the same causes exist and would produce the same effects there, as those you have testified to in regard to the passes?

A. Wherever the waters of the Mississippi river reach, the effect would be the same. I have no reason to believe why the effect should not be the same.

By Mr. DYMOND:

Q. Did you ever see a vessel loaded with brick, that ran aground

or was blown up on the land, in some storm, near the head of the passes, or in that general locality?

683 A. No sir.

Q. You do not remember any incident where this vessel gradually sunk out of sight. She may have been outside of the passes?

A. No. I have known two instances of small vessels, sailing vessels, grounding outside and sinking gradually into the mud.

Q. Did those vessels eventually disappear, masts and all?

A. No sir; the masts were eaten off by the toredo and they fell in the water before they had time to settle.

Q. Have you ever had occasion, in your 25 years' experience right at the mouth of the Mississippi river, to notice the direction that the current took as it left the mouth of the river and entered the gulf of Mexico?

A. Yes sir.

Q. What direction does that current take?

A. It goes to the westward.

Q. You heard Colonel Adams state a moment ago, that it was his impression that the charts indicated that the current went to the eastward; does it go to the eastward?

A. No sir, it goes to the westward.

Q. Do you know that from personal observation and experience?

A. Yes sir.

By Mr. ZACHARIE:

Q. What has been that experience and observation; how did you determine that?

A. I have determined it by making observations of the velocity of the current by putting floats in the water and locating them every minute or so of time, plotting them on the chart. The trend is decidedly to the westward, as was evidenced to Captain Eads in building the jetties. You notice he has got considerable of a curve in the jetties; the idea of curving the jetties was to throw the flow of the water into this westward current, instead of building out and striking it directly.

Q. Is there any evidence of this trend of the current to the westward, in the deposit of the silt of the Mississippi river?

A. Decidedly; the west side builds out, for instance, South Pass jetty, the west jetty is four thousand feet shorter than the east jetty. The jetties we are building at the Southwest pass, the west jetty is six thousand feet shorter than the east jetty; it builds out more rapidly on the west side. Another evidence in the case of South pass is, whereas the land on the west side has built out nearly to the end of that jetty, there has been no accretion on the east side at all; on the contrary the action of the sea has been there to drive back the shore, which has been receding for some years, that is, for the reason that this trend of the current to the westward is so great that

there is no chance for the sediment to go to the eastward and up in behind the east jetty.

Q. From your observations in regard to the Mississippi river, do you think that since the levee system of Louisiana has been completed, that there has been any deposit of silt from the Mississippi river to the eastward of the mouths of the Mississippi river?

A. Well, there has been a deposit to the eastward where the river water reaches to the eastward, for instance, below the forts where there are no levees the water is flowing over the whole country
684 there, and wherever that river water reaches no mattter how far, that water carries that sediment.

Q. Do you know, or can you approximate, to what distance that overflow might extend?

A. Well, no, that would be mere guess work.

Q. Is it, or is it not, a fact, when the Mississippi river water meets the density of salt water of the ocean, that silt is precipitated by the contact?

A. Well, as I am under oath, I cannot say of my own personal knowledge that it is. My opinion would be that it is.

By Mr. DYMOND:

Q. Did any of these discharges, or do any of these discharges of water from the mouths of the Mississippi river, reach as far north, in their deposit, as the Saint Bernard peninsula which is lying south of Mississippi. I will show you, in order that you may intelligently answer the question, the United States Coast Survey chart No. 19, marked map No. 7. If the trend of the Mississippi river be westward after the current leaves the mouth, where it enters the Gulf, and with the completion of the levee system above Fort Saint Philip, would there be any deposit as far north as the area in the neighborhood of these red ink lines on map No. 7?

A. It is possible that there would be, but it would be very light material.

Q. Would it have any appreciable effect in forming or affecting the topography of that section of the country immediately in the neighborhood of the red ink lines?

A. Well, wherever there is a deposit it is affected, in forming the topography.

Q. If the current of the Mississippi river runs westward, what distance would any water have to travel northward through the salt water of the Gulf in regard to reaching the locality concerning which you have just spoken?

A. I could not tell the distance unless I would measure it.

Q. Well, just measure it?

A. About 50 miles.

Q. With the levee system completed as far down the river as Fort Saint Philip and in fact extending now down to Olga post office would the water coming from the mouth of the Mississippi deposit any appreciable sediment at a point 50 miles north?

A. Well, as I stated before, it is possible there would be a deposit but it would be very light, extremely so.

Q. If you were told, Mr. Donovan, that Louisiana was made a State in 1812 and her boundaries described in the act of Congress and that evidence has been produced in the trial of this case showing the effect of storms and subsidence in the area in dispute between the States of Louisiana and Mississippi, would you or would you not, in your opinion, consider that any sediment travelling northward 50 miles from the mouth of the Mississippi river could and would affect this disputed area in any way to compensate for the destructive and disintegrating influence of storm and subsidence?

Mr. McCLURG: Mississippi reserves an objection to that question on the ground that the witness has not qualified himself as an expert.

685 A. My opinion would be that the deposit, as I said before, would be so slight that the effect of storms upon an area like that would very much more than offset any deposit that could possibly take place, because I know the violence of the storms that have visited that locality.

Q. Have you ever, in your 25 years' experience, had occasion to go through any storms at the mouth of the Mississippi river?

A. Yes sir.

Q. What was the first storm you ever experienced?

A. That was in 1882.

Q. What velocity, so far as you know, did the wind attain there?

A. 105 miles.

Q. What destructive effect, if any, did it have?

A. It didn't have—just in that immediate locality none at all.

Q. Why not?

A. I guess because there was nothing to destroy.

Q. Did you have any opportunity to notice the storm, its appearance, or did you have any occasion to notice it as a convulsion of nature in any way and can you describe it?

A. Yes sir; I had occasion to go out of my house and go through it.

Q. What was its tide effect?

A. It was simply a violent wind storm and the wind was constant from about a northwesterly direction, it was not variable, it was just a constant hard blow.

Q. Did it have any effect on the tide?

A. Yes sir, it had—well, not very much effect on the tide in the river; of course it drove the water up into the bay and over the land between the river and the bay.

Q. What tide resulted from the storm?

A. I don't remember just that storm; I think it was something like—I don't remember just what it was; it was considerable above

the ordinary tide but I do not remember what it was; that is all a matter of record.

Q. Was the 105 miles the maximum velocity of wind attained?

A. Yes sir.

Q. Did the instrument survive that?

A. Yes sir, during that storm it did.

Q. What was the next storm that you have any knowledge of, in that locality?

A. Let us see, 1882, 1893, there was another storm in 1888 but I was not there.

Q. What was the next storm that you, yourself, went through, after the storm of 1882?

A. 1893.

Q. What was the maximum velocity attained by the wind on that occasion?

A. I don't remember that; as my memory serves me I believe the aerometer was disabled. The cups were blown away so we did not get a record.

Q. What had it attained when the instrument was destroyed?

A. I think it was about 50 miles.

Q. Did it, so far as your observation went, increase in velocity, subsequently to the time that you noticed it?

A. Yes sir, there was a greater velocity than that.

Q. How did it compare with the first storm you testified about?

A. As far as velocity of wind was concerned, I do not think it was as severe.

Q. What was the effect produced by the water?

686 A. The water effect was about the same.

Q. From what direction did that storm come?

A. From the same direction, northeast.

Q. Did it demolish any buildings in that locality?

A. No sir. The only injury we have sustained at Port Eads from storm, was in the last storm, in 1901.

Q. What injury did you sustain then?

A. There were two or three buildings wrecked, some of our floating plant was lost from its moorings and sunk in the channel. That was the highest sea that I ever have known in the South pass.

Q. What height did the waves attain?

A. Well, my judgment is, that the waves were fully ten feet. They were so bad that the pilot steamboat Underwriter, a large boat——

Q. Seagoing vessel?

A. Seagoing vessel, would not turn around in the pass; she was at Port Eads and wanted to go below but the pilot would not turn her around in the channel.

Q. He was afraid she would sink?

A. He was afraid she might turn over the sea was so heavy.

Q. Did you experience any other storms beyond those you have mentioned?

A. I don't remember now the dates. There have been other storms but I can't tell the dates. I have a record of them all.

Q. You mentioned a moment ago, that this shore to the eastward was being gradually washed away. What is the character of that soil; is that the sediment deposited by the Mississippi river?

A. Same character, that is the sediment from the Mississippi river.

Q. Is it covered with grass in any way?

A. Yes sir.

Q. What caused it to wash away?

A. It is caused by the action of the sea. Heavy sea washing on the bank, you know, and very often there is considerable drift wood along there. When the heavy seas throws that drift wood against the bank it tears the bank all to pieces and when the sea recedes it takes a little material each time and the shore gradually washes away.

Q. Is that due to the heavy winds?

A. The heavy seas?

Q. Yes?

A. Yes sir.

Q. And the storms you have referred to?

A. Yes sir.

Q. Have you had any opportunity of calculating the amount of erosion that has occurred, as a result of this effect of the heavy seas and storms?

A. The shore erosion?

687 Q. Yes?

A. No sir.

Q. Could you say how many feet, in a rough way, it had washed away since you first knew it?

A. That is, on the east side and over a limited area, yes sir, in making our surveys along the jetty when outlining this land, just that adjacent to the jetty, that is all. I located the shore line this year, a year from now I will locate it again and find it has gone back as much as 200 feet in places.

Q. In a year?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. You do not undertake to speak as an expert witness, as I understand it, Mr. Donovan, except in your particular profession as an engineer?

A. No sir, I am not speaking as an expert at all.

Q. And you never made a special study of this subject of deposits otherwise than as affecting your immediate vicinity?

A. I have not.

Q. I understand you to say that your observation has been that

he accretions from the Mississippi River overflows, or sediment brought down and deposited by the Mississippi river, as a general rule has compensated the subsidence?

A. Yes sir.

Q. Now, in taking your measurements on this map shown you a while ago map No. 7, you measured a distance of 50 miles up to the southern point of those blue lines?

A. Yes sir.

Q. Look at that map so that you may understand. The territory in controversy extends from about that point northward to the Mississippi shore and the Mississippi shore must be about 75 or 80 miles from the mouth of the Mississippi river where you took your measurements from?

A. Yes sir.

Q. Now, if it be true that levees have been completed down the east bank of the Mississippi river to English Turn in 1750 so as to shut up the mouth of Bayou Terre Bœuf, do you think, and you will notice that Bayou Terre Bœuf leads in the southern portion of this territory in dispute, if the junction of Bayou Terre Bœuf with the Mississippi river was closed in 1750 by a levee, do you think there can have been much effect on this territory in dispute, since that time, by deposits in the Mississippi river, from that source?

A. If that is cut off by levees there could not be any deposit in there could there?

Q. That is what I want to ask you.

A. No; I should not think there would be any effect if the levee cuts it off.

Q. You know Major Harrod?

A. Very well.

Q. He testified that the levee was completed down below there, according to my recollection, in 1750. Now, you cannot testify with any degree of certainty at all, from your 27 years' experience, as to the subsidence of the land in this disputed territory?

A. Nothing at all; I know nothing about it.

688 Q. And where you say there has been a subsidence of something over a foot, that is in what you term the newest part of the State of Louisiana?

A. Yes sir.

Q. Do I understand you to say that the trend of the river has been westward out of the mouths or passes of the Mississippi river during this 27 years that you have been there?

A. Yes sir.

Q. And would not the silt deposited, trend in the same direction?

A. Surely.

Q. To the westward?

A. Yes sir.

Q. Did you ever experience any trouble with muskrats down there in effecting the subsidence of the soil?

A. There are some pretty large ones. Their weight, I think

would cause some subsidence, but they trap them so rapidly, get them out of the way, I don't know whether for that reason or not.

Q. How does the alligator fare down there, is there much war made on him?

A. Oh yes, the alligator has practically disappeared from the locality, I see one there occasionally.

Q. It has been testified here by a very prominent citizen of this State, that the cause of this subsidence was the decaying of vegetation and the maintainance of the levees and the multiplicity of the muskrats, especially since the alligators have been killed who were deadly enemies to the muskrats, and the storms. What do you think of those four causes for producing a subsidence of the soil?

A. Well, I do not think very much of them. Subsidence is entirely due to the deposits that are made from year to year.

Q. Do you know the distance, Mr. Donovan, from, say North pass around the mouth of the Mississippi river along the shore line to Sabine river?

A. No sir, I do not.

Q. How far is it, if you know, from North pass around to the entrance of the Southwest pass?

A. I do not know that.

Q. Where is your work here at the mouth of the Mississippi river?

A. It is at those passes, there is South pass and this is Southwest pass.

Q. In those two passes?

A. Yes sir.

Q. How far is it from the forks or separation of the river into these different passes, out to the sea point of South pass?

A. It is 12 miles and a half from there out to the sea end of that jetty. It is 15 miles between these lights on the Southwest pass, and on Pass à L'outre I don't know.

Q. And North pass?

A. I don't know exactly the distance.

Q. To what point has the levee been completed, Fort Saint Philip, up here?

A. I don't know; it is below the forts, it is some distance below the forts.

Q. Do you know how far it is from the city of New Orleans to this lighthouse here where the river branches off into the different mouths of the river?

A. 94½ miles.

689 Q. Which of these two passes that you are familiar with, South pass and Southwest pass, do the accretions form on more rapidly?

A. Well, Southwest pass.

Q. That is a deeper channel?

A. Yes sir, that is four times as large as South pass.

Q. What is the average width of that pass, up to the head of the passes?

A. The average width, I believe, is about 400 feet.
Q. And its depth is about 30 feet now?
A. The average depth of Southwest pass would be more than 30 feet now; the average depth would be not less than 35 feet.
Q. Now, the deepening of the channel out of those passes naturally lets the water flow, out of the river more rapidly?
A. Yes sir.
Q. And the more rapidly it flows out, the less sediment it deposits before it gets out?
A. Yes sir.
Q. Are you familiar with the overflows between New Orleans and the mouth of the river during the last 25 years?
A. Well, I am only familiar with them in, just as a matter of observation, coming up and going down the river when the country happens to be overflowed.
Q. Can you undertake to say about how many general overflows there have been during that time?
A. What do——
Q. There was one in 1898, was there not?
A. What do you mean, those overflows due to storms?
Q. Overflows from the Mississippi river caused from crevasses or any other cause?
A. Caused by crevasses, I don't know.
Q. You do not keep any record of that?
A. No sir.

Redirect examination.

By Mr. ZACHARIE.

Q. Have you observed, or do you know, what is the effect of muskrats in that section of the country burrowing under the crust of the marshes?
A. No sir; I never knew they burrow under the crust. I thought they built these houses out in the marsh; we see those bunches you know, out in the marsh.

By Mr. DYMOND:

Q. Where do they get the stuff out of which they build the hill?
A. That is this broken cane, you know, it is not built out of mud.
Q. Did you ever fall into a muskrat hole?
A. No sir.

Recross-examination.

By Mr. MCCLURG.

Q. You are not an expert on muskrats either?
A. No sir.

690 At this stage of the proceeding the hearing was adjourned until April 23rd, 1904, to be resumed at the same place and at the hour of 10.30 a. m.

FRANK HASTINGS MORTIMER,
Commissioner.

691 Third Volume.

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692 Resumption of Proceedings.

NEW ORLEANS, April 3rd, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer, commissioner.
Hon. Walter Guion, att'y general of Louisiana.
Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

JAMES R. BECKWITH, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. You are a resident, I believe, of the city of New Orleans, are you?

A. Yes sir. And have been since the winter of '59 or '60, with the exception of two years and a half during the war.

Q. This dispute or this case, pending between the States of Louisiana and Mississippi, concerning the ownership of territory, lying south of the Mississippi main shore line, and north of the southeastern portion of Louisiana, includes the area commonly known
693 as the Louisiana marshes. Have you ever had, on any occasion, an opportunity to go about or through or near that territory?

A. I am not familiar with any portion of the Louisiana marshes excepting that soft mud marsh that lies between the Chef Menteur and the Rigolets and from there to Pearl river.

Q. Well, the territory in question is just south of the area that you have just described. Did you ever have occasion to make any trip through the Rigolets or Chef Menteur out through the northern portion of Lake Borgne along the Mississippi sound?

A. Frequently.

Q. About when were these trips of yours made?

A. I made a number of them; I cannot now say how many, prior to the construction of what was known as the New Orleans Mobile and Chattanooga railroad across that marsh.

Q. Is that what is known as the Louisville and Nashville railroad?

A. Yes sir. It had several names, New Orleans and Mobile at one time, but originally it was the New Orleans, Mobile and Chattanooga railroad.

Q. About how old a man are you Mr. Beckwith?

A. On the 23rd of last December I was 71 years old.

Q. You are a practicing attorney in the city of New Orleans?

A. Yes sir.

Q. How long have you been practicing law?

A. In New Orleans?

Q. No, generally?

A. Since 1852.

Q. Were you here about the time of the war?

A. I was here from the time of the ordinance of secession and before, up to the first of August or a-proximately the first part of August, I might say, 1861. I was away from here until about the middle of October 1864. Excepting that time I have been here all the time.

694 Q. Were any of the trips that you have referred to, made about the time concerning which you have just testified?

A. Yes sir; I made two or three trips in 1860 and 1861, and then I made another trip through there I think sometime in fall of 1865.

Q. On any of these trips, did you ever experience any storms?

A. In 1865, after the surrender, and it must have been in October, I think——

Q. After what surrender?

A. The surrender of the Confederate armies; the surrender I

refer to was the surrender of the trans-Mississippi department under Taylor and Smith.

Q. Will you now proceed to tell us what happened on this occasion?

A. I was compelled, by business, to go to Apalachicola. At that time the only method of getting there was on public transports.

Q. Were those Government transports?

A. Yes sir. There was a large flotilla of those light draft transports here that had been gathered in aid of Canby's expedition against Mobile. I obtained transportation on a Government transport through the quartermaster, from New Orleans to Apalachicola. I boarded the vessel, she was at anchor off West End. The wind had been blowing quite severely for two days, I think from an easterly direction. The water on this side of Lake Pontchartrain was high but not very much disturbed. It was thought safe to start on the trip. We got over towards the Rigolets and the sea became so heavy that it was not thought safe to go out into the sound. The master, I remember, expressed some apprehension that he might strike the bottom with his draft in the high seas.

Q. What draft was that boat drawing, do you recall?

A. I only remember that it was a side wheel vessel with fore and aft rig, and I presume was drawing six or seven feet, I
695 should judge, from the construction of it. I hardly think they would have attempted to go through the lake with much greater draft. As we got over on the other side the master became alarmed and did not think it safe to go out into the Mississippi sound and he went to anchor somewhere between Point aux Herbes and the Rigolets. I think we were nearer to the mouth of the Rigolets than we were to the Point aux Herbes. Two anchors were gotten out and we had a fair lee, though the vessel rode very uneasily. At that time I represented parties in New York who contemplated the construction of a road to Mobile involving a permanent way across that swamp, and I was, like every citizen of New Orleans, interested in the question of overflow from the rear, and so the situation was one of particularly special interest to me. I went up on the ratlins of the foremast and I think I staid there from the time we anchored which was probably one o'clock until dark, overlooking the marsh. The sea was coming over there with tremendous velocity; the whole marsh, as far as I could see, was white with breakers.

Q. Was that to the southward of where you were; were you looking to the southward?

A. I was looking towards the Lake Borgne side.

Q. To the southeast?

A. Yes sir, to the southeast, and we, I remember, were pitching very considerably. Of course it was very tiresome to hang to the rigging. I made up my mind then, that the volume of water coming across there, breaking over the marsh, was far greater than any amount that could come through the Rigolets or Chef Menteur or

any of those small bayous. I watched the matter with a great deal of care and a very considerable volume of debris was coming, tufts of grass and small bushes which looked as if they had been torn from the banks of the bayous or torn up at least. Well we remained there all night and the next morning the wind had shifted around to the northward and about ten o'clock, as near as I can recol-
696 lect, they got up the anchors and went through the Rigolets. It was very rough but the wind had abated or changed its direction and we went out through Ship Island pass.

Q. Did you, on this occasion, happen to notice any indication of any disintegrating effect produced by the storms, on the land, in the shape of floating grass or debris?

A. Yes sir. I stated, that a very considerable volume of debris consisting of tufts of grass apparently torn up by the roots, and small bushes where the drift was very considerable, it drifted by us and it attracted my attention, particularly in view of what I stated, the proposed construction of a permanent way across the marsh. The feasibility was a matter of a great deal of dispute between engineers, whether it could be done or not.

Q. Was this condition of wave tossed area, as far as you could see to the southeast?

A. As far as I could see.

Q. About how much water was covering this area in depth, first say how deep were the waves, how high rather?

A. It is a little difficult to describe waves running over a low marsh unless you have seen them. As far as I could see towards the Gulf they seemed quite high, but they came in a series of long waves, flowing and foaming, and of course in the interval between the waves you could see the grass, but they came foaming if you know what that is.

Q. Have you any idea as to what depth of water would have been over the marsh?

A. Well, it would necessarily be higher on the Gulf side because the marsh would be considerably of an obstruction in the way of the water coming over to this side, but the water was probably over three feet above the normal level.

Q. Did you ever have occasion to experience another storm in that locality?

697 A. Yes sir; shortly after the construction of the road to Mobile.

Q. You refer now to the present Louisville and Nashville railroad?

A. Yes sir, the present Louisville and Nashville railroad across there. I was coming, I think from Washington, which must have been in '71 or '72 or '73, along there, and there was another very severe gale on the Gulf. When we reached what is known as English Lookout, we could not get any further.

Q. Is that what is called Pearl river?

A. It is this side of Pearl river.

Q. When you say this side, which side do you mean, on the New Orleans side?

A. On the New Orleans side.

Q. On the New Orleans side. It is near one of the branches of Pearl river?

A. I am not certain whether there is one of the branches of Pearl river that comes in there, but it is the last high land before you get to the salt marsh; we were stopped there. The marsh between English Lookout and the Rigolets bridge was all under water and it was considered unsafe I suppose, and perhaps impossible to go over the track. I got out of the train for the purpose of investigating the matter from that side of the marsh, and went along the shore there as far as I could go on that high land, and I found practically the same condition, you know, the sea breaking over the marsh, and it was difficult to determine the exact edge of the marsh except by the character of the break and the water was chasing across there just substantially as it did when I saw the storm from the open side, excepting, of course, the breakers were heavier.

Q. Did you have occasion to notice whether there was or was not any debris or disintegrated earth and turf on this second occasion?

698 A. I could not determine that because I was practically to the windward of it and not to the leeward; and could only get that where the drift was to the leeward. But that interested me for the reason—and why I remember it so distinctly—that in 1869 and 1870 I was city attorney——

Q. City attorney of the city of New Orleans?

A. Yes sir. A scheme had been devised, a very expensive scheme, of a revetment along the lake. It was a pet scheme of Mr. Bell who was then engineer. It was a tremendously expensive revetment and had been partially completed from what we now know as Bucktown, the line of Jefferson parish, down towards the New canal.

Q. You are referring to Lake Pontchartrain?

A. Yes sir, to Lake Pontchartrain. Well, it was proposed to carry it clear along the whole lake front and the expenditure was so enormous and the result of course seemed to me in an engineering sense so inadequate for the reason that in high water the banks of the canal were sources of danger, and the city was in no condition to embark millions in that scheme, that I energetically assailed it in committee and in the council and succeeded in arresting the construction at New canal, assuring the city, in my opinion, the city authorities, that the same money expended in revetting or increasing the resisting capacity of the roadway of the railway across the marsh would afford them better protection. And the time I witnessed this storm was after I had resigned; but of course I was interested in it in getting data to see whether my judgment about it was right. Well, we were detained there sometime, until everybody got nearly starved to death. Two or three gentlemen and myself

chartered a division hand car and went back to Bay Saint
699 Louis, thinking there must be a washout and uncertain how long it would take to repair it. The wind went down and changed its direction. We chartered a fishing vessel and came to New Orleans.

Q. How long did the break continue in the road at that time if you know?

A. It was 30 odd years ago and I could not tell. I simply know that the road was suspended for a considerable time and I know that afterwards, immediately afterwards, they adopted a system of more openings in the road, and a wooden revetment on the Gulf side in places.

Q. Was that revetment for the purpose of preventing the washing away and the destructive influences of storm?

A. I presume so; it could not have been for any other purpose, and it was quite efficient for that, because afterwards I went across that road when there was a southeast gale on and saw from the openings the water was perceptibly much higher on the Gulf side than it was on the other showing there was not a free exit through.

Q. Did you notice any destructive effects of either of these storms in the locality where you were at the time you saw them?

A. You can hardly tell what is going on under a sheet of foaming water. I have stated the indication of abrasion, in the drift. It was impossible for anybody—we were at a distance may be of 500 yards from the shore, and it looked like an immense sea of breakers and the breakers came over into the lake enough to disturb it, the condition of the vessel very much too, kept it pitching. I remember there were some furloughed Confederate soldiers that had transportation and they got very sick.

Q. Would these storms that you have referred to affected similarly the locality to the southeast of the point from which you made your observations?

A. They would if the resistance was the same. Of course
700 the abrasive action of the sea in the dynamic energy of the blow and the wash that comes from the accumulated water. I know nothing of the character of the shore and those islands and the marsh south of there, as to their capacity for resistance.

Q. Will you please look at this map marked No. 17 and upon being pointed out the Rigolets to the northwest with the L. & N. railroad crossing thereon, and your attention being called to what is commonly called the Louisiana marshes in the central southern portion of the map here, would or would not this Louisiana marsh have been affected by the storms concerning which you have testified?

A. In an easterly or southeasterly gale, with a heavy sea, I would suppose that the shock would be greater up here on the marsh you refer to as being south of the Rigolets, than it would be on the marsh crossed by the L. & N. road. But whether it would abraid it, or not, would depend of course, a great deal on the character of this marsh,

the extent to which it was bound together with roots, how much clay was in its composition, or whether it was sand.

Q. If the composition of the two earths were similar you would presume that similar results would follow?

A. I would say that in a southeast gale they would get a harder shock from the sea.

Q. Did you have occasion, at the instances you refer to, to examine the character of the soil composing the marsh in the locality of Lake Pontchartrain where you then were?

A. I did not, at that time, because I was about 25 feet up the rigging and the matter floating by seemed to be pretty free of earth. It consisted mostly of tufts of grass, that swamp grass, and small bushes.

Q. Did they appear as though they had been broken off or——

A. They appeared as though they had been wrenched loose and the swash of the water had washed the dirt away from them.

701 Q. From the roots?

A. Yes sir. I should judge so from the way they floated.

Q. Did you notice they had roots?

A. I assumed they had. I did not give that close observation. I was looking chiefly to ascertain the best data I could to get what abrasion was going on.

Q. Did you, afterwards, examine the character of the soil that composed the locality where you were then situated?

A. In 1872 or 1873, somewhere along there, the time when the Government established the lighthouse at Point aux Herbes there was considerable trouble about title, some little trouble about the contracts, and I went out there to the point.

Q. What position did you hold then?

A. I was United States district attorney for the then district of Louisiana.

Q. When you went out to the point did you examine the soil on that occasion?

A. Yes sir; I did, but it struck me to be higher than the average.

Q. What point was that? Was that Point aux Herbes?

A. Yes sir, where the lighthouse is. I remember that my impression was that if the soil was as loose as the title seemed to be around there, that it was pretty near fluid. I had a great deal of trouble with the title.

Q. Was that an alluvial soil mixed with roots?

A. There was a growth of roots. My recollection is there were some quite sizable trees there, that is, shrubs you might call them, 15 or 20 feet high.

Q. Would you be able to make a comparison of the soil which you then saw, with this sample of soil marked sample 1?

A. I would not. Nobody could at pretty near 30 years. It is a geological question that would require careful examination.

702 I know I went there for the double purpose of ascertaining whether it was probable that a lighthouse could be con-

structed there that would be permanent, and several gentlemen claimed the title to the land there, and there were a number of them I know along with me trying to point out their land and some of them had some grants or papers along with them. It gave me a great deal of trouble.

Q. Did you have any other occasion to go through this locality in which you went through storm besides the two you have just mentioned?

A. I think, probably, during 1865 and 1866 I made about four or five trips through there; but only on this one occasion was there any gale, or storm.

Q. You also, though, as I understand, experienced another storm when you came south by the railroad?

A. Yes sir, coming the other way.

Q. But those were the only two when you had occasion, when a storm was in progress?

A. My interest in the second storm was to examine the action of the sea on that marsh from the windward. I had seen it on the lake side from the leeward.

Cross-examination.

By Mr. McCLURG:

Q. Mr. Beckwith, you are not prepared to testify to any specific disintegration of the shores?

A. I could not.

Q. The same influence that you stated, in a general way, would affect the shores of the marshes, uproot the grass and bushes and carry them away, the same forces would strike the Mississippi shore, would they not?

A. The direction would be a little different.

Q. Coming from the southeast, would they, from the southeast, not strike the Mississippi shore?

A. It would strike some of the points substantially in the same direction.

703 Q. About the mouth of Pearl river substantially the same thing?

A. Yes sir. There was evidence that that whole flat, you know, between the Rigolets bridge and English Lookout, was all under water and the water was breaking over there.

Q. But as to any specific effects upon the shores you do not profess to be informed?

A. No sir, I could not be because there might have been tremendous erosion going on and I would not have been able to see it because it was covered by water.

Q. And you never had occasion to examine these shores with a view of determining what erosion was made?

A. No sir.

Q. And the force of your testimony, I understand, is from the point of general observation?

A. Yes sir. I might add that it was more careful than it would have been if I had not had interest in other matters.

Q. But not with any special reference to the erosion of the soil?

A. No sir, the reference was as to how much water was coming across.

ERNEST CUCULLU, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?

A. I am 69 years old.

Q. Where were you born?

704 A. I was born in the city of New Orleans.

Q. Where have you resided the greater portion of your life?

A. In the parish of Saint Bernard.

Q. Did your family reside there and if so, for how long?

A. In the summer we resided on the plantation and in the winter we resided in the city here.

Q. Where did your immediate ancestors reside?

A. In the parish of Saint Bernard.

Q. For how many generations?

A. For four generations.

Q. Where did you reside in 1850 or thereabouts?

A. In the parish of Saint Bernard, always having our home, though, in New Orleans also, our city home.

Q. We are discussing in this suit the question as to the territory south of the Mississippi coast and what appears upon map No. 17 as a sort of peninsular to the southward. Will you please state if you have ever visited that section or any portion of it and when you first saw it, indicating the point on map 17?

A. Well, from my early youth I used to go out hunting along Lake Borgne back of our plantation.

Q. Where was your plantation?

A. The plantation was eight miles below here, below New Orleans.

Q. Now, did you ever visit any portion of this territory south of the Mississippi shore?

A. Yes sir; I have.

Q. At what points?

A. Well, from the mouth of Bayou Bienvenu to Nine Mile bayou.

Q. When did you first visit it?

A. About 1847.

Q. Did you penetrate any way into the interior of this peninsular, if so, how far, about?

A. Which peninsular?

705 Q. This land here lying south of the Mississippi shore, east or west of Nine Mile bayou?

A. No; I never went farther than Nine Mile bayou except through here.

Q. Through where?

A. Through Nine Mile bayou out to the shooting pens, back. Would go out and camp for a week or ten days for duck shooting, and visit all the lagoons in the neighborhood of Nine Mile bayou.

Q. When did you last visit that section, the points you have indicated?

A. The last time was about 1857 or 1858.

Q. Did you, in your last visit, notice any change in the topography of the section you had visited, if so, in a general way what were they?

A. In a general way I have noticed it, in fact, all along that Lake Borgne coast, after each storm. I can cite a case where through a lagoon near Bayou Bienvenu——

Q. That is to the westward of this territory?

A. Yes sir, the west of this territory, where we had a passage out to the lake, that passage was filled up and another one was opened probably a quarter of a mile from that, after a storm took place.

Q. Will you examine this chart or map No. 17, in the neighborhood of where you say you went, and say what difference, if any exists upon that map or the delineation upon that map, and the topography at the time you visited it first in 1846?

A. It would be very difficult for me——

Q. I don't want exactly, but merely a general——

A. I noticed changes in places, right after a storm where there were some washings.

Q. Is that territory as represented on this map, more or less broken up, than when you first saw it, at that particular

706 point you visited in the neighborhood of Nine Mile bayou?

A. I don't know that I could answer that positively.

Q. As far as you could observe from the map, how would the proportion of land and water compare with what you saw when you visited it?

A. It strike*d* me that the proportion there on this map, there was more land when I was there than appears there on this map.

Q. Did you go into Bayou Boudreaux?

A. No sir.

Q. Did you go in False Mouth bay; Nine Mile bayou leads into False Mouth bay?

A. I have been out in the open back here, but I don't know what the name was. I don't know the names of the places.

Q. What do you mean by back here, do you mean south?

A. I mean south, going from Lake Borgne back.

Q. You speak of Lake Borgne, but Lake Borgne terminates in here; do you mean——

A. This body of water here.

By Mr. McCLURG:

Q. Going through Nine Mile bayou south?

A. Yes sir, going out in the different lagoons back there and shooting ducks.

By Mr. ZACHARIE:

Q. You are speaking of shooting ducks. Did you ever shoot snipe through there?

A. No sir.

Q. You say you have not visited that territory since when?

A. Since 1857 or 1858.

Q. Can you remember how wide Nine Mile bayou was when you first visited it, at the mouth?

A. I should judge about 500 feet, four or five hundred feet.

Q. Did you notice any change when you subsequently visited it in the '50's?

707 A. No sir.

Q. When you visited it in 1847, how——

A. I did not visit it in 1847. I was on the rear portion of the coast, not Nine Mile bayou.

Q. Well in the '50's?

A. Yes sir.

Q. How did you get into the interior of Nine Mile bayou?

A. By pirogues; we had a pleasure boat; we started from home from the mouth of Bayou Bienvenu in a pleasure boat and took our pirogues in tow.

Q. How big was the pleasure boat?

A. It was a sail boat some 30 feet long. And we either took the pirogues in tow or on board, and we would go down and camp at the mouth of Nine Mile bayou.

Q. Can you give about what the depth of water was, for navigation, in Nine Mile bayou?

A. No sir, I could not; I know it was deep but I could not——

Q. Do you know how it was in the interior. What character of vessels did you use in the interior, in the ponds?

A. Pirogues.

Q. What is a pirogues?

A. It is a light boat made of cypress, you know, a dugout, very light boat.

Q. How much would it draw?

A. From four to six inches, I suppose.

Q. Was it possible to navigate in this interior as far as you penetrated with a sail boat?

A. No sir; not to the hunting grounds, no sir, it was impossible.

708 Q. In these lagoons or ponds, could you have an idea how deep the water was, in floating your decoys?

A. It was hardly more than two to two and a half feet.

Cross-examination.

By Mr. McCLURG:

Q. Looking upon the face of this map No. 17 and comparing it with your memory of the observations you made in 1847 or '57, you are not able to speak with anything like accuracy about change?

A. No sir, I could not. Changes have taken place I did notice but in accuracy I could not.

Redirect examination.

By Mr. ZACHARIE:

Q. You were quite young when you first visited there?

A. When I first saw it, but I was speaking more in the '50's, but in '47 I was a small boy.

Recross-examination.

By Mr. McCLURG:

Q. You say then that Nine Mile bayou was deep?

A. I am speaking now of Nine Mile bayou the first time I was there in 1853 or 1854.

Q. And it was deep at that time?

A. Yes sir, it was a deep bayou.

Q. You did not go any further east?

A. No sir.

Q. And it was four or five hundred feet wide at that time?

A. Yes sir.

709 Q. You don't know how wide or deep it is now?

A. No sir.

Q. You have no idea what changes have been made in the configuration of this coast line?

A. No sir, I have no idea.

JAMES WILKINSON, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. I forgot to ask you whether—when you were on the stand the other day you mentioned about the Shell Beach club house being carried away in the storm of 1893. Can you tell us, if you saw or heard or were present at the blowing away of any substantial building at Pointe à la Hache if so what?

A. It was a very remarkable fact in evidence of the velocity of the storm, that on our courthouse at Pointe à la Hache which had

been recently erected there was a very substantial and strong brick tower through the masonry of which there were large iron bolts about two or two and a half inches in diameter bolting the whole tower together and at the top of this tower was a clock, a very large clock with a very large bronze bell weighing about 500 pounds. Just at the time when the gale was hardest, you, myself, and Mr. Estopinal, were sitting together with our feet against the floor holding the partition of the room that we were in that was being bent, the wooden partition, in by the blow, the wind having already blown out all the glass of the room facing the storm, and the same force of the wind came against the partition. Just as I say. At
710 the height of the blow I heard this bell on this clock, boom out above the roar of the storm, one, one o'clock. Shortly after there was a tremendous crash. None of us at the time, dared to go out and see what the crash was as the air was full of flying slates and other debris, and we found the next morning that this tower, this brick tower had been blown down, the rods had been twisted and broken and the tower had been thrown about 100 feet towards the river from the courthouse, and on the dial of the clock the hands marked five minutes after one, registering the time of its own destruction. The slates from that tower roof I found some of them across the river.

Q. How wide is the river there?

A. 2800 feet and a fraction. A number of other slates from the courthouse roof struck a building of Haspel and Davis. Part of the other slates from that courthouse struck Haspel and Davis's storehouse and stuck into the weather boarding and the roof of that building at right angles and remained there for weeks after. The fury of the wind drove them into the weather boarding in a way that no power, no human power could have driven them in there.

By Mr. McCLURG:

Q. What river was that?

A. The Mississippi river.

By Mr. ZACHARIE:

Q. Let me ask you right there. To what depth were these slates driven into the weather boarding of the storehouse of Haspel and Davis?

711 A. I should judge about a quarter of an inch, enough to imbed them very firmly, the weather boarding itself I don't think was over half an inch in thickness. They might have been through, but I didn't notice. I only noticed the remarkable sight of the building with a number of slates sticking out at right angles to it. At Mr. Onizeme Martin's place below the courthouse, his house was blown down and the rafters of the building were driven through the air some distance beyond the house end wise, with such velocity that one of them passed entirely through a horse and pinned it to the ground, the end of the rafter passed entirely through

it and pinned it to the ground. My own house at West Pointe à la Hache, a very large two story house, was torn all to pieces, the large two inch doors were driven through the wall and blown back in the orchards, two acres, in the track of the storm further to the southward.

Q. Let me ask you one question before you go any further. What was the effect, if any on the doors and windows of the Pointe à la Hache courthouse?

A. They were all blown in. The building was a new brick building. The windows towards the storm were all driven in and the glass blown out of them and the building very seriously damaged; the courthouse had cost some $23,000.

Q. Built how long before?

A. Not long before that. It was considered to be a strong structure but it was very seriously damaged by that storm.

Q. You can go on?

A. At the Ocean Club hotel that I had built at Grand island, which was a very large building with a tower above the second story, I suppose that tower would seat between 100 and 200 people, it was a sort of observatory on top of the hotel; that tower was blown off and traveled a quarter of a mile before it struck ground.

Q. How far, in a straight line, from the southern edge of
712 the disputed territory in this suit, is Pointe à la Hache where this courthouse was situated, suppose you take it to the courthouse?

A. The map shows it and it is generally considered to be about 22 miles.

Q. What storm have you been speaking of?

A. Of October 1st, 1893, probably the most terrible storm that has ever visited that section within the memory of the oldest inhabitant. There was a storm in 1837. We only know that by tradition. But this particular storm was more terrible and more circumscribed than any storm that had occurred in that country, any equinoctial storm or West Indian hurricane, tornadoes, of very narrow compass.

Q. Have you ever had occasion to trace the path or direction of the October storm of 1893 of which you have just spoken?

A. Yes sir. I was so seriously injured by it, financially, every orange tree I had being blown over and my residence being destroyed and the hotel that I had an interest in being damaged so much, and so many people being made destitute by it, that I traveled around in the injured or wrecked locality and noticed from the path of its ruin the path of that storm. Shall I state the path?

Q. Yes.

A. The storm began, as far as we could discover, southwest of Chenier Caminada in the parish of Jefferson in the State of Louisiana. It then came in from the sea, passed over Chenier Caminada, Grand island, Grand Terre and the country as far east as about Bayou Cypriene below Buras settlement. I noticed on Bayou Cook,

which is 25 miles, on the west bank, below Pointe à la Hache
713 and about five miles southwest from the river, that an enormous log with roots and everything, probably ten feet in diameter, had been swept in there by the high water and washed far up on the prairie probably two miles up in the prairie from the sea, showing the enormous force that the waves had rolled in over the main land with. From what I could see and gather while the fury of the storm at Pointe à la Hache came from the east, northeast, at any rate, why, the fury of the lower circle of the storm at Buras settlement and above Buras settlement, about 25 miles below where I was, was from the southwest, causing a tidal wave and the luggers from the country to the southwest were all driven on the land and some of them were driven across the embankment of the Grand Island road and left there. There was an enormous loss of life, there was a considerable loss of life in the section I was in. A number of houses were blown down. I think there were three people killed in that section, not from the water but from the falling houses. Now, that storm, then, came across, the fury of it, about 20 or 25 miles in width, came up travelling in a northeasterly direction from the southwest, passed up across in the rear of the parish of Saint Bernard.

Q. What do you mean by the rear, north or south——

A. I mean the eastern side of the parish of Saint Bernard, away from the river. The fury of it passed to the east of the courthouse, five or six miles from the river, on up Terre Bœuf ridge, passed over Proctorville and this country to the south, the country in the neighborhood of the southern part of Lake Borgne, and passed then, along the Mississippi sound and destroyed the railroad bridge at Bay Saint Louis in its track, and destroyed a large part of the track.

I don't know the width of the storm there, but if it was any-
714 thing like the width that it was in our section and in the lower part of Saint Bernard, it took in this whole area of country now in dispute.

Q. Did you notice, and if you did please state what you noticed, in regard to the water from the eastward coming up towards the Mississippi river at Pointe à la Hache?

A. The water in the river there in front rose eight feet.

Q. The river itself?

A. Yes sir.

Q. I am speaking of the water——

A. I am going to say. The water in the river rose about eight feet in about three hours. The water in the rear towards the sea rose from dusk until about one or two o'clock until you could row a skiff in the public road just behind the levee in front of the courthouse.

Q. You mean to say the Mississippi River levee?

A. Yes sir; there is a public road there that runs in front of the courthouse and the wind blew the water, in three hours, right straight up over the embankment. The water passed over the rail-

road track in the rear of the courthouse about 100 yards and the fury of the wind blew the cross ties over into the excavations alongside of the track.

Q. In order to bring this water up to the levee of the Mississippi river on the east bank, about what distance would it have to come over the marshes which lie to the eastward of Pointe à la Hache?

A. It would have to come I suppose—you can't say over the marshes, as all of the coast of Louisiana that I have seen
715 and I have been around a great deal of the coast to the sea, is cut up by an interminable lot of bays and lagoons. This is a product of the storms and nowhere in the country along the Louisiana coast are there any other conditions apparent. But it is probably across these bays, 12 or 15 miles, to the sea, but the solid Louisiana prairie would not be from the courthouse, away from these bays and lagoons, more than a mile and a half because these bays and lagoons, about that spot reach within about a mile and a half of the levee.

Q. Did you have occasion to notice, when daylight dawned, after the night you describe, the waters to the rear of Pointe à la Hache where these marsh lands are high?

A. There were waters there, then, but strange to say the course of the wind, after that storm, or with that storm, differed from any other storm I had ever seen. Nearly always these terrific storms blow hard from the east then from the southeast, then from the south, then the wind shifts around to the north, northwest; but that particular storm began in the southeast and backed around to the east north east and north, and then came out from the west with terrific force the next day and blew that water away from the rear country there in a few hours. Well, at daylight there was a whole lot of water in the public road and of course a complete sea of water behind, because the land at the public road or levee in Pointe à la Hache is about five feet above the level of the sea whereas the marsh in the rear is always at sea level, probably not over six or seven inches above sea level. I had a full set of topographical maps of
716 the State of Louisiana from which I made my observations.

Q. When did you *to* go to Pointe à la Hache, just on the eve of this storm or the commencement of it, did you go down there that night?

A. I went to Pointe à la Hache, my family were stopping in the city at that particular time and were away fortunately away from home. I went down to see some prisoners in jail at Pointe à la Hache, and I went down on the east bank and when I got to Pointe à la Hache in the morning about ten or eleven o'clock the river was very rough and my friends there told me they did not think it would be safe to cross, and fortunately I did not cross or I would have been in my house when it was destroyed.

Q. This storm occurred, or commenced on what day and in the evening or morning.

A. The weather had been murky the day previous, but the wind began from the southeast and blew fresh all day, blew hard all day.

Q. What day of the week was it?

A. It was on Sunday morning October 1st, I think it began, and was blowing there before I got there; but it gradually increased. You, Colonel Zacharie, and Mr. Estopinal came down on the night train and got off, if I remember correctly, at Pointe à la Hache about nine o'clock. The wind then was blowing a furious gale and had hauled to the east and the tide was running in.

Q. Do you remember how we got from the railroad to the hotel?

A. No, we had the doors at the hotel, the storm doors on the outside, shut at the particalar time, but I know that when you did come into the hotel I found a great deal of trouble in getting the
717 storm doors shut again as the wind was blowing so hard it was with difficulty I pulled the doors to.

Q. Do you remember whether we had to wade or did we come dry shod from the railroad?

A. I think you all were wet through, whether from the rain or the water under foot I don't know. I know when I ran out of the house I was in there was a tree blown against the house I was in.

Q. The hotel?

A. Yes sir. The end of the building started out and came back with a spring, struck against my bed, almost threw me out of the bed, and I didn't stop to dress, I went across and was very nearly blown in the river in my night clothes in getting to the building that you all were in, and the rain struck me then like shot being fired at me with a gun.

Q. In your prior examination the other day, you mentioned about how muskrats contributed to the undermining and cutting up of the grass of these marshes. I want you to explain more fully than you did at that time, as to what effect you have seen muskrats have upon this marsh territory?

A. I take it that the——

Mr. McCLURG: Mississippi reserves an exception on the ground that this witness has testified on all these matters heretofore in this case.

A. I take it that the muskrat is, as to the prairie grass of these marshes, a member of the same family as the beaver, only
718 that, instead of the beaver cutting down trees, the muskrats cut down the grass and leaves on the roots of the grass, they cut down the grass and make nests out of it until there are all over these marshes little hillocks that looks very much like the pictures of the prairie dog mounds that you see in the West.

Q. Where are the entrances to these little mounds?

A. They come from underneath the grass. These muskrats burrough in, eat these grass roots, underneath the surface of the ground, very much like a mole does and nearly always their holes terminate off the shore of a lagoon, bayou or bay.

Q. Now, the entrance——

A. Consequently when these prairies are flooded, even by the tide, a receding tide running through these holes bears some of the deposit and earth and vegetable matter out into the bays and very often, shoals the bays and enlarges the bays.

Q. Are these muskrats herbiforous?

A. Yes sir, they are *hiberf*orous, but they do not like any land that has not a great deal of water.

Q. Where are the entrances to these little huts or buildings which they make, below or above the water?

A. They are below the water, so far as I have been able to observe. Of course they are made up of such a mass of tangled grass, it may be that the muskrats burr*ough* through these masses of tangled grass, scratch themselves through. I have seen them in the nests but never saw them go in or come out of the nests.

Q. You have seen them disappear in the water?

A. Yes sir. You see they swim in the canals and bayous along the edges of the banks always; there is rarely a time that you go in the bayous now that you don't see them, there are myriads of them. They are getting so bad, when I went down, since I testified
719 I have been down to Deer Range plantation where they have abandoned the prairies and have come up and cut down a number of rows of sugar cane, so much so that the manager of the Deer Range plantation has to have a man with traps to catch them and prevent their destruction of the sugar cane itself.

Cross-examination.

By Mr. McClurg:

Q. Down in this section where so much havoc has been made by storms and muskrats, you spoke of railroads; they still have railroads?

A. Yes sir; the railroads are on solid land however, generally very close to the levee.

Q. Answer me this. I understand the trend of your testimony to be the subsidence of the land and the encroachment of the water. But there is nothing of a serious character in that respect to create anything like a scare to people living in this section?

A. As I told you before, I do not think the subsidence of the lands which are used for cultivation, lands that are close behind the levees and the river, was so great as the lands in the rear where there was nothing but marshes because the lands near the river are not composed of the vegetable matter to such an extent as the lands in the marshes and consequently do not disintegrate and erode, like the lands in the marshes; but it has been a very serious matter with the planters upon the lower coast——

Q. What do you mean by the lower coast?

A. The lower coast, below the city of New Orleans, on the Mississippi below New Orleans, and today I do not think there is a single

successful planter that raises sugar cane there, but has to pump his fields by steam machinery to keep them thoroughly drained.

720 We have now, on the ten plantations operated by my brother, pumping machinery which is capable of discharging over three million gallons of water an hour, in order to keep our fields dry from the seepage water and rain water. We estimate it costs us about $2.00 an acre to drain these lands from the surface and seepage water.

Q. What do you know about the relative height of that land now as compared with your remotest recollection with reference to its subsidence?

A. All I know is what I saw. The lands, in that section, seem to be about the same relative height above sea level as the lands upon the west side. That is, they are submerged by high tides, or possibly six inches above ordinary tide level, and the flats are bare at very low tides, but as far as the value of that land for cultivation I think it is nil.

Q. I believe, you stated, when you were on the stand the other day that you would not undertake to say what the subsidence was in this immediate territory in dispute except on general comparative theories?

A. That is all.

Q. This storm in 1893 you say travelled from Pointe à la Hache to the northeast across by Proctorville, thence on up along to the Mississippi shore. You have then personal information as to the destruction along the Mississippi shore by that storm?

A. Yes sir, I saw it. I went over to Bay Saint Louis and saw it.

Q. What did you see?

A. I saw the bridge was partly destroyed and torn away.

721 I saw every bath house and wharf along the coast there washed away, but I could not get any further than Bay Saint Louis because the railroad stopped operating there for some days.

Q. About the coast along Pass Christian, in fact, in front of Hancock county, there was great damage done was there not?

A. The bridge being destroyed at Bay Saint Louis, I did not go any further, and the bulk of the settlements at Pass Christian are about two or three miles east of Henderson point and you could not see from where I was the exact damage that had been done at Pass Christian.

Q. What was your observation, from Pearl river to Bay Saint Louis?

A. My observation of that section of the country, I travelled through it on a train going 25 miles an hour and I did not have time to observe anything.

Q. How far is the railroad from Pearl river to Bay Saint Louis from the Gulf coast, from the shore?

A. Along there around by Pearl river to the Rigolets there are several places there where the sea comes in, I should judge, or the

sound comes in, within about from 300 to 600 yards of the railroad; but at Pearl river, if my recollection is correct the sea trends off there to the southeast, the shore line trends off to the southeast and you are not within a mile of the sound, after you pass a mile east of Lookout.

Q. Well, from your knowledge of th- violence of that storm, would you be willing to say that you would not be surprised if you
722 found that it had wrought great havoc along the shore line of the sound as far east as Biloxi?

A. I was told by Mr. Paquette that it wrought enormous havoc as far as Pascagoula and that the storm was perfectly furious.

Q. In fact it drove some of the schooners out into the streets of Biloxi and of Pascagoula, did it not?

A. Yes sir, but of that my knowledge is hearsay. If it struck them as hard as it did us, why——

Q. Pointe à la Hache is on the western bank of the Mississippi river?

A. On the eastern bank of the Mississippi river about 45 miles below New Orleans by river and 35 miles by rail.

Q. How far is it from Pointe à la Hache eastward to where the plantations stop and the waters of the marshes begin?

A. Well, the cultivable part of the parish of Plaquemines extends more than a mile from the river on *the* either bank. After that it was one succession of sea marsh and bays and bayous and lagoons out to the sea.

Q. I wish you would please examine this map No. 17 which gives you the eastern shore of Lake Borgne from Malheureux point on down by Proctorville and—what is this point down here?

A. Proctorville; and Malheureux point is up here.

Q. Tell me now whether there are plantations to the east of that line?

A. When you asked your last question I understood you referred to the parish of Plaquemines. In Saint Bernard parish which you now speak of, the plantations only extend out about 15 miles and there are no plantations whatever between Proctorville which
723 is Old Shell beach now called Shell beach and Mal-eureux point, as it is all low sea marsh.

Q. And in Saint Bernard parish, east of the line from Malheureux point and Proctorville, there are no plantations?

A. There are no plantations and in my opinion *my* cultivable land with the exception of one or two shell mounds at Saint Malo.

Q. There is no industrial life to amount to anything, in that section?

A. Nothing whatever. The only value of that section of the country, is, in its fishier-s, in my opinion.

CHARLES MARSHALL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. I believe that you are the superintendent of the Louisville and Nashville railroad?

A. Yes sir, of the New Orleans and Mobile division.

Q. The particular line that you have referred to runs from the city of New Orleans to Mobile?

A. My division does.

Q. How long have you been connected with the New Orleans and Mobile division of the Louisville and Nashville railroad?

A. Altogether, since January 1st, 1881; as superintendent of the division, since September 1st, 1886.

Q. When was the railroad first carried through to New Orleans?

A. I only know that by hearsay.

724 Q. What date was that, as near as you can get it?

A. It opened for traffic in 1871 is my understanding.

Q. How far west did it come, prior to its being connected with New Orleans. I mean by that, when was the connection made over the marshes lying between that section at Pearl river and the New Orleans end?

A. I do not know.

Q. In other words the purpose of my question was to ascertain whether the railroad had previously extended as far as the high land went, before it was, at a later date connected with New Orleans?

A. I don't know that.

Q. Is this the railroad that you refer to, which, on map No. 17 is indicated by a line running from the left hang or western side of the said map skirting the Mississippi main shore? crossing Bay Saint Louis and thence extending towards the northeast corner of the map?

A. Yes sir.

Q. Have you any knowledge, Mr. Marshall, of any storms which have affected the Louisville and Nashville railroad, since you became connected with it in 1881?

A. A good many.

Q. Were there any storms that affected the railroad between 1871 and 1881, of which you have no personal knowledge, but of which data could be given to us through others connected with your road. In other words——

A. I understand your question. I was thinking if there was any one that could give that information, connected with our service. I have no personal knowledge, but have been informed that the road was washed out a number of times between 1871 and

725 1881; but the men who told me, some of them are dead and the others I do not know where they are, and I do not knoow

anybody connected with our service that could testify as to that point. If you wish I can make inquiry and return here again and testify as to that.

Q. Well, just for the present, any information, Mr. Marshall, that you can give us in regard to those who are dead would be perfectly acceptable as coming from yourself?

A. A section foreman, whose name was G. D. Brown, who in those years worked on a construction train, told me of washouts taking place in the old company's time, as we express it, that is, prior to the time that the Louisville and Nashville acquired the road. If he told me the years in which these washouts took place I don't remember them, but in conversation more than once he mentioned the washouts and his work at them.

Q. Is this man Brown now dead?

A. Yes sir.

Q. Is there any one else that you remember who is now dead who made any statement to you in regard to any interference with the traffic of the old road as the result of storms?

A. Yes sir, a man named Philip Caldwell who was a locomotive engineer and subsequently working under me as a conductor told me of his hauling earth to washout places in the old company's time and in this territory.

Q. Is this party also dead?

A. Yes sir.

Mr. McCLURG: I do not understand the witness to mean that the only persons who know of these washouts are dead. I understand that there are other persons living that can testify to that as a fact.

726 A. I said I could make inquiry as to that and come back again and give their names. I can only testify now as to what dead *dead* men told me.

By Mr. DYMOND:

Q. It is purely tradition that has come to you from men that are now dead?

A. Yes sir.

Q. Now, coming to your own period of connection with the Louisville and Nashville railroad, which began in 1881, are you familiar with all or whatsoever vicissitudes the railroad has sustained since then, as a result of storms on this coast?

A. From January 1st 1881 until September 1st 1886 I was freight agent in this city and my business with the road was not in the department that dealt with the maintainance contract and with repairing the road after storms. It has only been since September 1st 1886 that I have had charge of that department of the road; but in February 1881 or 1882 I had a personal knowledge of a very bad storm which interrupted the road between New Orleans and Bay Saint Louis and which washed out the track in the vicinity of

Michaud Louisiana, Chef Menteur, Lake Catharine, Rigolets and Lookout for the matter of three weeks.

Q. That is, kept the track broken, the communication broken?

A. Yes sir, for about three weeks; it might have been 19 or 22 days. Since September 1st 1886 we have had a good many storms. The dates of them I do not remember, of all of them. I do remember, however, that we had one on the 18th day of August 1886. We had them until 1893 had them nearly every fall. The second day of October 1893 was a very bad one. The last one was the 14th day
of August 1901. The dates that I have mentioned are all I
727 can recall now, but there were more of them as I stated.

Q. I presume your are familiar with the character of the soil traversed by your road between New Orleans and the mouth of Pearl river, are you not, upon which the road bed is built?

A. Yes sir, except as to the soil where the road passes through Lee station out here, I don't know about that.

Q. Have you had occasion to visit what is commonly called the Louisiana marshes lying south of Bay Saint Louis and south of Pearl river?

A. Yes sir, very frequently.

Q. Have you ever had occasion to notice the character of the soil formation in the Louisiana marshes?

A. Yes sir.

Q. How does the formation in the Louisiana marshes compare with the soil formation at which the washouts occurred on your railroad about which you have been testifying in constituency, and resistance to storm?

A. We had washouts that have taken place in the marshes. Those occurring in Louisiana have taken place in the marshes. But the washout would be that of the roadbed which was foreign, very largely foreign material hauled there from somewhere else. The base of it, originally, was made from marsh soil and then on top of that was hauled by trains sand from Mississippi, put on top of it. When a washout would take place this roadbed would be washed away from under the track and if at the point of the washout the current was very strong it would dig out a hole six feet deep in the original soil of the marsh underneath the place where the track stood before the washout.

Q. How did the original soil underlying your roadbed, compare with the character of the soil in what is commonly call- the
728 Louisiana marshes?

A. Let me understand that question.

Q. What I call the Louisiana marshes is that area of marsh lying between Malheureux point on the west and Isle à Pitre on the east side of a line drawn along that shore line down, in this interior which lies south of that shore line?

A. I am testifying as to this marsh up here.

Q. Have you ever been in this area in dispute in this case, lying

south of the shore line extending from Malheureux point to Isle à Pitre?

A. I have never been in there.

Q. You then have no direct knowledge of the character of the soil of which this marsh is composed?

A. No sir.

Q. Will you now please look at this sample of soil (being shown sample No. 1) and state how it compares with the character of soil found in the marsh along which your roadbed was built?

A. That looks to be the same. That looks to be the same, I don't recognize that vegetation in it, but the soil looks to be the same.

Q. After you leave Pearl river, going westward, does or does not your roadbed cross any soil that would have the character of sample No. 2?

A. Between Pearl river and New Orleans.

Q. Yes?

A. I never saw anything like that. I saw it in Mississippi.

Q. What do you recognize as being similar to this; does that look to you like Mississippi sand?

A. It looks like Mississippi sand.

Q. When you say Mississippi sand do you mean sand from
729 the State of Mississippi?

A. From the State of Mississippi, yes sir.

Q. If the same conditions of soil and the same condition of current and exposure during these storms existed in this area which we call the Louisiana marshes, would you or would you not, from your experience, consider that similar results would have happened as were noted by you in your roadbed which came under your inspection?

Mr. McCLURG: Mississippi reserves an exception to that as being wholly a matter of conjecture.

A. As regards being covered by water?

Q. As regards its erosion and disintegration from the effects of storms?

A. I should say there would be a question of currents. If the current impinged here as there it would be the same effect. It is possible, however, that this may be in the process of formation by deposits from overflow water, I can't say——

Q. Overflow from where?

A. From the sea, bringing sand there and drift and sea weed over it.

Q. Of course you do not personally know that?

A. No sir.

Q. Which one of these several storms, was, in your experience the most destructive to your railroad property?

A. That of October 2nd 1893, so far as bridges were concerned. But it was not so destructive in Louisiana, because a few years be-

fore our roadbed had been raised from East Pearl river all the way to Michaud, it had been raised on a average of about 3½ feet.

730 Q. Michaud is westward of Pearl river and is in Louisiana?

A. Michaud is in Louisiana. Therefore the destruction on account of that big storm of October 2nd 1893, was not so severe in Louisiana as other storms. The storm of February 1881 or 1882 was the most destructive in Louisiana.

Q. Have you any way of telling the velocity attained by the wind during the storm of February 1882?

A. No sir.

Q. Have you any way of telling its velocity by the destructive results produced by the storm?

A. No sir.

Q. Have you any way of telling the velocity of the storm of October 1893?

A. I have not. I knew but I have forgotten.

Q. Have you any way of telling its velocity by the destructive effects produced by the storm af 1893?

A. No sir.

Q. Was or was not your bridge at Bay Saint Louis which lies immediately north of the Louisiana marshes, as shown by map No. 17, was or was not that bridge severely damaged by the storm of 1893?

A. There was about a mile of it washed away, that is, the track and the superstructure and a good many of the piles, about a mile of the bridge with the exception of the draw-bridge, was washed away.

Q. Was that bridge securely built and put together prior to its being washed away?

A. Yes sir. But there was a fault in its construction which cut a figure in the damage to the bridge and it was this. This represents the pile, this represents the cap, the cap projected over

731 the pile and the waves would get a tree, a drift tree, 50 feet long perhaps, and strike this cap, come up this way and strike that cap and knock the pile in to the water. In re-constructing the bridge that cap was made flush with the pile, besides being strapped down with a iron strap that went over the cap and alongside of the pile and bolted through. So, in the second severe storm, which was very nearly as severe, August 14th and 15th, 1901, the waves would throw the drift entirely over the bridge without damage to it, or with slight damage? The bridge was strong in 1893 but it had that fault.

Q. Were the results shown by these storms which you have testified about, indicative of a very severe hurrican-?

A. Yes sir.

Q. What, Mr. Marshall, was the general effect produced by these storms concerning which you have testified?

A. The effect was to raise the water; overflow the marshes and low lands, run over the track, the roadbed, and then cut away the

embankment; washed the track out some distance dug away in places of greater or less extent, the roadbed dissolved the sand, spread it over the marsh and leave the original surface of the soil with holes in it where the track had been.

Q. Now as to the bridges?

A. As to the bridges, the wat*re* came up until it would impinge against the, in some cases, against the iron spans and displace it; in one place in Mississippi it displaced it so that it fell down and fell in the water and broke up. At Pearl river—that was at West Pascagoula, in one of the storms. At Pearl river it displaced the draw bridge and blew one or two of the spans from the piers to one side perhaps six inches from their positions. The bridge stood there out
732 of place, it could not be used until jacked back into position again after the storm. I have described how, with the trestle at Bay Saint Louis and also Biloxi the damage was done, by the waves driving heavy drift in front of the bridge striking the top of the trestle work and washing it away, also at Bay Saint Louis several vessels were driven bodily through the trestle; of course—they cut their way through, cut the whole thing taking every thing in front of them; I believe that happened in two places at Bay Saint Louis.

Q. From your knowledge of the situation did the storm which thus affected the railroad skirting the southern main shore line of Mississippi, was the direction of the wind such as would carry those same storms over these Louisiana marshes lying immediately south of this shore line concerning which you have just testified?

A. Yes sir.

Q. Are you familiar with the effect produced by the storm of 1902 on the main shore line of Mississippi in the neighborhood of Biloxi?

A. You mean 1901?

Q. It might have been 1901?

A. Not of my personal knowledge. I saw pictures in the newspapers of the damage done at Biloxi and Waveland.

Q. Did you ever ride along the front road in the neighborhood of Biloxi after a storm?

A. No sir. I did at Bay Saint Louis.

Q. What effect was produced on the main Mississippi shore at Bay Saint Louis, as the result of the storm?

A. The banks, or bank was washed in a great many places. At two places it was necessary for the front road to be put back
733 from its original position.

Q. How far back?

A. I should say at one place perhaps fifty feet. Another effect of the storm was to wash away bath houses, I believe there were only one or two left at Bay Saint Louis from that storm.

Q. What was the character——

A. It washed away breakwaters that people had put there to protect their shore; besides blowing down trees and fences.

Q. What is the geological formation of that shore line, do you know?

A. Where the road runs?

Q. Yes. I mean the Mississippi shore line, we will say between Bay Saint Louis and Pearl river concerning which you have just been testifying, and I mean the front shore line exposed to the Gulf or Mississippi sound.

A. On the sound, I could not tell you.

Q. What is it where your road bed runs along?

A. It is, in places, sand, but the road intersects every now and then, marsh land extending back from the front to the rear until you get near Pearl river where you strike a plain, it used to be called, if not now, Grand plain, where the ground is pretty much the same as it is west of Pearl river. That plain, I should say, is two miles in extent from a station called Ansley to the river. Just at Pearl river is a——

Q. You are now speaking of east or west Pearl river?

A. I am speaking of the main Pearl river that is crossed by the draw bridge. Between a bayou and our railroad track is a little high ground, perhaps 200 feet in length where Baldwin lodge is established, but the balance of the plain is about the same character, a little firmer than Louisiana marsh land.

Q. When you noticed this erosion which had occurred at Bay Saint Louis which caused the moving back of the road. I presume you mean by the road, the public road for carriages etc?

734 A. Yes sir.

Q. Did you notice the character of the earth as to whether it was sand or clay or mixed?

A. It was mixed sand and clay.

By Mr. ZACHARIE:

Q. Were you present in these localities along your road during these storms say, that is, at the height of the storm, in February 1881 or 1882?

A. I was in New Orleans.

Q. How soon after the prevalence of the storm did you visit the locality and where did you go?

A. There was a freight train which had left New Orleans and got off the track in consequence of the storm, getting in a washout place. It had freight on it, it was a train of freight. There were some live stick on the train also. That train remained there for some days.

Q. Where do you speak of, what locality?

A. Somewhere in the vicinity of Chef Menteur. How long after that I don't remember but I went down there for the purpose of seeing after the freight. I did not go all the way to the train. I came back, I believe, because we let the men that were working out there come back with what they could get. I was working in the vicinity of Michaud, I did not go to Chef Menteur.

Q. Were you able, at that time, from the effects of which you observed, to judge from what direction the storm came?

A. From my own observation?

Q. Yes?

A. No sir.

Q. Now, in regard to the storm of 1893, were you present in this particular locality at an- time during the prevalence of that storm?

A. In that particular locality?

735 Q. Yes.

A. No, sir, I was at the Mobile end. I was in the storm there.

Q. How soon after the storm did you visit this particular locality where the damage was done?

A. About 18 days.

Q. Were you able to judge, from what you saw, as to the direction from which this storm came which inflicted this damage from what point of the compass?

A. Let me understand about that. I know which way the wind blew from; but I cannot say that I can tell that from the indications I saw.

Q. Well, state what direction the wind came from and how you know it?

A. The wind blew first from the southeast; that was the storm of 1893, and then from the northwest.

Q. How did you get that information?

A. I was in the storm.

Q. Where were you in the storm?

A. When it was at its maximum, it began in the night, I was in Mobile, I left there early in the morning, I don't remember the hour but when the storm reached its maximum I was at a place called Venetia, Alabama, about nine miles south of Mobile.

Q. How soon afterwards did you visit this particular point?

A. About 18 days.

Q. And you judged the course of the storm from what you observed at the points where you were?

A. Yes sir.

736 Q. Now, in regard to the storm of 1901, were you in this particular locality or where were you at the time of this storm?

A. I was at Bay Saint Louis when it began, and attempted to come to New Orleans. I was in it between Lake Shore station and Ansley station, for several hours.

Q. Was that in Mississippi?

A. Yes sir.

Q. How far west of Bay Saint Louis were those points which you just mentioned?

A. About ten miles to where I was.

Q. Did you observe from what direction the wind came, in that storm?

A. A little east of north.

Q. Did it continue to blow from that direction?

A. Yes sir, until just before it ended and then it whipped around to the other direction for a little while.

Q. What do you call the other direction?

A. From the west, perhaps south of west.

Q. Can you describe what you saw in regard, if you observed anything, in regard to the waves and water as to flooding territory, or other factors, which showed the violence of the storm?

A. This last storm?

Q. Yes.

A. I was on the coast train. There were a great many passengers on the train. It was my belief that we could get through to New Orleans. We left Bay Saint Louis to make the attempt. I was on the platform, the rear platform of the train. When
737 we got out of the woods, south of Waveland or west of Waveland——

Q. State how far Waveland is from Bay Saint Louis?

A. About four miles, but this place was about half or three quarters of a mile west of Waveland where there was an opening extending to the sound, a low marsh and without trees. The train was exposed to the violence of the wind and then I realized how strong the storm was and that it was increasing. The water from the sound was beating up against the roadbed.

Q. What was the condition of the marsh which you have just spoken of?

A. It was covered with water.

Q. Have you any idea of the depth of the water that was over it?

A. It was several feet deep.

Q. Was that water quiescent or was it in the form of waves?

A. It was in the form of waves.

Q. Could you——

A. And dashing up against the road.

Q. Could you form an idea of the depth of the water and the height*h* of the waves?

A. I formed my idea of the depth of the water from a general knowledge of the height*h* of the roadbed.

Q. Can you state about how high that was?

A. I should say several feet, three feet maybe.

Q. How about the waves, any waves at all?

A. Yes sir.

Q. What did they seem to be in height*h*?

A. I formed no estimate of that; but a spray was dashing up in the air particularly against the road. We proceeded until the train got down about Ansley station.

Q. How far did you say that was from Bay Saint Louis?

738 A. That is about ten miles, perhaps eleven. There, the engineer came to a stop because the waves were dashing over the track itself and he knew he could not pass it. The storm had

increased in violence and the conductor and myself had a conference, we saw then we couldn't get through, as to what we should do. The first thing to be done was to get out of that wind. We were afraid for the safety of the train. So we backed up until we found a skirt of woods where the trees were low, the tall trees were out of our reach. We staid there sheltered from the wind, the train stopped. Knowing that the storm had increased in violence and not wanting to be cut off from the world and something to eat, I directed the trainmen to send a flagman in the rear to see if there was any damage to the track and to keep any other train off of us that might be coming in our direction and gave him time to go a mile and instructed him to keep on going to Bay Saint Louis or until he got a train. And then we backed up and when we crossed those places I mentioned the water was breaking over the track——

Q. You mean that marshy place?

A. Yes sir, I should say there were several of those places. This was the largest one. We got back to Bay Saint Louis safely. And that place afterwards washed out.

Q. The place which you crossed?

A. Yes sir.

Q. In returning to Bay Saint Louis?

A. Yes sir.

739 Q. During the progress of this train and its return to Bay Saint Louis, from what direction was the wind, at that time, of the storm?

A. A little north of east.

Q. Did, where you were, seem to be, from your observations, at that time or afterwards, the center of that storm, or was it the edge of that storm?

A. It must have been the edge of the storm, as it continued so long it continued from that time about 24 hours although I read in the papers, I think I did, that the Signal Service people stated it was two storms one occurring before the other had scarcely gotten out of its way.

Q. Were you present in this locality or about there, at the time when you say it shifted around to the northwest?

A. I was at Bay Saint Louis.

Q. Did you have any opportunity of observing, and if you did, what was the violence of the storm when it shifted to the northwest?

A. I was in it and watched it. I was engaged in filling sacks with sand, piling them around the bulkhead of the bridge. There was a schooner with some people on it driven into the bridge.

Q. Read the question? (Question read.) I will add to that. As compared with the storm from the east or southeast?

A. The north west wind?

Q. Yes?

A. It was not near so strong.

Q. Now what is the effect, if any, of these winds from the
740 east and southeast, in filling up the Mississippi sound and Lake Borgne and Lake Pontchartrain, so far as you observed. Does it diminish the water or does it increase the water?

A. The east wind and the northeast wind drives the water into Lake Borgne as a pocket. It goes then into Lake Pontchartrain it reaches Lake Pontchartrain through the Rigolets, unknown pass, Little Rigolets, Chef Menteur, and even Pearl river, backs the water up.

Q. How about the western end of Mississippi sound. Does it have any effect, if so, what, in regard to the filling up of the sound with an unusual amount of water?

A. Yes sir, it fills that up with an unusual amount of water. And the southeast wind also, as to filling up Mississippi sound.

Q. Now, what is the effect when the wind shifts around to the northwest on those accumulated waters in the sound?

A. It drives them out very rapidly.

Q. Is it more difficult or is it easier for those waters to escape then, these accumulated waters, than the ordinary waters in ordinary times when there is no storm?

A. Does your question mean, does the northwest wind facilitate the running of the water out?

Q. No. I mean to say as compared with the ordinary amount of water, what is the effect as to the easiness or difficulty in discharging those waters from, these accumulated waters from these sounds, lakes, etc. Is it easier for that discharge or is it more difficult for them to discharge? You have testified that it filled up these sounds?

741 A. Yes sir. As soon as the wind which has banked up the water ceases, the water begins to run our very rapidly, particularly when the tide begins to go out; but when the wind changes and blows in the direction of the running water the current is very violent and it rushes out.

Q. Is it, or is it not a fact that these waters are balled up as it were and more difficult to discharge on account of the accumulation of this extraordinary amount of water?

A. It takes some time for it to run out.

Q. Does it discharge with the facility that it would with ordinary tides in calm weather?

A. That is difficult to answer. It runs out very swiftly and falls rapidly. At the ordinary stage of water it is running both ways according to the tide.

Q. How long, or about how long do these storms which you have described, last?

A. From the incipiency to the height is usually about 48 hours; then they continue about 12 hours. They are over very quickly, when the wind shifts.

Q. Have you ever noticed any subsidence of these marsh lands in

southeastern Louisiana, any evidence of it, that is, the sinking of the land?

A. No; except where the sinking has been caused by the weight of our track and roadbed.

Q. Geologists state that there is about a four foot subsidence in a century; have you ever seen any evidence to justify that theory?

A. I have not. I believe the contrary—oh, a moment, please, what I believe is, that there is an accretion to the surface of the marsh.

742 Q. By what means?

A. By the rotting of vegetation, deposit of sand and drift from these overflows. If there is any general subsidence discovered by the geologist I don't know anything about it. I have not observed any.

By Mr. DYMOND:

Q. Is, or is not, the question of the damage suffered by your road, or its New Orleans division, as to expense, a matter of serious consideration by the management of the road, so far as these storms are concerned?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

Q. You have been questioned, Mr. Marshall, a great deal about the direction and effect of storms, and of the different kinds and stratas of earth. I am not mistaken, am I, in believing that you have not undertaken to testify about these matters scientifically or as an expert, but rather from your observation that was given during the time you had business along the shore with your railroad?

A. Yes sir.

Q. And I understand you to state, in your direct examination, that you are of the belief that these marsh lands over which your road runs are increasing in height rather than subsiding?

A. Yes sir. I stated that I did not know anything about the general or geological theory of subsidence; that my personal belief was that by accretion the ground was getting firmer.

Q. And that belief is based on your observation during the last 20 years, of that section?

743 A. Yes sir, 18 years.

Q. And that applies to the marsh land east and west of Pearl river?

A. West of Pearl river.

Q. You think those marshes are firmer there than they were in 1886?

A. I think so.

Q. Has there been any displacement of trestling on your road

along that portion of it about which you have been interrogated, by fills, hauling in of dirt, since your knowledge of it?

A. Not within my time.

Q. Do you not know, from the history of the road and its traditions, that a great deal of it that is now on ground was originally built on piling?

A. On trestle work, yes sir.

Q. And I have referred, of course, to that portion in the neighborhood of the Rigolets and on eastward to the Pearl river?

A. There is an embankment through Lake Catherine just between the Rigolets and Chef Menteur where, I have been told, the lake was crossed by a trestle work once. A time or two when there was a washout I have observed the remains, under the ground, of work showing that once there was a culvert there or a short bridge there in the vinicity of Lake Catherine and Chef Menteur.

Q. How far would you say these marsh lands extend east of Pearl river along the line of your road, excepting those high portions that you spoke of in your direct examination?

A. Do you mean towards Lake Borgne or towards Bay Saint Louis?

744 Q. I mean eastward from Pearl river along the line of your road towards Biloxi?

A. Eastward you mean along the line of our road?

Q. Yes?

A. About two miles.

Q. How is it then, at the end of that two miles, on eastward the soil, what is the character of the soil eastward from the end of that two miles?

A. Sandy, with the exception of the intervention of these marshy places extending back from Lake Borgne to the interior; there are several of them.

Q. This prairie stretch that you spoke of is in the neighborhood of Waveland, is it not?

A. In the neighborhood of Waveland is a marsh extending back from Lake Borgne to the interior, called Jackson's marsh; but I spoke of a prairie that is called Grand Plains, that is in the neighborhood of Pearl river, it lies, it begins at Pearl river and extends back to, about two miles to a place called Ansley.

Q. Is it not true that the character of the soil along your road way, at about Ansley or Bay Saint Louis, is generally of a sandy nature?

A. Yes sir.

Q. Then, east of Bay Saint Louis on to Biloxi, what is the general character of the soil?

A. Sandy.

Q. And is that not the character of the soil along the Gulf coast from say the south of Pearl river around to Biloxi?

A. Yes sir, sandy.

745 Q. Same character of soil?

A. Yes sir.

Q. Susceptible——

A. Well, there is a little more loam in it in the vicinity of Pass Christian than at Biloxi.

Q. Easily susceptible to the action of the waves, especially in times of storms?

A. Yes sir.

Q. These storms of 1893 and 1901 which you spoke of as having done damage to your road, came from the seaward?

A. From the seaward, yes sir.

Q. And the water that damaged your track and drove the vessels through your trestle work, was Mississippi Sound and Gulf of Mexico water?

A. Mississippi Sound, Gulf and Lake Borgne water.

Q. Driven in by the wind from that direction?

A. Yes sir. To be exactly accurate some of the damage was done by the return water when the wind shifted around.

Q. But the greater damage was done as it went out of the sound across your track?

A. Yes sir.

Q. You have no personal knowledge, as I understand it, of the physical changes in the coast from Malheureux point down here along these Louisiana marshes at Isle à Pitre?

A. No sir.

Q. And no specific information as to the damage done to the Mississippi shore except in this instance that you have spoken of where they moved the public road back?

746 A. No sir, I have not, except at Bay Saint Louis.

Q. Do you know what the effect of the storm of 1893 was upon the shipping interests at Biloxi?

A. Only what I saw in the papers. I read in the papers about the damage to vessels at Ship island.

Q. Did you read in the papers about some schooners being driven up in the streets of Biloxi?

A. I read a good deal of the damage to vessels there and about the damage to vessels that belonged in Pearl river, told by the vessels' owners.

Q. Have you any knowledge as to whether the lighthouse at Biloxi was washed down by that storm?

A. No. I saw a schooner on the roadbed at a point between Scranton and Pascagoula. I saw another one sunk.

Q. How far from the waters of the sound, after the storm was over and the waters had resumed their normal condition?

A. There are bayous that come right up to the place, bayous through the marsh.

Q. Where the schooner was?

A. Yes sir. But the main body of the water was about ¾ of a mile away. I saw a bark or brig up in that marsh, half a mile from

the sea, standing up in the marsh. Our track was washed away four miles at this place.

Q. At what place.

A. Between West Pascagoula and Scranton, portions of it, sections of it. We had to replace the track back entirely.

Q. Tell me, if you —, the distance from Pearl river, by your railroad, to West Pascagoula?

747 A. I can give it to you very close, 60 miles.

Q. And your road runs pretty well along the shore all the way, the Mississippi shore?

A. Except for the woods the water would be in sight at nearly every point from Pearl river to Ocean springs until you get to West Pascagoula the shore line comes out some distance, perhaps eight or ten miles.

Q. What would you estimate the water line from the mouth of Pearl river to Pascagoula, to be, at mean tide, the distance?

A. From the mouth of Pearl river to the mouth of West Pascagoula river?

Q. Yes sir.

A. The distance on a straight line or ap-roximately straight line, is 60 miles and I should judge following the coast line it would be from 70 to 75 miles.

Q. How far is it from West Pascagoula to East Pascagoula?

A. Three miles.

Q. And I believe the State line is about ten miles further east, the State line between Mississippi and Alabama is ten miles east of Pascagoula?

A. East of Scranton or east of Pascagoula.

Q. I will ask you to give us the distance between the eastern branch of Pearl river, westward to the Rigolets, the Big Rigolets?

A. Five miles.

Q. What is the width of Pearl river, if you know, where your road crosses?

A. About 300 feet.

Q. And how is it across Big Rigolets?

A. About half a mile.

Q. And at Little Rigolets?

748 A. About 200 feet.

Q. Where have you draw bridges?

A. At Pearl river and the Rigolets, that is, in this State, in Louisiana.

Q. Have you any information about what old forts there are in that neighborhood of the Rigolets?

A. I have been informed that there is one called Fort Pike that lies north of the Rigolets, in Lake Pontchartrain. Then there is an old fort called Fort Macomb on the west shore of Chef Menteur, an abandoned fort.

Q. How wide is Chef Menteur where your road crosses?

A. About 600 feet.

Q. Have you a drawbridge there?
A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. When you spoke of the accretion, did you, or did you not refer to that section lying west of Pearl river on the route of your road to New Orleans?
A. I did.
Q. What accretion do you refer to as having any influence upon the surface of the land in that locality?
A. The growth of vegetation and its decay yearly, and occasional storms spreading sand and driftwood over the land.
Q. There is no alluvial deposit from the Mississippi river that has taken place there?
A. No sir.

At this stage of the proceedings the hearing was adjourned by the commissioner, to Monday April 25th 1904, to be resumed at the same place and at the hour of 10.30 a. m.

749 Resumption of Proceedings.

NEW ORLEANS, April 25th, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m. All parties present.
Present: Hon. Frank H. Mortimer, commissioner.
Hon. Walter Guion, attorney general of the State of Louisiana.
Messrs. John Dymond Jr., F. C. Zacharie, and Albert Estopinal Jr., associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

A. C. DUVAL, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this paper which we call Document No. 11, and state if you recognize to have seen before the blue prints which are marked sketches Nos. 1, 2 and 3?
A. Yes sir; I have seen them before and traced them.
Q. Will you look at this map which is marked No. 7 and state whether the black ink dotted line extending through Lakes Maurepas, and Pontchartrain and the Rigolets into Lake Borgne; and the

black dotted line extending from the mouth of Pearl river
750 through Mississippi sound through the pass southwest of Cat island and north of Isle à Pitre into Lake Borgne; the dotted blue ink lines marked Nine nautical miles from Isle à Pitre and nine statute miles; nine nautical miles from Grand pass and nine statute miles; nine nautical miles from present main body of marsh land and nine statute miles; and the red ink dotted lines marked 18 statute miles and 18 nautical miles from the coast of Mississippi, were projected on this map No. 7 from the data furnished by Document No. 11?

A. Yes sir; they are reproductions of these blue prints in other words.

Q. Are they, or are they not, the lines of the Hodgkins report projected by you on map No. 7?

A. They are.

Q. Will you please now look at this map which is called No. 6 and note the dotted black ink line extending from the mouth of Pearl river eastwardly through Mississippi sound by the pass southwest of Cat island and northeast of Isle à Pitre into the gulf of Mexico, and the blue ink line marked A–A and the blue dotted ink line marked A′–A′ and the blue ink line marked B–B and the blue dotted ink line marked B′–B′ and state where you got the data by which you projected these lines?

A. I projected these lines by taking these lines on these blue prints and applying the scale of this map.

Q. When you speak of these blue prints do you refer to the sketches No. 1, 2 and 3?

A. Of the Hodgkins——

Q. Of the Hodgkins report marked Document No. 11?

A. Yes sir.

Q. Are those lines projected correctly in accordance with the scale of map No. 6, in proportion to the scale on the sketches made by Mr. Hodgkins?

751 A. They are to my best ability.

Cross-examination.

By Mr. McCLURG:

Q. So then it follows, Mr. Duval, that any inaccuracies on the blue prints marked No. 11, would be carried into the marking on maps 6 and 7, by you?

A. No sir, because before doing that I have checked the lines to see that what they indicate is correct.

Q. Checked them by what?

A. By the scale.

Q. I understand, but I understood you to say that you took as a basis for those markings, the Hodgkins report, map No. 11?

A. Yes sir, I did; but before doing that, every line on these blue prints was checked by me.

Q. On the Hodgkins report?
A. Yes sir. I didn't have the report but I had these lines and what they claimed to be I checked to see that they were really so.
Q. Checked them by what?
A. By the scale.
Q. What did you take the scale from?
A. From the maps, 1/80,000 scale and——
Q. Scales from maps 6 and 7?
A. Yes sir.

By Mr. DYMOND:

Q. Please look at map No. 7 and state what scale is on that map?
A. 1/400,000.

By Mr. MCCLURG:

Q. Do I understand you to say that you verified the markings on map 11 by the scale which you found on map No. 7?
A. I don't exactly understand——
752 Q. This is No. 11; did you verify these markings by any scale from map 11?
A. Yes sir.
Q. What scale?
A. The scale is written on each map. They are reproductions of those maps, the blue prints are reproductions of those maps.
Q. Now, I will ask you to go back with me to my original question. If there are any inaccuracies on map No. 11, the blue prints, they necessarily follow into these markings that you have made indicating the lines out of Lake Pontchartrain, Lake Borgne, and the mouth of Pearl river about which you have just been interrogated by Mr. Dymond. In other words, if the blue print is incorrect these markings that you have carried to maps 6 and 7 are incorrect, are they not?
A. Well, they are to a certain extent, if I made the same mistake in going through, making those measurements, as Mr. Hodgkins has made, then it might be incorrect in that way.
Q. Please look at Document No. 11, sketch 3, and follow the line drawn from the mouth of Pearl river marked Grand Island pass and South pass and channel, and tell me what that map shows that this line indicates?
A. Showing deep water sailing line from Pearl river to the gulf of Mexico.
Q. And that is the line reproduced, marked C–C, on map No. 6?
A. Yes sir.
Q. And it is intended to indicate the same on No. 6 as it is on Document 11, the deep water sailing channel?
A. Yes sir.
Q. And the same line is delineated in red on Exhibit E?
A. I don't know anything about that map.

Q. I want to call your attention to map No. 7 where you
753 have made some measurements taken from sketch No. 2, Document No. 11. The line which is marked nine nautical miles from Isle à Pitre, strikes the main shore of Mississippi east of Bay Saint Louis, on map No. 7, does it not?

A. It does.

Q. Now, look at the next line to that marked nine statute miles; how far is it from that line to the Mississippi shore at the point where the nine nautical miles strike the Mississippi shore?

A. I would have to measure that.

Q. What is the distance between those two lines at that point?

A. I am doing that of course, it is a rough way, but I have not got the instrument to give my answer accurately. Well, about 1½ nautical miles from the coast of Mississippi.

Q. Now, I call your attention to the line which you have indicated on map No. 7, as nine nautical miles from Grand pass. How far is that from the Mississippi shore west of Bay Saint Louis where the railroad crosses into the said bay, from the Mississippi shore?

A. Two nautical miles.

Q. And the nine statute miles would be about the same distance?

A. It would be the difference between nautical and statute miles.

Q. I wish to ask you about the lines which you have indicated on map No. 7, marked nine nautical miles from present main body of marsh land. That strikes the Mississippi shore at the same point?

A. It does not strike it at the same point. It strikes it pro-
754 portionately between the nine nautical miles and the nine statute miles to the west.

Q. So, then, it is not true then that the nine nautical miles measurement from the present main body of marsh land and the nine statute miles measurement from the same point and the nine nautical mile- measurement from Isle à Pitre, would deprive Mississippi of any of the frontage to the westward of either of those lines?

A. The line nine nautical miles from Isle à Pitre, does not strike the coast

Q. How much does it lack of it?

A. I have not the instrument—it is very small; at the end of that line which is nearest to the coast it would be about a quarter of a nautical mile from the coast and the end of it is the nearest point to the coast.

Q. So that measurement would leave about a quarter of a nautical mile between the Louisiana line, according to that indication, and the Mississippi shore?

A. Yes sir.

Q. Come back, please and make another measurement for me. How far is it from Gulfport to that nine nautical miles from Isle à Pitre, indicated on this map No. 7?

A. The distance, in regard to what?

Q. What is the distance from Gulfport to that line at its nearest point, to Gulfport?

A. I give this measurement as close as I can get it, of course I have not got the instruments, I am doing this as near as I can get to it. 3¾ nautical miles.

Q. What direction did you measure?

A. I measured it in a line perpendicular to the coast.

Q. I want you to please take another measurement directly north to Gulfport and tell me that distance, in nautical mile measurement?

A. 2¾ nautical miles.

Q. Let me ask you to state if you see indicated on map No. 7 a channel out of Gulfport, seaward, towards Ship island?

755 A. Yes sir.

Q. Is it not true that this nine nautical mile measurement from Isle à Pitre, intersects that channel between Gulfport and Ship island?

A. No sir; it does not intersect the channel; it comes near it but it does not intersect it.

Q. How far is it from that channel at its nearest point?

A. I put it a little less than a quarter of a nautical mile. You see the lines are made rather thickly to be able to see them, to reproduce them to the eye and it is the center of that line which really would be, so I can't really give you the exact distance of that and I would call it a quarter of a nautical mile.

Q. Now, tell me, as near as you may be able to do so, the distance between this nine nautical mile line from Isle à Pitre to the west end of Ship island?

A. One nautical mile.

Q. How far is it from this nine nautical mile line from Isle à Pitre to the nearest point on the Mississippi coast at Mississippi City? I want the distance from Mississippi City to this line by the nearest marking, nearest direction?

A. I cannot determine where Mississippi City is. I cannot determine the position of Mississippi City.

Q. As the author of those markings on map No. 7, do they not indicate that if either of those lines, traced in blue, should be established as a boundary between Louisiana and Mississippi it would shut off the water frontage of the State of Mississippi east of the channel from Gulfport to Ship island, save a little passage that you spoke of at the northwestern end of the line marked nine nautical miles from Isle à Pitre, and is it not completely closed up west of Bay Saint Louis at the northwest of Point Clear?

756 A. The line indicating nine nautical miles from Isle à Pitre would leave a small passage, of course I don't know the depth of water there, a quarter of a mile, of a nautical mile, southeast of the Gulfport channel and another passage between the coast, the same one that I mentioned before. Now, the nine nautical miles from present body of marsh land would close the frontage from the northeast of Point Clear. This one does not close your

frontage at all in any way. Now, nine nautical miles from Grand pass does not close it in any way.

Q. Would it, if it was extended?

A. You would have to follow the coast, and to follow that coast wherever it went.

Q. How much would an extension of that line leave the Mississippi front in the neighborhood of Point Clear. I mean nine nautical miles from Grand pass, or nine statute miles from Grand pass?

A. Around Point Clear it would only leave a channel of about——

Q. Do you mean a channel?

A. Well, a passage of half a nautical miles, about.

Q. Have you any idea how deep the water is at the passage last mentioned by you and the passage between the nine nautical miles from Isle à Pitre and the shore?

A. I will have to use another map for that. That passage on the southeast of Point Clear would vary from 12 to 7 feet in the biggest depth and of course when you come to the coast it goes to nothing. The passage between the nine nautical miles from Isle à Pitre line and the coast of Mississippi would practically give you no water passage at all.

Q. I will ask you to examine the combination map by the combination of the charts 190, 191 and 192, and say whether you made the delineation- on this map which appear to be the same as those on map No. 7?

757 A. Yes sir.

Q. And the measurements about which we have been making inquiry on map No. 7, would be the same on this combination map marked No. 6?

A. They would be practically the same.

Q. Now, is it not true that these markings which indicate measurements taken by you from the northeast of Isle à Pitre, Grand pass and the main land of the marshes, do not put the deep water channel entirely within the State of Louisiana, all to the east of lower Point Clear?

A. If I understand the question, I will answer as I understand it.

Q. Yes?

A. The deep water channel is to the southwest of the lines indicated on the map No. 6, as lines A–A, A′–A′, B–B, and B′–B′, and would be to the northeast of the line you asked me, a line that is not on this map, that would make a conflict would it not, this line is not reproduced on this map.

Q. The last line is not reproduced on map No 6?

A. No sir.

Q. Then if either of these lines A–A, A′–A′, B–B, B′–B′, should be established as the boundary between those two States, the entire deep water channel from the lower side of Point Clear, eastward, to

near the west of Ship island and southward of that, would be exclusively within the State of Louisiana, would it not?

A. Yes sir.

Q. And would run very close to Ship island out of Gulfport, if A–A should be established as a boundary line, would it not?

A. My last answer would answer that. The question of what distance there is between the channel and that A–A line on
758 the other map answers this that you have asked about. I have measured it.

Q. And what water would you have between that line and the Ship Island channel, Gulfport and Ship Island channel?

A. What water, what depth?

Q. Yes.

A. Well, that channel is excavated to 24 feet in depth.

Q. I said between the line and the channel. I did not ask you the depth of the channel, but what depth of water between the line A–A and the channel. What does the map indicate?

A. I want to go through the soundings, I have not looked at the map, I want to find out whether those things are in it or what. It would be water of 3½ to 3¾ fathoms.

Q. To the southwest of the Gulfport channel?

A. And to the southwest of the Gulfport channel, in feet, from 8 to 14 or 17 feet of water.

Q. Look at Exhibit E where the deep water channel line is marked in red and lettered in red letters which read Boundary line between the State of Mississippi and the State of Louisiana, on to the point southwest of the west end of Ship island, and say whether the measurements about which we have been making inquiry, would not be the same on this Exhibit E as you have indicated them to be on maps Nos. 6 and 7 at which we have just been looking?

A. Yes sir; on any map they would be the same.

Redirect examination.

By Mr. DYMOND:

Q. You have been asked by counsel for Mississippi, whether, if there should be any errors or inaccuracies in the Hodgkins sketches 1, 2 and 3 accompanying Document No. 11, you would have reproduced them on your projections on maps 6 and 7. Are you able to tell what map or chart Mr. Hodgkins used as a basis for
759 making these sketches 1, 2 and 3, accompanying his report as Document No. 11?

A. Document 11, sketch 1, is the reproduction of the Coast and Geodetic chart No. 19; scale 1/400,000.

Q. Will you please now look at map No. 7 and state whether or not it is a copy of chart No. 19 of the United States Coast and Geodetic Survey?

A. It is.

Q. Is it, or not, the same chart that Mr. Hodgkins used in making his blue print tracing?

A. It is.

Q. Will you please now look at sketch No. 2 and state what basis Mr. Hodgkins used in making that drawing?

A. Sketch No. 2 is also chart No. 19, scale, 1/400,000.

Q. Is that the same as this map No. 7?

A. Yes sir, it is.

Q. Will you please now look at sketch No. 3 and state what basis Mr. Hodgkins used in making that drawing?

A. United States Coast and Geodetic Survey charts 190, 191, scale 1/80,000.

Q. Now, look at map No. 6 and state whether you find United States Coast and Geodetic Survey charts 190 and 191 as forming part of that map?

A. Yes sir.

Q. Will you please now look at map marked Exhibit E, and state whether you also find charts 190 and 191 as forming part of that exhibit?

A. 190 and 191 form part of that exhibit.

Q. Did you, Mr. Duval, check the work of Mr. Hodgkins as shown on the blueprints to see whether or not it corresponded with the scale of chart 19 so far as sketches 1 and 2 were concerned and with the scale of charts 190 and 191 so far as sketch No. 3 was concerned?

760 A. I did.

Q. What was the result of your comparison. Were the lines projected——

Mr. McCLURG: Would it not be better to ask him what he did to test the correctness of those maps. You are leading him.

Mr. DYMOND: Just make your objection.

Mr. McCLURG: I am doing that now.

Mr. DYMOND: Have you finished?

Mr. McCLURG: Yes.

Q. —by Mr. Hodgkins found to be or not to be in accordance with the scale of chart 19, marked map No. 7, and charts 190 and 191, marked map No. 6?

A. They were scaled correctly.

Q. Now, what errors or inaccuracies could there be as based upon charts 19, 190 and 191, if any, in either your work or the work of Mr. Hodgkins?

A. The only erro- that may occur, and that would not be an error from an engineering standpoint, would be the different handling of maps, a map will, by being handled a great deal or blue print, will shrink, but the shrinkage is uniform and when there is a scale on the map the scale shrinks with the paper, the inaccuracy cannot be very large. In other words it is practically no inaccuracy. That is the only thing I ever heard yet on maps

that could be called inaccuracy, because the making of the maps, they are perfectly correct.

761 WILLIAM BEER recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this atlas being Cary's General Atlas, published by M. Cary at Philadelphia 1814, and compare this photo print, which we will for the purpose of identification mark No. 48, and state whether or not it is a correct photo print of the map before you?

A. I have compared it and find it a correct photo print.

Q. Have you compared the coloring upon the photo print with the coloring upon the original map and if so, what is the result of that comparison?

A. The coloring is correct. It is a little thicker on the copy than on the original, but the outlines are correct.

Q. By whom was this map made, Mr. Beer?

A. Only the name of the publisher is shown, Cary.

Q. Will you please look at this map which, for the purpose of identification will be called map No. 49, and state by whom it was made?

A. It was made by W. H. Wilder, civil and topographical engineer.

Q. Do you know who Mr. W. H. Wilder was?

A. No sir.

Q. Will you please look at this photo print and make a comparison of it with the original map which is now before you?

A. I have previously compared it and find it correct, photographically.

Q. Does this map of Mr. W. H. Wilder give any date as to its publication or does it in any way indicate upon its face when it was published?

A. I find no indication of date.

Mr. DYMOND: The commissioner is requested to mark the
762 photo print concerning which the witness has just been testifying, map No. 49.

Cross-examination.

By Mr. MCCLURG:

Q. Look at the photo copy of map 48 and say whether it shows by whom this Philadelphia atlas was made?

A. It does not state on the face of the map by whom it was made.

Q. Is a date given on the face of the photo print?

A. The date is not given.
Q. But it is on the original?
A. No; this is a faithful photographic blue print.
Q. Is it given on the face of the original map, the date?
A. It is not.
Q. Nor the name?
A. Nor the name of the maker.
Q. Whom did you say made it?
A. I said it was published by Cary. I have reason to believe it was made by Samuel Lewis.
Q. Map No. 48 indicates by the coloring of all of the islands east of Pearl river including Cat, Ship and the Chandeleur islands, to the southward, are designated as belonging to Louisiana?
A. It colors the whole of them in the same way as the outline of Louisiana is colored. While it colors them it leaves one or two by accident uncolored.
Q. In photographing these atlases and maps is the coloring on the original reproduced in the photographic copy?
A. The action of photography does not reproduce the color.
Q. How is the color then reproduced?
A. It is put on by hand.
Q. Can you say of your own knowledge, who colored this
763 photographic copy of map No. 48?
A. I cannot personally.
Q. As to map No. 49 you have the same to say?
A. Yes sir.

F. C. ZACHARIE, states as follows:—
I knew William H. Wilder very well. I knew him before the civil war and after the civil war. He was a civil engineer and my recollection is that he was connected with the State land office prior to the civil war.

By Mr. DYMOND:

Q. Was he affiliated with the Northern or Southern forces at the time of the civil war, do you remember?
A. I don't remember; my impression is, however, that he remained here and took the oath.
Q. Took the oath of allegiance?
A. Yes sir, and I heard he was employed by the Federal Government by the military authorities.

Mr. DYMOND: Counsel for Louisiana states that he will endeavor to photograph map No. 49 in four separate negatives assemble them and produce a print from such assembled negatives and submit the same to counsel for the State of Mississippi to ascertain if it will be a satisfactory copy of said map.
Mr. DYMOND: Counsel for the State of Louisiana now offer, pro-

duce and file in evidence, a copy of the January 1881 issue of
764 the Transactions of the American Society of Civil Engineers from which the following extract on page 15 on the subject of the removal of the foundation and transfer of a light house by J. W. Putman associate A. S. C. E. is taken, to wit:

"Borings made on the island revealed the fact (plate 2) that it was a bank of loose sand, and worn and broken sheels to a depth of about 20 feet. Below that was an old and submerged grass marsh, from which pieces of sod were brought up, containing all the little roots and fibres of the ordinary marsh sod. It had evidently been formed at or above the surface of the water, and plainly indicates the subsidence of the continent."

Page 16.

"Below this marshy vegetable deposit of about 20 feet, was found a hard, sandy stratum, making a firm and solid bearing for the piles. Yellow pine piles, 75 feet long, were procured and thoroughly creosoted at the creosote works of the New Orleans and Mobile railroad."

And in lieu of copying the whole of said pamphlet into the record, counsel for the State of Louisiana requests that the counsel for the State of Mississippi upon being given a copy of said pamphlet consent to the extract being taken?

765 Mr McCLURG: Counsel for the State of Mississippi consent.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence the following documents furnishing counsel for the State of Mississippi copies thereof, to wit: Document 13, being article 7 of the treaty between England, France and Spain, February 10th 1716, translation appearing in the American History Leaflets of September 10th, 1892, No. 5.

Document No. 14, treaty between England, France and Spain, February 10th 1716, article 6 (7) translation as appearing in Treaties and Conventions Concluded between the United States and Other Powers Since July 4th 1776, Washington 1889.

Document No.15. Article 7 of the treaty of 1763 between France, Spain and England.

Counsel not yet having received the copies of this article will produce the document for filing by the commissioner and furnish counsel for Mississippi with a copy thereof.

Document No. 16. Treaty between the United States and Spain, October 27th 1795, taken from the Revised Statutes of the United States, 43rd Congress, 1st session, 1873–74, pages 7044–5, being articles 1, 2 and 4 of said treaty.

In connection with Document No. 16, counsel for the State of Louisiana, now offer, produce and file in evidence certified
766 photo prints of the maps made by Andrew Ellicott late commissioner on behalf of the United States, taken from the Journal of Andrew Ellicott and showing the southern boundary line between the United States and Spain, fixed at 31 degrees north lati-

tude, described as follows, in the certificate of John Hay, Secretary of State of the United States, "being a photograph of map appearing in and described as belonging to the Journal of Andrew Ellicott late commissioner on behalf of the United States during part of the year 1796, the years 1797, 1798, 1799 and a part of the year 1800 for determining the boundary between the United States and the possessions of His Catholic Majesty in America."

Document No. 17, treaty between the United States and France April 30th 1803, taken from the Revised Statutes of the United States 43rd Congress, first session, 1873–74, pages 232 and 233, being article one and two of said treaty.

Document No. 18. Act of Congress for an amicable settlement of the limits of Georgia, and authorizing the establishment of a government in the Mississippi territory. Approved April 7th 1798. U. S. Statutes at Large, chap. 28, vol. 1, page 549.

Document No. 19. Description of Louisiana. Message of Thomas Jefferson, President of the United States. Extracts from Annals of
Congress 8th Congress, 2nd session, appendix 1804 and 1805
767 being pages 1498, 1504 and 1505.

Document No. 20. Act of Congress erecting Louisiana into two Territories, and providing for the temporary government thereof. Approved March 26th, 1804. U. S. Statutes at Large. Chap. 38 Vol. 2. Page 283. Being sections 1 and 12 of said act.

Document No. 21. Act of Congress to enable the people of the Territory of New Orleans to form a constitution and State government. Approved February 20th, 1811, United States Statutes at Large, vo. 2, *p* page 641, being sections 1, 2, 3, 4 and 5 of said act.

Document No. 22. Act of Congress concerning an act to enable the President of the United States under certain contingencies to take possession of the country lying east of the Perdido. Approved March 3rd 1811. U. S. Statutes at Large. Vol. 3, page 472.

Document No. 23. Act of Congress to enable the President of the United States under certain contingencies to take possession of the country lying east of the River Perdido. Approved January 15th 1811. U. S. Statutes at Large. Vol. 3, page 471.

Document No. 24. Act of Congress for the admission of the State of Louisiana into the Union etc. Approved April 8, 1812. U. S. Statutes at Large. Chapter 1, vol. 2, page 701.

768 Document No. 25. Act of Congress to *the* enlarge the limits of the State of Louisiana. Approved April 14, 1812. U. S. Statutes at Large chap. 57, vol. 2 page 708. Being sections 1 and 2 of said act.

Document No. 26. A resolution of the legislature of the State of Louisiana, giving consent to the enlargement of the State of Louisiana. Approved August 4th, 1812.

Document No. 27. Resolution of Congress relating to Spanish provinces. Approved January 15th, 1811. U. S. Statutes at Large Vol. 3, page 471.

Document No. 28. Act of Congress for ascertaining the titles and

claim to land in that part of Louisiana which lies east of the River Mississippi and the island of New Orleans. Approved April 25th 1812. U. S. Statutes at Large. Chap. 67. Vol. 2, page 713. Being sections 1 and 2 of said act.

Document No. 29. Act of Congress authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi territory and west of the River Perdido. Approved Feb'y 12, 1813. *Approved February 12, 1813.* U. S. Statutes at Large, vol. 3, page 472. Being sections 1, 2 and 3.

769 Document No. 30. An act of Congress to enlarge the boundaries of the Mississippi territory. Approved May 14th 1812. U. S. Statutes at Large. Chapter 84, vol. 2, page 734. Being section 1 of said act.

Document No. 31. Act of Congress to enable the people of the western part of the Mississippi territory to form a constitution and State government etc. Approved March 1, 1817. U. S. Statutes at Large. Chapter 23, vol. 3, page 348. Being sections 1, 2 and 3 of said act.

Document No. 32. A resolution of Congress for the admission of the State of Mississippi into the Union etc. Approved December 10, 1817. U. S. Statutes at Large, vol. 3, page 472.

Miss BESSIE MEADE, recalled, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this map of Louisiana in the atlas of M. Cary, published in Philadelphia in 1814, and compare it with map 48 which I have now shown you and state by whom the coloring on the photo print was made?

A. I did the coloring on the photo.

770 Q. Have you carefully and faithfully followed the colors on the original as nearly as it was possible for you to do so?

A. Yes sir, as near as it was possible for me to do it.

No cross-examination.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, Document No. 33, being Bulletin of the United States Geological Survey, No. 171, Department of the Interior. 56th Congress, 1st session, House of Representatives. Document No. 720. Being boundaries of the United States, and Territories with outline of history of important changes. (Second edition.) Gannett. Washington. Government Printing Office 1900. The reference to Louisiana appearing on page 36 beginning there, and beginning again on page 110, with the map of Louisiana on the following page next to page 110. The reference to Mississippi appearing on page 109 and the map of Mississippi on the following

page 164. And tenders to counsel for the State of Mississippi copy of said bulletin.

It is agreed between counsel for Louisiana and Mississippi that it shall be unnecessary to reproduce in the record the balance of said Bulletin No. 171.

771 ALBERT ESTOPINAL, JR., witness re-called on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. In January 1901 and in the months following, the record in this case shows that you were the chairman of the boundary commission appointed by Governor Heard of the State of Louisiana on behalf of the State of Louisiana, to ascertain if it were possible, after a conference with a similar commission appointed by Governor Longino of the State of Mississippi, on behalf of the State of Mississippi, to see if the boundary difficulty could be settled amicably. Are you aware of the preparation by that Louisiana amicably boundary commission of a map or chart setting forth the calaim of Louisiana as it was then contended for?

A. Yes sir.

Q. Do you recognize this Exhibit E as being a certified copy of the original on file in the office of the clerk of the Supreme Court in Washington, D. C., in this suit, as a certified copy of that original exhibit?

A. Yes sir, I do.

Q. At the time that this chart was prepared and while it was in preparation for the purpose of furnishing to the Mississippi Boundary Commission, the contentions of Louisiana, did, or did not, the Louisiana Boundary Commission have any knowledge of the report which was made by W. C. Hodgkins assistant — of the United States Coast and Geodetic Survey on this subject, at the request of Mr. McLain member of Congress from Mississippi?

A. No sir, I know that the Louisiana commission knew absolutely nothing about it. Had no knowledge that any map was being prepared or had been prepared by Mr. Hodgkins.

772 By Mr. ZACHARIE:

Q. You have already stated that you were born and raised and resided in the parish of Saint Bernard and that you were the district attorney of that district?

A. Yes sir.

Q. Where is the country situated, or that territory, that is commonly known as La Chinch?

A. It is on the eastern end of the parish of Saint Bernard, it is contiguous to what is known as the Louisiana marsh.

Q. The territory in dispute here called the Louisiana marshes?
A. Yes sir.
Q. Does it immediately adjoin?
A. Yes sir.
Q. Had you occasion to visit the Chinch prior to the storm of October 1st 1903?
A. Yes sir.
Q. For what purpose did you visit that and how often?
A. I had occasion to make frequent excursions to Shell beach *an* and other occasions I went duck shooting in the marshes.
Q. Did you shoot snipe also?
A. Ducks and snipe.
Q. What direction from this disputed territory, the Louisiana marshes, does La Chinch lie?
A. South by west, I suppose southwest south, southwesterly, that is about the direction.
Q. What is the character of that territory, or was, at the time when you visited it prior to the storm of October 1st 1893.
A. Well, pretty much of the same character that it is now, save that it was nit so cut up as it is now.
Q. What would you call it; was it high land or marsh land or swamp land?
A. It was marsh land.
Q. Did you have occasion to traverse that territory La Chinch, prior to the first of October 1893 and to what extent, if any?
773 A. As I said before, I had occasion to go to Shell beach and in reaching that point it is necessary to go through some prairie land there lying between the high land and known as La Chinch and the coast of Lake Borgne; and on other occasions I went slightly into the prairie at points further east than Shell beach, just penetrated the prairie some little distance to shoot birds.
Q. Did you traverse at different times the smaller or larger portion of La Chinch?
A. The smaller portion?
Q. In what portion was that, was that adjoining or away from the territory in dispute in this suit?
A. That was a considerable distance away from the territory in dispute.
Q. How many mile- would you say?
A. That I don't know enough about, even approximately, I don't know how far I was from the territory in dispute.
Q. How wide is this territory known as La Chinch, about, as I suppose you never measured it?
A. I should judge it was about 20 or 25 miles wide.
Q. What do you mean by wide, extending to the eastward?
A. Extending east of it.
Q. Then how broad is it, north and south, about?
A. I don't believe I could say with any accuracy, even approximately, the distance.

Q. When you have visited it, for instance, you say snipe shooti
how have you traversed this territory, on foot, on horseback or
boat?

A. On foot and in boats.

Q. In so far as you have traversed it in foot was it practicable
walk through hunting?

A. Not entirely, no sir.

Q. Why was it not.

A. Because the marshes are very mush cut up by bays and
goons and bayous.

774 Q. Was that the case prior to 1893?

A. To some extent, yes sir.

Q. Did you visit this territory La Chinch, after the storm of O
tober 1st, 1893?

A. Yes sir, I had occasion to hunt there on two or three occasion
this last winter.

Q. How long after the storm of October 1st 1893, did you vis
there?

A. I cannot fix any time defi*f*itely that I was there: last winter
hunted there on two or three occasions.

Q. What changes, if any, did you find in that territory when you
last visited it, compared with what it was prior to the storm of Oc
tober 1st 1893?

A. I found that in several sections of the marsh where it was pos
sible prior to the storm of 1893, to go afoot, that since then it was
all open country, open water, the country had been cut up, and
there had been bays and lagoons formed where before there was
land: there was so little land left there it had the appearance of a
lake in high tide, in ordinary tide even.

Q. What is the character of that marsh as compared with what
you call the Louisiana marshes which are in controversy in this
suit?

A. There is no difference between them at all.

Q. Are you certain that you had not visited that territory after
the storm of October 1st 1893 until 1902.

A. Yes sir, I had been through it before, between those dates, but
I cannot say just when.

Q. Often?

A. Several times, I just can't say how often, I know that by follow-
ing the line of the railroad between La Chinch ridge and Shell
beach, you find that where, prior to the storm of 1893, prairies and
marshes contiguous, or touching or bordering the line of railroad,
were solid; to day they are all open, or rather covered with water,
it has been formed into lagoons or bays or whatever you may call
it.

775 Q. What portion, if any, of the La Chinch country, does
the railroad traverse. Does it go through the sides, or center
or end of it?

A. I will have to look at the map a moment. The railroad ex-

tend*a* out at right angles from the Mississippi river to a point on the western end of La Chinch, and then at right angles from that point up to Lake Borgne, it is right on the western part that it turns to go out to Lake Borgne.

Q. When it goes up to Lake Borgne at right angles does it traverse the center or sides of La Chinch?

A. It would traverse the western end of it.

Cross-examination.

By Mr. McCLURG:

Q. Do you know Mr. Estopinal, when that railroad was built?

A. Yes sir, I do.

Q. When?

A. About 15 or 17 years ago, I believe, about, I cannot fix the exact date in my mind.

Q. That railroad is about 20 or 23 miles a little southeast of La Chinch—your best judgement?

A. La Chinch is about 35 miles east of the railroad.

Q. These hunting expeditions that you have spoken of, did not extend as far east as this lake?

A. No sir, I have never been out that far hunting; I have been around through that country, I went on one occasion from Shell beach.

Q. Where is Shell beach?

A. Right here, that is on the southern coast of Lake Borgne.

Q. Has the territory about that railroad changed materially since it was built?

A. Yes sir, it has.

Q. In what respect?

776 A. In this, heretofore that area of land of the marsh which prior to the storm of 1893 was a solid quantity has been removed or dug out and there are lagoons there instead, to day bays etc. And those conditions prevail through the La Chinch prairie which was comparatively solid, prior to the storm of 1893. It is indented now with bays and lagoons.

Q. From your observation and personal experience of that country do you not think that it was higher and drier in 1812 and 1817, than it is now?

A. I judge so. Yes sir.

Q. You know of your own knowledge of no violent changes or disfigurations that the surface suffered by the result of storms like that of 1893?

A. No sir, I do not.

Q. I believe your name appears on the pleadings as one of the attorneys in this case?

A. Yes sir.

Q. And you have heard several of the witnesses testify as to the different storms within their recollection and knowledge?

A. Yes sir.

Q. Is it not fair to presume that that condition of storm and wind has been going on for ages past?

A. I suppose so. That is a natural presumption, I suppose.

Q. At different intervals?

A. Yes sir.

Q. And it is a fair presumption also, is it not, that each recurring storm left its imprint on the configuration of this country?

A. That is a matter of opinion altogether and of argument. I suppose there may be some——

Q. The purpose of the question was to show that it is a fair presumption, as I stated, that the storm — 1893 is not the only storm that has done the damage along this country that we are talking about?

777 A. I suppose not. There have been other storms.

Q. Were you ever in Nine Mile bayou?

A. Yes sir.

Q. How did you get there?

A. I went by way of Lake Borgne through Petite pass.

Q. Did you go in south of Nine Mile bayou, did you go through the bayou?

A. Yes sir.

Q. Where did you go?

A. We went through Nine Mile bayou and then right on down in a southerly direction.

Q. How far down did you go. Here is Drum bay and Lake Eugenie?

A. I don't recall the names of the bays and lakes. I went there but once, but I doubtless went through most of those bays, that is, most of those that lie in a direct southerly direction from Nine Mile bayou.

Q. How did you travel?

A. I travelled in a nap-tha launch.

Q. When was that?

A. About 1895, I think.

Q. Did you return by the same route?

A. No sir; I did not go back that way.

Q. Which way did you get out of there?

A. Possibly by Lake Eloi, but I am not sure, and then went on down to the mouth of Terre Bœuf and then up that bayou to Lake Leary.

Q. You stated, in your original examination today, that the Exhibit E in your original bill of complaint, as acknowledged on this map Exhibit E, is a certified copy and the same as the original from which it was taken. I understand you to make that answer from your observation of the physical appearance of the map and

778 without going into any critical measurements or examination of the two maps in comparing them; is that true?

A. Yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. You have stated you went through Nine Mile bayou in 1895 in a launch. Can you state what was the most southerly point that you reached or about. Did you go down as far as Drum bay for instance?

A. I went right on down through the marshes out to the Gulf again.

Q. Out to the Gulf?

A. Yes sir.

Q. What was the draft of that launch, if you can state it?

A. Three feet.

Q. Did you find difficulty in any place, if so, state what, in getting through?

A. I believe my pilot got into the wrong bayou, got into shallow water somewhere, shortly after leaving Nine Mile bayou, and we were unable, owing to the shallowness of the water to proceed in that bayou and had to turn back and take another route.

Q. Were there any other portions of your trip, if so what, that you found yourself scraping through the mud?

A. No sir. We had no difficulty after that.

Q. How was the tide, do you know?

A. The tide was moderately high.

Q. You stated a moment ago, to the attorney, Mr. McClurg, for the State of Mississippi, that you had only generally observed this map Exhibit E. I see upon this map a certificate signed by yourself and four other members of the boundary commission on the part of Louisiana, certifying to this. Did you, or did you not, examine critically, or only cursorily, this map comparing it with the
779 original?

A. I examined it now cursorily simply.

Q. I mean to say when you put this certificate on the map; did you, or did you not, with these other gentlemen examine it critically?

A. Of course we did examine it very critically.

Q. Did you look at the distances, and general features of the map, to see whether it was correct or not?

A. Yes sir.

Q. Do you remember if these other gentlemen, whose names are signed to the certificate, whether they did the same or whether they did so jointly together?

A. We did so together, we did so jointly.

Recross-examination.

By Mr. McCLURG:

Q. While different names appear to this certificate, they all appear to be in the same handwriting. The names of Albert Estopinal Jr., chairman, is that of your own handwriting on this map?

A. No sir; it is not; that is simply a copy.

Q. This certificate on this map seems to be a copy of a resolution which your commission had adopted?

A. Yes sir.

Q. And it certifies to the correctness of the resolution rather than of the map, does it not?

A. The resolution should speak for itself; I don't remember the exact terms.

Q. Resolved that it is the sense of the Louisiana Boundary Commission etc. That certificate is to that resolution?

A. Yes sir.

Q. And you do not undertake to certify by those signatures to the correctness of the map?

A. No sir.

780 Q. I notice in the red lines on this map, Exhibit E, which I gather are substantially the same as the markings as made by your commission in conference with the commission from Mississippi on the map then before them, that at the point of division between Mississippi and Alabama, that you go down 18 miles from the shore by your red line marking. Tell us, if you can, why you did that. Why you went 18 miles south of the shore before you turned westward?

A. I judge that we followed the channel line right on through here.

Q. To the Alabama line?

A. Yes sir.

Q. Didn't you do it because the act of Congress admitting Mississippi into the Union, provided that the line should extend 18 miles from the shore?

A. That may have been considered; but it coincided or tallied with the boundary as we fixed it here through the channel and met at this 18 mile point.

Q. Do you understand that this deep water channel extends on to that point dividing Alabama and Mississippi?

A. Not absolutely; but there appears to be a pretty deep channel all the way to this point.

Q. What is termed in this controversy *is* a deep water channel which diverges to the southward at a distance a little to the southwest of the end of Ship island, does it not?

A. Yes sir.

Q. Have you ever seen any map or chart which undertook to fix upon its face, except Exhibit E, or some maps which have been made for the purpose of this litigation, to designate upon its face the

deep water channel line out of the mouth of Pearl river and the one now claimed as the boundary between Louisiana and Mississippi. Did you ever see it so written on any other map?

A. No sir.

781 ERNEST J. BELLOCQ, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at this photo print marked map No. 20——

A. Yes sir.

Q. And also at this photo print marke- map No. 20–*a*?

A. Yes sir.

Q. Will you please look at this photo print marked map No. 34?

A. Yes sir.

Q. And this photo print marked map No. 34–*a*?

A. Yes sir.

Q. Will you please look at this photo print marked map No. 48?

A. Yes sir.

Q. And this photo print marked map No. 49?

A. Yes sir.

Q. And state by whom they were printed?

A. I printed them.

Q. Were they printed from negatives made from the original maps?

A. Yes sir.

Q. Did you compare your photo prints with the originals to see whether they were correct photo prints, after you made them?

A. Yes sir. I compared both of them.

Q. How did you find them to be, correct?

A. Yes sir.

Q. You compared all of them that you just testified to?

A. Yes sir.

Q. And found them to be all correct?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

782 Q. I wish you would please tell us how much larger the original of No. 49 is than this photo print that is exhibited?

A. The size of it is 11 x 14.

Q. The original of map No. 49?

A. All of them that I made are 11 x 14 inches.

Q. What is the size of the original of 49?

A. I never measured the size.

Q. Measure it please?
A. It is 44 inches long by 39½ inches wide.
Q. The photo copy is about 1/9 the size of the original?
A. Yes sir.
Q. And a similar comparison will hold as to the other origi
and photo prints?
A. Yes sir, because it is some distance away, you know from
lens.

Redirect examination.

By Mr. DYMOND:

Q. Do you mean to say that all of the other maps, that you p
tographed, are of the same size of this map?
A. No, not the same size but the paper I used is all 11 x 14.
Q. You were not asked in regard to the paper, but in regard
the maps, whether the same proportion of small size of the ph
print to large size of the map held in every one of these cases, d
it or not? Do you understand the question?
A. No sir.
Q. You have photographed some ten or 12 maps; were they
of the size of this original map?
A. No sir.
Q. Were any of them smaller?
A. Yes sir.
Q. Any of them much smaller?
A. Yes sir.
783 Q. Well, then, if it would take nine of the photo prints
map No. 49 to equal the original map No. 49, would it tak
nine of each of the other photo prints to equal to each of the othe
maps?
A. No sir.

Mr. DYMOND: In connection with the testimony of the witness
counsel for the State of Louisiana, now offer, produce and file in evi
dence, the said photo prints being maps Nos. 48 and 49.
Mr. MCCLURG: Mississippi reserves an exception to the offer o
photo copy of map 49, on the ground that it is too dim, and imper
fect to be intelligible.

HUGH C. SMITH, witness sworn and examined on behalf of the
State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. Parish of Saint Bernard.
Q. How old a man are you?

A. I am forty five.
Q. What is your profession?
A. Civil engineer.
Q. How long have you been a civil engineer?
A. About twenty three years.
Q. When did you first move into the parish of Saint Bernard?
A. In 1878.

Q. Did your practice your profession as that of a civil engi-
784 neer, in the parish of Saint Bernard?

A. Yes sir.
Q. Are you a graduate of any school of civil engineering?
A. No sir.
Q. What official position do you hold in connection with the parish of Saint Bernard, if any?
A. I was surveyor for the parish of Saint Bernard.
Q. What official position, if any, do you hold at present?
A. In Saint Bernard?
Q. No sir, in the State?
A. I am chief engineer of the Oyster Commission of Louisiana.
Q. When were you made chief engineer of the Oyster Commission of Louisiana?
A. In August 1902.
Q. Prior to that were you continuously practicing your profession as a civil engineer?
A. Yes sir.
Q. Were you ever employed to make a map of the parish of Saint Bernard?
A. Yes sir.
Q. By whom were you employed?
A. By the police jury, the present police jury.
Q. Of the parish of Saint Bernard?
A. Yes sir.
Q. When were you employed if you can recollect?
A. I think it was about, in the fall of 1895 and the sprin- of 1896.
Q. Did you make up a map of the parish of Saint Bernard?
A. Yes sir.
Q. How long did it take you to make up that map?
A. About six months.
Q. Will you please look at the large map which is now hanging before you, marked Parish of Saint Bernard, Louisiana, and state whether that is a map of the parish of Saint Bernard which was provided by you under the authority of the police jury of the parish of Saint Bernard and which for the purpose of identification of the photo prints we will call map No. 52.
A. That is it.
Q. Were you familiar with the territory of the parish of Saint Bernard prior to your making up of that map?
A. Yes sir.

785 Q. From what source did you get the data which enabled you to make up the map?

A. From the Government township plats and from Government records and records from the courthouse of Saint Bernard.

Q. Did you make any surveys at all or had you made any that were embodied in the making of that map?

A. Yes sir; I made a good many surveys in the parish.

Q. Were you able to get any assistance from the map records of the courthouse of the parish of Saint Bernard?

A. Only the township maps which were made by deputy United States surveyors.

Q. What has become of the other maps of the parish of Saint Bernard?

A. If there were any they must have been destroyed.

Q. By what occasion?

A. By the burning of the courthouse.

Q. Do you remember when that occurred?

A. I don't remember the exact date of the burning of the courthouse.

Q. Did you confer with the authorities of the parish of Saint Bernard as to what constituted the territory of the parish of Saint Bernard prior to the making of this map?

A. Well, no. I can't say that I did.

Mr. McCLURG: Mississippi objects to leading question on this subject. Let the witness state what he did.

A. They asked me to make up a map of Saint Bernard parish as I understood Saint Bernard, the territory that I understood to belong to Saint Bernard parish and from the records that I got from the Saint Bernard courthouse, some from the land office at
786 Baton Rouge, and some from Washington, this map here is a result of a compilation of those records.

Q. Was that map approved by the police jury of the parish of Saint Bernard, or by the president of the police jury?

A. By the president and secretary.

Q. Does it bear their signature on its face?

A. Yes sir.

Q. When you prepared this map did you have in mind any existing controversy with the State of Mississippi as to boundary?

A. None whatever.

Q. Will you please look at this photo print which, for the purposes of identification is to be marked map No. 52, and state whether it is a phot- print representing as correctly as it is possible to do by photographic process, the original map made by you?

A. While it is not a very clear photograph I should say it was perfectly accurate being a mechanical operation.

Q. It is on a different scale is it not, from the map which you made?

A. Yes sir, considerably reduced.

Q. What are the dimensions of the map prepared by you?

A. I think it is about 6 x 9 feet.

Q. What are the dimensions of the map which you now have before you?

A. 42 inches by 32 inches.

Q. I notice on this map No. 52 that you have indicated thereon the private land grants. From what source did you get the data which enabled you to designate and delineate Isle à Pitre as being the property of the Louisiana Navigation Company? Sections 22 and 23 township 11, range 19 east, as being the property of Meloche; a part of section 29 and section 32, of the said township as being also the property of Meloche and the fractional sections 3 and 10 of township 13, range 16 east, as being the property of Meloche?

787 A. I got those from the records in the courthouse at the parish seat.

Q. I notice you have also sections 19 and 30, or parts of those sections, in township 11, range 19 east, as being part of the property of the Louisiana Navigation Company. Was that also gotten from the same source, that information?

A. Yes sir. That property is assessed in the parish of Saint Bernard.

Q. Will you please look at Exhibit A of the State of Mississippi and notice the red ink line projected on said exhibit as indicating the boundary claimed by the State of Mississippi and note the locality in which that line, if projected on this large map 52, would run, that is, the corresponding point or line?

A. Yes sir.

Q. Having made the comparative examination which you have now done will you please examine this township plat which we will call Document No. 38, being the township plat of townships 10 and 11, south range 17 east, and township 10, south range 18 east, southeastern district east of the Mississippi river, and state whether the area represented by this township plat is within the disputed area in this controversy between Louisiana and Mississippi?

A. If it is within the limits of this line?

Q. If you will, for the moment, refer to the black ink line designated as the line claimed by Louisiana in her original bill and the red line designated as the Mississippi line on Exhibit A of Mississippi attached to the deposition of W. M. K. Dukate, and state whether the territory shown by this township plat, Document No. 38, is embodied within those lines and therefor- within the disputed area?

A. Yes sir, it is.

788 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said Document No. 38 and tenders to the counsel for the State of Mississippi, a copy of same.

Q. Will you please look at this township plat which, for purp
of identification will be called Document No. 39, and state whe
or not it is within the disputed area as defined by this Exhibit
Mississippi, it being the township plat of township 11, south ra
18 east, southeastern district of Louisiana.

A. It is, yes sir.

Mr. DYMOND: In connection with the testimony of the witn
counsel for the State of Louisiana now offer, produce and file in e
dence, the said Document No. 39, and tenders to counsel for t
State of Mississippi, a copy thereof.

At this stage of the proceedings, the hearing was adjourned,
April 26th 1904, at 10.30 a. m. to be resumed at the same place.

789 Resumption of Proceedings.

NEW ORLEANS, April 26th 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at t
same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer, commissioner.
Hon. Walter Guion, attorney general of the State
Louisiana.
Mess. John Dymond Jr., F. C. Zacharie and Albert E
topinal Jr., associate counsel for the State of Louis
ana.
Hon. Monroe McClurg, associate counsel for the State
Mississippi.
Hon. Jos. N. Flowers, ass't att'y gen'l of Mississippi.

The examination of HUGH C. SMITH resumed.

By Mr. DYMOND:

Q. Mr. Smith, will you please look at this township plat marked
Document No. 7, being the township plat of township 13, south
range, 19 east, southeastern district of Louisiana and state whether
that is the next township, coming eastward, to the one concerning
which you have just been testifying, and whether it is also in the
disputed area?

A. Yes sir, it is.

Q. Mr. Smith, will you please look at this township plat being
that of township 11, south range 20 east, southeastern dis-
790 trict of Louisiana, east of the Mississippi river and for identi-
fication marked Document No. 40, and state whether that is
the next township to the eastward, concerning which you have just
been testifying, and whether it is within the disputed area?

A. Yes sir.

Q. In making these comparisons and noting the various township

plats that you are testifying about, have you before you the original map of the parish of Saint Bernard as made by you?

A. Yes sir, that is the original map.

Q. Which, for purposes of identification was marked map No. 52?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said Document No. 40, and tender to counsel for the State of Mississippi a copy of same.

Q. Bearing in mind, the course taken by the red ink line on Exhibit A of Mississippi attached to the deposition of W. K. M. Dukate, and applying that line to the map of the parish of Saint Bernard, No. 52, now before you, will you please look at this township plat of township 12, south range 16 east, southeastern district of Louisiana, and state whether it is, or covers the most western portion of the Saint Bernard peninsular to the east of Lake Borgne?

A. Yes sir.

Q. Is that, or is that not, within the disputed area as defined by the red line on Exhibit A of Mississippi?

791 A. No sir; I should say not.

Q. Does it lie to the westward of the red line drawn down through Nine Mile bayou?

A. Yes sir.

Q. Does this township plat represent part of the same peninsular the balance of which is included within the red ink line concerning which you have been questioned?

A. Yes sir; it does.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said township plat being marked Document 41, and tenders to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being that of township 12, south range 17 east, southeastern district of Louisiana, east of the Mississippi river, and state whether the territory represented by this plat is or is not within the disputed area as shown on Exhibit A of Mississippi?

A. Yes sir.

Q. What portion of it is within the disputed area?

A. I should say the extreme eastern edge; I think that line comes down about the lakes here; probably it might touch it; it is hard to tell from this map because it does not show the townships.

Q. Is the township concerning which you are now testifying, does it lie immediately east of the township concerning which you have just previously testified?

A. Yes sir.

Q. Is that part of the same peninsular of the parish of Saint Bernard?

A. Yes sir.

792 Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, produce and file in evidence the said township plat marked Document 42 and tenders to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being the plat of township 12, south range 18 east, southeastern district of Louisiana, and state whether it covers territory within the disputed area?

A. Yes sir, it does.

Q. Does it cover part of Nine Mile bayou?

A. Yes sir.

Q. Is this township plat which you have now before you, the plat of the township immediately east of the one concerning which you have just previously testified?

A. Yes sir, east of 12–17.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of the witness now offer, produce and file in evidence, the said township plat mark- Document 43, and tender to counsel for the State of Mississippi a copy of the same.

Q. Will you please look at this township plat being the plat of township 12, south range, 19 east, southeastern district of Louisiana, east of the Mississippi river, and state whether it represents territory within the disputed area?

A. Yes sir, all of it.

Q. Is this the township lying immediately to the east of the township concerning which you have just previously testi-

793 fied?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said township plat marked Document No. 44, and tender to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat, being a plat of township 12, south range, 20, east, southeastern district of Louisiana, east of the Mississippi river, and state whether the territory represented by that township plat is within the disputed area. I notice that this map also covers a small portion of township 12, south range 21, east; is that correct?

A. Yes sir.

Q. Is that within the disputed area in this suit?

A. Yes sir.

Q. Does this township plat represent the territory immediately east of the territory represented by the township concerning which you have just previously testified?

A. Yes sir.

Q. Does this township 12, south range 21, east, lie immediately east of township 12, south range, 20, east?

A. Yes sir.

Q. About what amount of territory, comparatively speaking, is in township 12, south range 21, east?

A. I would say 15 or 20 acres.

Q. Is it just a small point of that island lying to the northeast of the township?

A. Yes sir.

794 Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the said township plat marked Document 45, and tender to the counsel for the State of Mississippi a copy of the same.

Q. Will you please look at this township plat being that of township 13, south range 16 east, southeastern district of Louisiana, east of the Mississippi river, and state whether it represents part of the peninsula of Saint Bernard?

A. Yes sir, it does.

Q. Does that township lie immediately along the eastern shore of Lake Borgne?

A. Yes sir.

Q. Is the land represented by that township in the disputed area?

A. No sir.

Q. Is the township, however, part of the same peninsula as Saint Bernard?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana, now offer, produce and file in evidence the said township plat being marked Document 46, and tender to counsel for the State of Mississippi a copy thereof.

Q. Will you please look at this township plat being township 13 south range 17, east, and state whether it is part of the peninsula of Saint Bernard?

795 A. It is. I have looked at it and it is a part of the peninsula of Saint Bernard.

Q. Is this, or is this not, within the disputed area as shown on the Mississippi Exhibit A, or any part of it within the area?

A. No sir; it may touch a point on the extreme eastern—I can-*r* tell from that map exactly where this township comes.

Q. When you say that map, what map do you refer to?

A. The map of Saint Bernard made by myself, marked No. 52.

Q. I understood you to say a moment ago that you could not tell from that map where the township line came; from what map were you referring to?

A. I was referring to Mississippi's Exhibit A.

Q. Are there any township lines drawn on this Exhibit A of Mississippi?

A. No sir.

Q. Are there township and section lines drawn on this large map of the parish of Saint Bernard known as map No. 52?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said township plat marked Document No. 47, and tender to counsel for the State of Mississippi a copy of same.

Q. Will you now please look at this township plat being that of township 13, south range 18, east, and state whether in accordance with Mississippi's Exhibit A, this township covers any territory in the disputed area, if so, what part and in what portion of the township?

A. I should say all of that was within the disputed territory except the very extreme southwest corner.

796 Q. Will you please carefully compare Mississippi's Exhibit A, with map No. 52 before you, and see whether there is any indication of Billy Lawsons lake on map Mississippi's Exhibit A, and note where Billy Lawsons lake is on map 52.

A. No sir, I see on Exhibit A, Billy Lawsons lake seems to be marked Treasure bay.

Q. Do you then find that this township plat of township 13 south range 18, east, does or does not include territory in the disputed area?

A. I find that it does.

Q. Except in what portion?

A. Perhaps the extreme southwestern portion. Although the township line shows that it just crosses the north end of the Lake of the Mound and it does the same here on Exhibit A.

Q. Is this township a part of the same peninsula of Saint Bernard represented by your map No. 52.

A. Yes sir. It is.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of witness now of-er, produce and file in evidence, the said township plat as Document No. 48 and tender to counsel for the State of Mississippi a copy of same.

Q. Was the township plat concerning which you have testified and which has been marked Document No. 48, immediately east of the township concerning which you previously testified?

A. Yes sir.

Q. In taking up these townships are you proceeding from the western extremity of the eastern shore of Saint Bernard, eastwardly?

A. Yes sir.

797 Q. And then as you traverse the coast as far westward as the land extends, do you begin at the next township south and run along the range eastward?

A. In an easterly direction, yes sir.

Mr. McCLURG: Counsel for Mississippi objects to all these leading questions.

Question withdrawn.

Q. In taking up the identification of these township plats, with map No. 52 said map being the official map of the parish of Saint Bernard, will you please state what order has been followed in considering and comparing the township plats?

A. I began on the eastern border of Lake Borgne which was the western end of the peninsula of Saint Bernard, that portion of it, and proceded in an easterly direction to the end of the territory that was sectionalized and laid off into townships.

Q. Is all of the territory in that official map No. 52 sectionalized and laid off in townships?

A. Yes sir.

Q. When you finished one line of townships how did you proceed in taking up the next line of townships?

A. I took the one just south of it and proceeded eastward in the same manner as all townships range in that section of the country east of the Mississippi river, north and south, east and west.

Q. Will you please look at this township plat, being that of township 13, south range 19 east, and state whether or not it represents any territory within the disputed are- in this case?

A. Yes sir, it does.

Q. It represents what?

798 A. It represents from Oak Mound bayou all of this township represented here, township 13, south range 19 east, north of Oak Mound bayou, approximately all of it lies within the disputed area.

Q. What geographical position does this township bear as to its territory with the township plat concerning which you have just previously testified?

A. It is immediately east of it.

Q. It is a part of the same Saint Bernard peninsula shown on map No. 52?

A. It is.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the township plat marked No. 49 in connection with the testimony of the witness and tender a copy thereof to the counsel for the State of Mississippi.

Q. Will you please look at this township plat being that of township 13, south range 20, east, southeastern district of Louisiana, east of the Mississippi river, and state whether any territory covered by it is within the disputed area?

A. Yes sir.

Q. What portion of it?

A. The northwestern portion of it; the northern protion of it you may say, because it includes all that part.

Q. What geographical position does the territory represented by this township plat bear to that township concerning which you have just previously testified?

A. It lies immediately east of it.

Q. Is this territory represented by this township part of the same peninsula of Saint Bernard shown on your map No. 52?

A. It is.

799 Q. Does this now cover the territory as far eastward as land is shown on this map No. 52?

A. Well, all except the Chandeleur islands which are shown on a small sketch in the lower corner of the map.

Q. Are the Chandeleur islands within the disputed area as shown on this Exhibit A of Mississippi?

A. No sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana offer, produce and file in evidence the said township plat being marked Document No. 50 and tender to the counsel for the State of Mississippi a copy of the same.

Q. Concerning these various township plats running from Document No. 38 to Document No. 50 inclusive, and including Document No. 7 is the territory represented by all of these township plats, part of the peninsula of Saint Bernard, shown on the official map of the parish of Saint Bernard, map No. 52?

A. Yes sir, it is.

Q. And part of what is known as the Louisiana marshes?

A. Yes sir.

Q. With the exceptions which you have stated, do these township plats cover the territory in dispute between Louisiana and Mississippi so far as the land is concerned?

A. Yes sir, they do.

Mr. DYMOND: Counsel for the State of Louisiana, in connection with the testimony of the witness, now offer, produce and file in evidence the certified extracts from the tract books and records of the United States land office showing the selections by the

800 State of Louisiana and the approval to the State of Louisiana by the United States Government under the provisions of the swamp land act of the United States Congress of March 2nd, 1849, of all of the lands in township 12, south range 16, east; township 13, south range 16, east; township 10, south range, 17, east; township 11, south range 17, east; township 12, south range 17, east; township 13, south range 17, east; township 10, south range 18, east; township 11, south range 18, east; township 12, south range 18, east; township 13, south range 18, east; township 11,

south range 19, east; township 12, south range 19, east; township 13, south range 19, east; township 10, south range 20, east; township 11, south range 20, east; township 12, south range 20, east; township 13, south range 20, east; south eastern district of Louisiana, east of the Mississippi river the same being Exhibit "G" attached to the original bill of complaint on file in the office of the clerk of the Supreme Court of the United States in this suit a certified copy whereof is now tendered to the State of Mississippi, the offer in evidence being the offer of the original Exhibit "G" in the custody of the clerk of the Supreme Court of the United States.

801 Q. Will you please look over the list of seclections and approvals as shown by this copy Exhibit "G" and state whether, as to townships and ranges, they cover the Saint Bernard peninsula and whether they also cover the area in dispute in this case between Louisiana and Mississippi?

A. Yes sir, they do according to my understanding.

Q. Do they cover the territory which is commonly called the Louisiana marshes?

A. The portion of the territory commonly called the Louisiana marshes, yes sir.

Q. Are the Louisiana marshes included within these various townships described in this copy of Exhibit "G"?

A. Yes sir.

Q. Is all of that part of the Louisiana marshes which is in dispute between Louisiana and Mississippi in this case, included in this Exhibit "G"?

A. Yes sir, I think it is, according to the red lines shown on map Exhibit "A" of Mississippi.

Mr. DYMOND: In connection with the Exhibit "G," a copy of which has been tendered to counsel for the State of Mississippi, counsel for the State of Louisiana now offer, in addition the certificate attached to said Exhibit "G" signed by Walter L. Cohen, register and Charles P. Johnson, receiver of the United States land office at New Orleans, Louisiana.

Q. Mr. Smith, will you please look at your large map No. 52, being the official map of the parish of Saint Bernard, and state whether sections 23, 24, 25, and 26 of township 10, south range 20, east, in the southeastern land district of Louisiana, Saint Bernard parish, are within the disputed area in this suit?

802 A. Yes sir, they are within the disputed area.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent granted by the State of Louisiana to Richard Pindell on the 20th of March, 1867, the same being on file in the clerk's office of the United States Supreme Court

and being Exhibit "H" attached to the bill of complaint, a certified copy whereof having been furnished to the State of Mississippi.

Q. Will you please state whether sections 33 and 24 in township 10, south range 20, east, in the southeastern land district of Louisiana, parish of Saint Bernard, are within the disputed area in this case?

A. They are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent 195 by the State of Louisiana to Richard Pindell for the said lands issued on March 20, 1867, the same being original Exhibit "I" attached to the bill of complaint and on file and in the custody of the clerk of the Supreme Court of the United States, the offer being of the original exhibit and a certified copy of same being furnished to counsel for the State of Mississippi.

803 Q. Will you please notice if sections 27, 28 and 32 of township 10, south range of 20, east, southeastern land district of Louisiana, Saint Bernard parish are within the disputed area?

A. Yes sir, they are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the original patent No. 196 issued by the State of Louisiana to Richard Pindell for the said lands on March 20th, 1867, being original Exhibit "J" attached to the bill of complaint herein on file and in the custody of the clerk of the Supreme Court of the United States, Washington, D. C. in this suit, the offer being of the original exhibit and a certified copy thereof having been given to the counsel for the State of Mississippi.

Q. Will you please, Mr. Smith, notice if sections 20, 21, 28 and 29 of township 10, south range 20, east, southeastern district, east of the Mississippi river, are within the disputed area?

A. I find them all except section 21, the fractional section 21.

Q. They are denominated in the patent as being three islands?

A. There is not room enough on this little island; there
804 are two other islands here but the section is not designated on this map.

Q. From your knowledge of the facts, are you prepared to state whether sections 20, 21, 28 and 29 of township 10, south range 20, east, are within the disputed area?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the patent No. 4055 issued by the State of Louisiana to Henry J. Leovy on January 26th, 1883, for the said lands with the certificate of the register of the State land office of

Louisiana thereon under date of April 5, 1904, the said certified copy to be marked Document 51, and tenders to the counsel for the State of Mississippi a copy of the same.

Q. Will you please state whether the east fractional half of the northwest fractional quarter of section 4 in township 11, south range 20, east, in the southeastern district of Louisiana, east of the Mississippi river, parish of Saint Bernard is within the disputed area in this case.

A. Yes sir, it is.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the original patent 5093, issued
805 by the State of Louisiana for said lands to Joseph C. Gilmore on April 27, 1894, with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard, under date of April 2, 1904, the said exhibit to be marked Document No. 52, and tender to counsel for the State of Mississippi a certified copy thereof.

Q. Will you please notice whether the north half of section 32 and the fractional southwest quarter of section 29 in the township 11, south range 19, east, Southeastern East of River land district, in the parish of Saint Bernard, are within the disputed area in this case?

A. Yes sir, they are.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of the original patent 5094, issued by the State of Louisiana to S. Meloche for this land on April 27, 1894, with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard, State of Louisiana under date of April 2, 1904, the said offer to be marked Document No. 53 and tender to the counsel for the State of Mississippi a certified copy thereof.

Q. Will you please notice if fractional section 35, town-
806 ship 11, south range 20, east, in the Southeastern, East of River land district, parish of Saint Bernard, is in the disputed area in this case?

A. Yes sir, it is.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence a certified copy of original patent No. 5095 issued by the State of Louisiana for these lands to S. Meloche on April 27, 1894, together with the certificate of the register of the State land office and clerk of court and *ex-officio* register of conveyances of the parish of Saint Bernard, State of Louisiana, under date of April 2, 1904, said offer to be marked Document No. 54, and a certified copy thereof being tendered to counsel for the State of Mississippi.

Mr. DYMOND: Counsel for the State of Louisiana now refers to act 14 of 1892 of the legislature of the State of Louisiana, creating the board of commissioners for the Lake Borgne Basin levee district and tender to the counsel for the State of Mississippi a copy of said law.

Q. Will you please notice whether the following townships compose the peninsular of Saint Bernard and whether they also cover the area in dispute in this case between Louisiana and Mississippi, to-wit: Township 11, south range 17, east; township 11, south
807 range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 13, east——

A. Township 12, south range 13, east, would not be in the disputed area.

Q. These townships which I have indicated to you and interrogated you about, prior to township 12, south range 13, east, would they be within the disputed area?

A. Yes sir.

Q. Do you understand, Mr. Smith, that the question is not confined to the disputed area; you are also asked if it forms part of the peninsular of Saint Bernard?

A. Yes sir, I understand that part.

Q. Township 12, south range 16, east?

A. Yes sir.

Q. Township 12, south range 17, east?

A. Yes sir.

Q. Township 12, south range 18, east?

A. Yes sir.

Q. Township 12, south range 19, east?

A. Yes sir.

Q. Township 12, south range 20, east?

A. Yes sir.

Q. Township 12, south range 21, east?

A. Yes sir.

Q. Township 13, south range 16, east?

A. Yes sir.

Q. Township 13, south range 17, east?

A. Yes sir.

Q. Township 13, south range 18, east?

A. Yes sir.

Q. Township 13, south range 19, east?

A. Yes sir.

Q. Township 13, south range 20, east?

A. Yes sir.

808 Q. Township 14, south range 16, east?

A. Yes sir.

Q. Township 14, south range 17, east?

A. Yes sir.

Q. Township 14, south range 18, east?
A. Yes sir.
Q. Township 14, south range 19, east?
A. Yes sir.
Q. Township 14, south range 20, east?
A. Yes sir.
Q. Township 15, south range 16, east?
A. Yes sir.
Q. Township 15, south range 17, east?
A. Yes sir.
Q. Township 15, south range 18, east?
A. Yes sir.
Q. Township 15, south range 19, east?
A. Yes sir.
Q. Township 16, south range 16, east?
A. Yes sir.
Q. Township 16, south range 17, east?
A. Yes sir.
Q. Township 16, south range 18, east?
A. No sir, that don't exist unless it is a part of the Chandeleurs, es, there are some little points here, Mr. Dymond.
Q. Do those various townships represent the peninsular of the arish of Saint Bernard, lying east of a line drawn north and south hrough Lake Borgne?
A. To about the middle of Lake Borgne?
Q. Yes sir.
A. Yes sir.
Q. Do those townships include as a portion of its area, that part of the Louisiana marshes in dispute in this case?
A. Yes sir, it does.

Mr. DYMOND: In connection with the testimony of the witness, ounsel for the State of Louisiana, now offer, produce and file in vidence, a certified copy of the original deed of the register of the tate land office made by him in accordance with the provision of ct 14, 1892, to the board of commissioners for the Lake Borgne Basin levee district, under date of April 2, 1895, and covering, mongst other lands the lands concerning which the witness has just een examined; together with the certificate of the clerk of court nd *ex-officio* register oc conveyances for the parish of Saint Bernard nowing the registration of the said original deed in his conveyance ffice; together with the certificate of the said clerk of court and *ex-fficio* register of conveyances to the correctness of this certified copy; hich said offer is to be marked Document No. 55 and a copy thereof tendered to counsel for the State of Mississippi; the list of lands n the said Document No. 55 as being located in the parish of Saint ernard, beginning on page 10 of said document.

Mr. DYMOND: Counsel for the State of Louisiana now offer, pro-uce and file in evidence the following exhibits:

810 First. A certified copy of the original act of sale by Richard Pindell to Henry J. Leovy on April 8th, 1867, before George William Christy, a notary public in the city of New Orleans, State of Louisiana, of the fractional sections 23, 24, 25 and 26 in township 10, south range 20, east; the fractional sections 33 and 34 in township 10, south range 20, east; the fractional sections 27, 28, and 32 in township 10, south range 20, east; acquired under patents 194, 195 and 196 of the State of Louisiana, dated March 20, 1867, with the certificate of the custodian of notarial records for the city of New Orleans, Peter Stiffi, being the original Exhibit "K" attached to the bill of complaint on file and in the custody of the clerk of the Supreme Court of the United States, at Washington, D. C. in this case, the offer being of the original exhibit and counsel for the State of Mississippi having been furnished with a copy of same.

Second. A certified copy of the act of sale by Henry J. Leovy to Joseph C. Gilmore on March 2nd, 1892, before Theodore Cotonio, notary public for the parish of Orleans State of Louisiana, of certain lands situated in the southeastern land district of Louisiana,
811 in the *in the* parish of Saint Bernard, embracing the whole of the island known as the Isle au Pitre and other lands, to-wit: the fractional sections Nos. 23, 24, 25 and 26 in township 10, south range 20, east; fractional sections 33 and 34 in township 10, south range 20, east, and fractional sections 27, 28 and 32 in township 10, south range 20, east; with the certificate of registration in the conveyance office of the parish of Saint Bernard together with the certificate of the said notary; being the original Exhibit "L" attached to the bill of complaint now on file and in the custody of the clerk of the Supreme Court of the United States at Washington, D. C. in this case, the offer being of the original exhibit and a certified copy thereof having been tendered to the counsel for the State of Mississippi.

Third. A certified copy of an act of sale by Henry J. Leovy to Joseph C. Gilmore under date of March 2, 1892, before Theodore Contonio, a notary public for the parish of Orleans, State of Louisiana, of certain lands situated in the southeastern land district of Louisiana and parish of Saint Bernard, adjacent to Isle au Pitre being three islands in sections 20, 21, 28 and 29 in township 10 south range 20, east; southeastern, east of the river land dist. with
812 the certificate of registration thereon and of the notary thereto attached being the original Exhibit "M" attached to the bill of complaint and on file and in the custody of the clerk of the Supreme Court of the United States at Washington, D. C., in this case; the offer being of the original exhibit annexed to the bill and a certified copy having been tendered to the counsel for the State of Mississippi.

Fourth. A certified copy of an act of sale by Richard Pindell to Henry J. Leovy on April 18, 1867, before George William Christy, notary public for the parish of Orleans, State of Louisiana, of the north west quarter of section 15, in the township 14, south range

ast, southeastern land district of Louisiana in the parish of
t Bernard; with the certificate of Peter Stifft, custodian of
rial records thereto attached; being the original Exhibit "Z"
ched to the bill of complaint on file and in the custody of the
k of the Supreme Court at Washington, D. C., in this case; the
r being of the original Exhibit "Z" annexed to the bill; and
rtified copy having been tendered to counsel for the State of
sissippi.

ifth. A certified copy of the original act of sale under private
nature by Joseph C. Gilmore to the Louisiana Navigation Com-
pany Limited, under date of October 10th 1894 of certain lands
situated in the southeastern land district of Louisiana in the
parish of Saint Bernard, embracing the island known as Isle
Pitre and other lands, to-wit: the fractional sections 23, 24, 25
26 in township 10, south range 20, east; the fractional sections
nd 34, in township 10, south range 20, east; the fractional sec-
s 27, 28 and 32, in township 10, south range 20, east; with the
ificate of registration thereon and the certificate of the clerk of
rt and *ex officio* register of conveyances of the parish of Saint
nard thereto attached; the said document to be numbered Docu-
nt No. 56, and a certified copy thereof being tendered to counsel
the State of Mississippi.

ixth. A certified copy of act of sale from the board of commis-
ers of Lake Borgne Basin levee district to Lazaro Lopez and
illiam K. M. Dukate, of sections 26 and 21, also islands N, M, L
K, in township 12, south range 18, east, in the southeastern dis-
t of Louisiana described as being a part of the lands acquired
vendor from the State of Louisiana under and by virtue of the
visions of act 14 of the General Assembly for the year 1892,
sed before James D. St. Alexandre, a notary public for the parish
Saint Bernard together with the certificate of Joseph D. St Alex-
dre, clerk and *ex-officio* recorder showing the same to have been
recorded in the conveyance records for the parish of Saint
Bernard on the 15th of March 1902, which document is
marked Document No. 8, and has already been offered in
dence and a copy of same tendered to counsel for the State of
sissippi.

Seventh. A certified copy of an act of sale under private signa-
e by the board of commissioners for the Lake Borgne Basin levee
trict on September 16th 1898, to Charles Sanger of Bay Saint
uis, Mississippi, of the following lands situated in the parish of
nt Bernard State of Louisiana, to-wit: the fractional south half
section 15; the east half; the fractional southwest quarter and
ctional east half of the northwest quarter of section 21; all of
tions 22, 27 and 28; the north half of section 33; the north half
section 34; the south half of the northwest quarter and south-
st quarter of section 23; the west half of the northeast quarter
l west half of section 26; the west half and northeast quarter
l the northwest quarter of section 35; all in township 11, south

range 19, east; southeastern land district, east of the Mississippi river; with the acknowledgment and certificate of registration thereon and the certificate of the clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard under date of April 2nd 1904, the said offer to be marked Document No. 57, and
815 a certified copy thereof being tendered to counsel for the State of Mississippi.

Eighth. A certified copy of an act of sale under private signature by the board of commissioners for the Lake Borgne basin and levee district on June 17th 1899, to George H. Dunbar, of the following described lands, to-wit: The southeast quarter of the northeast quarter; the southeast quarter of the southwest quarter and the southeast quarter of section 11; the northeast quarter of section —; the northeast quarter of the northwest quarter; the south half of the northwest quarter and the south half of section 12; and all of section 14; the north half of the northwest quarter and the east half of section 23; all of section 24; all of section 25; the east half of the northeast quarter and southeast quarter of section 26; the east half of the northeast quarter of section 35; the north half of the south half and south half of the north half of section 36; in township 11, south range 19, east. The northwest quarter of the northwest quarter, the south half of the northwest quarter and the southwest quarter of section 19; the west half of section 30; in township 11, south range 20, east. The island designated as Preachers
816 island, embracing all of fractional sections 13, 14, 15, 22, 23; the fractional west half of section 24, in township 12, south range 18, east. In the southeastern land district of Louisiana, east of the Mississippi river. Being the same lands acquired by the board of commissioners from the State of Louisiana, under section 11 of act 14, 1892, by deed of the register of the State land office of April 2nd 1895; together with the acknowledgement and certificate of registration thereon and the certificate of the clerk of court and *ex-officio* register of conveyances for the parish of Saint Bernard; said offer to be marked Document No. 58, and a copy thereof being tendered to counsel for the State of Mississippi.

Ninth. A certified copy of an act of sale before James D. St. Alexandre notary public for the parish of Saint Bernard on March 7th 1902, by the board of commissioners for the Lake Borgne Basin levee district, to George Ruppel, of the following described lands; the east half of section 33; the west half of section 34; in township 11, south range 20, east; the northwest quarter of section 3, and the northeast quarter of section 4; in township 12, south range 20, east. In the southeastern land district of Louisiana, east of the Mississippi
817 river; together with the certificate of registration thereon and the certificate of James D. St. Alexandre clerk of court and *ex-officio* register of conveyances thereto attached. The said offer to be known as Document No. 59, and a certified copy thereof being tendered to counsel for the State of Mississippi.

At this stage of the proceedings, the hearing was adjourned by the commissioner for recess to be resumed at the hour of 2.15 p. m. at the same place and date.

Resumption of Proceedings.

2.15 P. M.

Pursuant to adjournment for recess, the hearing was resumed at the same place, at the hour of 2.15 p. m. all parties being present.

The examination of Mr. HUGH C. SMITH resumed.

By Mr. DYMOND:

Q. Will you please state whether Isle au Pitre, Half Moon island, and these other islands of the character of the Louisiana marshes, are divided by townships and sections, as being part of the survey made by Richardson and Powell, as Louisiana territory?

A. Yes sir, they are, and are so shown on the township maps.

Cross-examination.

By Mr. FLOWERS:

Q. When did you say this survey was made?

A. Which survey, Mr. Flowers?

Q. The survey shown by this map No. 52.

A. At different dates. Some of them in the '40's, 1842, 1843, 1845; but the majority of Saint Bernard was surveyed by the deputy surveyors Powell and Richardson.

Q. When was that?

A. As I stated, at different dates, some of them in 1843, some of them in 1845.

Q. Had you anything, yourself, to do with any of the surveying of any part of this territory?

A. As regards what, as regards laying off sections?

Q. As regards the actual survey?

A. I have made numerous private surveys.

Q. In making private surveys you were not establishing original lines, were you?

A. No sir.

Q. Did you have anything to do with the surveying of this territory or any part of it, shown by this map No. 52.

818 A. No sir; not relative to laying off townships and sections.

Q. When did you prepare this map?

A. In 1896, I finished it; I think I began it in 1895.

Q. Where did you say you got your data?

A. The majority of it was compiled from Government records and some from actual surveys of sub-divisions of old Spanish and French grants.

Q. What Government records?

A. Surveys that were made by Deputy Surveyors Powell and Richardson that were on file in the courthouse at Saint Bernard, as township maps.

Q. You said something about getting part of your data from out of the United States Land Office, did you not?

A. Yes sir.

Q. What was that?

A. That was relative to the marsh land being turned over to the State of Louisiana.

Q. Where did you get your idea as presented by this map as to the boundary lines of Saint Bernard parish?

A. It had already been certified by the United States deputy surveyors and shown as such among their records.

Q. And as to the boundary lines you took those records for it?

A. Yes sir.

Q. Do you know anything, of your own knowledge, about any part of this territory?

A. Yes sir; I know a good deal about it.

Q. But, you do not know anything personally about the location of those lines?

A. No sir; not about the location of those lines.

819 Q. Your testimony here, as to the location of any section or township and as to whether any part of this territory is within the disputed territory, or is part of it, you have testified altogether from this map prepared by you, have you not?

A. That and the Government records.

Q. In making your answers to questions asked you on your examination in chief, you have depended altogether on this map No. 52, have you not?

A. Well, yes.

Q. You have not testified here to anything except what is shown by this map No. 52, have you?

A. And those township plats which this big map is a reproduction of.

Q. The township plats, or maps you refer to, are taken from this map No. 52?

A. No sir.

Q. Are they not parts of this map?

A. Yes sir; but this map No. 52 was taken from the township plats.

Q. Those plats show, purport to show, exactly what this map No. 52 shows?

A. Yes sir.

Q. But those township plats and this map No. 52 present everything you know about the location of this territory and the township and range section lines, do they not?

A. Yes sir; as regards lines and township and sections.

Q. Your answers to the questions on examination in chief were all based on this map and those plats?

820 A. Yes sir.

Q. You have not pretended to answer anything of your knowledge about the location of these lines, and whether any part of the land shown by this map, is in the disputed territory?

A. Well, I have—in the disputed territory.

Q. Yes?

A. I have never established any township or section lines in that part of the parish, but I have in other portions of the parish.

Q. You say you have established township lines?

A. Yes sir, portions of them, extended them.

Q. In what part of the territory did you do that?

A. Near the southwest coast of Lake Borgne.

Q. Is that southwest coast of Lake Borgne within the disputed territory or part of the disputed territory as you understand it?

A. No sir.

Q. Have you established, or helped to establish any township or range line within the disputed territory?

A. No sir, I have not.

Q. And you have not, I believe you said, testified to any facts about the location of these lines except what is shown by these township plats and this map No. 52?

A. Yes sir; I have gone entirely by those.

Redirect examination.

By Mr. DYMOND:

Q. In your position as chief engineer and surveyor of the oyste commission, have you ever had an occasion to look up the matter of the township and range lines in the disputed area?

821 A. Yes sir.

Q. Have you ever found them with any relative accuracy?

A. In the disputed area?

Q. Yes?

A. Well, no sir, I have never looked them up systematically. I have tied surveys to section corners, located as near as it was practicable to do, from prominent points, where the section line was shown on the plat. In the southwestern part of the Louisiana coast here, I have made pretty accurate surveys and tested them by measurement by chain and found them to tally very nicely.

Q. Did you ever make any surveys of oyster beddi*b*g grounds for people interested with Lopez and Dukate, south of Pirate's point near the township line dividing township 12–18 from 13–18?

A. Yes sir; I have.

Q. Did you locate those bedding grounds with reference to the township and section lines as shown on the plat of survey by the government, or on your map No. 52?

A. As near as practicable to do so without running the township line out with an instrument.

Q. Have you made any other surveys of oyster bedding grou in this disputed area?

A. Yes sir; several.

Q. Please state for whom?

A. For Dunbar and others.

Q. Where did you make your surveys for Dunbar?

A. Just east of Pirate's point, southern extremity of Pira point.

822 Q. Is that in township 12, south range 18, east?

A. Yes sir.

Q. Is that in the disputed area?

A. Yes sir.

Q. Did you make those with reference to any section lines in t township?

A. The same as those for Dukate and others, or the people t Dukate was representing.

Q. Did you make any surveys for any one else?

A. Yes sir; I made a survey for Salvador Rousso in Bay B dreaux.

Q. Where did you locate his bedding ground?

A. On the south west side of Shell point.

Q. Where is Shell point?

A. You want me to designate it?

Q. Designate it, not by pointing it out, but by describing it?

A. It is in township 12, south range 18, east. I also made so surveys in Blind pass.

Q. Is that to the westward of Nine Mile bayou?

A. Yes sir; to the west of Nine Mile bayou.

Q. Is that west of the red ink line?

A. Yes sir.

Q. Which comes down through Nine Mile bayou?

A. Yes sir.

Q. On Exhibit A of Mississippi?

A. Yes sir. I made also——

Q. This survey of oyster bedding ground which you made Salvador Rousso; was that in the disputed area, or not?

823 A. That was in the disputed are- east of Nine Mile bay

Q. You were about to say you made other surveys?

A. One for Mr. Darling.

Q. Where did you make that?

A. In False Mouth bay; that is also west of Nine Mile bayou.

Q. Is False Mouth bay, according to Mississippi Exhibit A in disputed area, or not?

A. Well, according to my map and our knowledge of that sect of the country that is called Nine Mile Bayou bay.

Q. What are you referring to now?

A. The name of the bay in Exhibir A of Mississippi. The sa body of water on my map of Saint Bernard and on the Governm plats is called Nine Mile bay.

Q. What is that called on Mississippi's Exhibit A?

A. It is called False Mouth bay.

Q. Is that the bay you had reference to when you spoke a moment ago of making a survey?

A. No sir; I had reference to one still further west. It really opens out into two bays, it is known by a different name, because ther- are islands intervening.

Q. Islands that separate it from the other big body of water?

A. Yes sir.

Q. How do these names on Mississippi's Exhibit A compare with the names with which you are familiar as given to the bodies of water on your map No. 52 and on the United States Government townships surveys?

A. I notice quite a difference.

Q. Do you know where the names were gotten which appear on Mississippi's Exhibit A?

824 A. No sir.

Redirect examination.

By Mr. FLOWERS:

Q. I believe you said the name of the bay into which Nine Mile bayou enters, flows, is called on your map, Nine Mile Bayou bay?

A. I don't know if I said on my map particularly; but on the Government charts and Government plats.

Q. What is it called on your map?

A. I don't believe I have any name there for it at all. No sir, I have not.

Q. I want to ask you one thing, you have not been asked about at all. Just for my own information. Is there any water course, body of water of any kind, connecting Lake Borgne with the gulf of Mexico, directly south?

A. What part of Lake Borgne?

Q. I mean connecting the most southern loop of Lake Borgne with the gulf of Mexico, south?

A. No sir, not now. There was once upon a time.

Q. Within your recollection?

A. No sir, previous.

Q. What evidence have you of that?

A. By the old bayou bed which is still in existence, but it is perfectly dry now.

Q. All *the* way from Lake Borgne to the Gulf?

A. No, not all the way; it is dry a portion of the way.

Q. Is it still there, still in existence a part of the way?

A. Part of the way, yes sir.

Q. How far?

825 A. Only down through the marshes; but where it comes in contact with higher land and cultivated land it is all filled up.

Q. About how far is that?

A. About 18 miles.

Q. Is it still in existence about 18 miles?

A. Yes sir, going out of Lake Borgne.

Q. Well, but connected at one time with Lake Borgne?

A. That is Bayou La Loutre, that connected with Bayou Yaclosky.

Q. Is that bayou connected with Lake Borgne?

A. That bayou is connected with Lake Borgne now, Bayou Yaclosky.

Q. Is that lake connected with the other lake you name?

A. That bayou.

Q. The other bayou I mean?

A. It at one time connected with Bayou La Loutre and Bayou La Loutre emptied into the Gulf, therefore, of course it had a connection with Lake Borgne.

Q. You say there is no body of water connecting Lake Borgne with the Gulf south?

A. No sir: not from any point near there.

Q. But it does extend part of the way?

A. There is an old bayou that does, yes sir, Bayou La Loutre.

Q. How far is it from that most southern extremity of Lake Borgne south through that country to the Gulf?

A. To where the bayou empties into the Gulf?

Q. Yes?

A. About 33 or 34 miles.

Q. And there is a body of water covering about 18 miles of that?

826 A. Yes sir.

Q. That you estimate, of about 18 miles?

A. Yes sir, approximately.

Q. I don't remember the names of the surveyors you mentioned awhile ago?

A. Powell and Richardson.

Q. And when did they make their surveys of this Saint Bernard parish?

A. I will have to refer to those charts, Mr. Flowers, to give you an exact date. Some of them were made in 1843 and some in 1845.

Q. All made by those men?

A. I think most all of Saint Bernard were given out under contract to different surveyors by the Government.

Q. By what Government?

A. By the United States Government; and they in turn were approved by the surveyor general of Louisiana.

Q. At whose instance did you say these men made these surveys?

A. By the order of the United States Government.

Q. They were employed to do it by the United States Government?

A. They had a contract for it.

Q. The State of Louisiana did not have any thing to do with it?
A. No sir—well, I suppose it was under the direction of the surveyor general of Louisiana.
Q. When they made these surveys they were not surveying Saint Bernard parish particularly, were they; they were not sent
27 to mark that territory off into townships and range sections?
A. That is what they did; but whether they took it at Saint Bernard parish, I am not prepared to say.
Q. But that was their duty?——
A. To lay off that territory without any regard to parishes and to give a general outline of the contour and topography of the country.
Q. It had no reference to the boundary lines between parishes or between States?
A. No sir; I think not.

By Mr. DYMOND:

Q. Will you please state what townships and what sections compose what is called Isle à Pitre?
A. Township 10, south range 20, east, sections 21, 22, 23, 24, 25, 26, 27, 28, 32, 33 and 34.
Q. Are those sections given in the transfer and approval by the United States to the State of Louisiana, being Exhibit "G" which you have in your hand?
A. Yes sir.
Q. Now what sections of township 11, south range 20, east, if any, form part of Isle au Pitre?
A. Section 4, section 5, section 6, section 7, and section 8.
Q. Are those also found in Exhibit "G" being approval by the United States to the State of Louisiana?
A. Yes sir.
Q. Will you please tell us what townships, with ranges and what sections, compose Half Moon island?
A. Half Moon island is a part of four townships.
28 Q. Please designate them and give the section of each township as you designate the township?
A. On the wast township 10, south range 17, east, sections 36 and 3.
Q. Will you please look at this Exhibit "G" which is the approval by the United States to the State of Louisiana, and say whether you find these sections of this township as having been approved by the State of Louisiana?
A. Township 10, south range 17, east.
Q. Do you understand the question. You have mentioned certain sections of township 10, south range 17, east, as composing part of Half Moon island?
A. Yes sir.
Q. Will you please state whether you find those sections as being

set forth in this Exhibit "G" which is the approval of certain land by the United States to the State of Louisiana.

A. No sir; I do not. I do not find these lands are on there if understand you right.

Q. You certainly do not understand me right. What sections d you find in township 10, south range 17, east, on Document No. 3 as being a part of Half Moon island. You think you understan that question?

A. Yes sir.

Q. Answer the question if you understand it. Read the questio to the witness.

A. I only find fractional section 36.

Q. Do you find fractional section 36 as having been approved t the State of Louisiana by the United States Government in this Ex hibit G?

A. Yes sir.

829 Q. Will you please state what sections of township 10, sout range 18, east, compose Half Moon island?

A. Fractional sections 29, 31, 32 and 33.

Q. Do you find any reference to any selection and approval b the United States to the State of lands in township 10, south rang 18, east, in this copy of Exhibit "G"?

A. Yes sir; I do. All of township 10 except section 16.

Q. Will you please state what sections of township 11, south rang 18, east, compose Half Moon island?

A. Five and six, section five and section six.

Q. Will you please state whether you find those sections as havin been selected by and approved to the State by the United States, i this map Exhibit G?

A. Yes sir.

Q. What sections do you find in township 11, south range 17 east, as composing part of Half Moon Island?

A. Fractional section 1, 2——

Q. I asked you about Half Moon island. You want to listen at tentively to these things so you can answer intelligently?

A. Fractional section 1.

Q. Will you please state whether this copy of the original Ex hibit H, shows section 1 as having been selected by and approved t the State by the United States Government?

A. Yes sir, it does.

Q. Will you please state what sections of township 10, south rang 17, east, compose Grassy or Marsh island?

A. Fractional section 26.

830 Q. Will you please state whether you find any record o the approval of this section to the State of Louisiana by th United States Government, in this copy of Exhibit G?

A. Yes sir.

Q. Will you please — what sections of township 11, south rang 17, east, compose Round island?

A. Fractional section 2 and fractional section 11.

Q. Will you please state whether this Exhibit G shows any record of the approval of the United States to the State of these two sections?

A. It does.

Q. Will you please state what sections of township 11, south range 17, east, compose Petite Bois island?

A. Fractional section 14, and fractional section 23.

Q. Will you please look at the copy of Exhibit G and state whether it shows any record of approval by the United States to the State of Louisiana of these two sections?

A. It does.

ALCIDE GUTIERREZ, witness, recalled on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please state whether that is your signature as the secretary of the police jury of the parish of St. Bernard, attached to this official map of the parish of Saint Bernard, which we call map No. 52?

A. Yes sir; that is my signature as secretary of the police jury.

Q. Was this map made for and paid for by the police jury?

831 Q. Was the map made for and paid for by the police jury of the parish of Saint Bernard?

Mr. FLOWERS: Mississippi objects to leading questions.

Q. Will you please look at this document which we will call Document No. 60 and state what it is?

A. This is a bill of expense for the year 1896 and adopted by the police jury.

Q. What parish?

A. Police jury of the parish of Saint Bernard.

Q. Was, or was not, the money therein budgeted for the preparation of a map, this map which is now before you and which is marked map No. 52?

A. Yes sir.

Q. Was the money paid to Mr. H. C. Smith?

A. Yes sir, it was paid to him.

Q. Do you, or do you not, recognize this to be the map which was made for the police jury of the parish of Saint Bernard?

A. Yes sir. That is the same map.

Mr. DYMOND: In connection with the testimony of the witness counsel for the State of Louisiana now offer, produce and file in evidence, a certified copy of the budget of the parish of Saint Bernard

for the year 1896, to be marked Document No. 60, and tenders a certified copy thereof to the counsel for the State of Mississippi.

Q. Is that your signature Mr. Gutierrez, to the exhibit, namely, Document No. 60?

832 A. Yes sir.

Cross-examination.

By Mr. FLOWERS:

Q. You say Mr. Smith made this map?
A. Yes sir.
Q. Who employed him to do it?
A. The police jury of the parish of Saint Bernard.
Q. He made it at the expense of the parish of Saint Bernard?
A. Yes sir.
Q. He made it for the authorities of the parish of Saint Bernard?
A. I don't know that it was made for the authorities.
Q. I mean he made it at their expense?
A. Yes sir.
Q. When did he do this?
A. I believe it was in 1896, in the early part of 1896.
Q. Did they, or not, leave it *ot* him to determine what Saint Bernard parish was?
A. Well, I suppose he was a civil engineer, he was employed I believe for that purpose.
Q. They just employed him to prepare a map of Saint Bernard parish and this is what he delivered to them?
A. Yes sir. And that is what we consider the parish of Saint Bernard; that is what I have always taken to be the parish of Saint Bernard.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a copy of a resolution of the police jury of the parish of Plaquemines adopted January 7th, 1901,

833 marked Document No. 61, and tender to the counsel for the State of Mississippi a copy thereof.

At this stage of the proceedings, the hearing was adjourned by the commissioner to Thursday April 28th, 1904, by consent of counsel for the States of Louisiana and Mississippi, to be resumed on that date at the hour of 10.30 a. m.

Resumption of Proceedings.

NEW ORLEANS, April 28, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed at the same place and at the hour of 10.30 a. m.

Present: Hon. Frank H. Mortimer commissioner.
Hon. Walter Guion, attorney general of Louisiana.
Mess. John Dymond Jr., F. C. Zacharie and Albert Estopinal Jr., associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

834 Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of the list of selected swamp and overflowed lands in townships 10, south range 17, east; township 10, south range 18, east; township 10, south range 20, east; with the certificate of the acting Commissioner of the General Land Office of the United States Government and the certificate of the register of the State land office of the State of Louisiana. The latter under date of April 11th 1904. The said offer to be known as Document No. 62, and a copy thereof being tendered to counsel for the State of Mississippi.

Mr. DYMOND: Counsel for the State of Louisiana offer, produce and file in evidence, the following exhibits, to wit: 1st. List of swamp and overflow lands in township 11, south range 17, east: township 11, south range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 16, east; township 12, south range 17, east; township 12, south range 18, east; township 12, south range 19, east; township 12, south range 20, east; township 13, south range 16, east; township 13, south range 17, east; township 13, south range 18, east; township 13, south range 19,
835 east; township 13, south range 20, east; with the certificate of the acting Commissioner of the General Land Office of the United States Government and the certificate of the register of the State land office of the State of Louisiana, thereto attached, the latter being under date of April 26th, 1904, which offer is to be marked Document 63 and a copy thereof is tendered to counsel for the State of Mississippi.

Second. A certified copy of the extract of entries from the books of the register of the State land office of the State of Louisiana, in regard to the lands in township 11, south range 17, east; township 11, south range 18, east; township 11, south range 19, east; township 11, south range 20, east; township 12, south range 16, east; township 12, south range 17, east; township 12, south range 18, east; township 12, south range 19, east; township 12, south range 20, east; township 13, south range 16, east; township 13, south range 17, east; township 13, south range 18, east; township 13, south range 19, east; township 13, south range 20, east; together

with the certificate of the register of the State land office of the Stat
of Louisiana, under date of April 26th 1904, the said offe
836 being marked Document No. 64. And a certified copy there
being tendered to counsel for the State of Mississippi.

A. C. GONZALES, witness sworn and examined on behalf of th
State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. I live in the parish of Saint Bernard.
Q. How long have you resided there?
A. I was born and raised there.
Q. What is your post office address?
A. Saint Bernard.
Q. What official position, if any, do you hold in the parish o
Saint Bernard?
A. Assessor.
Q. What are the duties of the assessor?
A. To tax the property.
Q. Do you, in connection with your duties as assessor, make
list of all of the property in the parish subject to taxation?
A. Yes sir.
Q. Do you keep that list in the shape of a permanent book o
record for future reference if necessary?
A. Yes sir.
Q. Will you please look at the books which rest on the table be
side you and state whether they are what are called the assessor'
rolls of the parish of Saint Bernard?
A. Yes sir, from 1889 up to 1903.
Q. Do I understand you to say that you have the assessment roll
from 1889 up to 1903?
A. Yes sir.
Q. Has the assessment roll for the year 1904 been com-
837 pleted as yet?
A. No sir.
Q. How long have you been assessor of the parish of Saint Ber
nard?
A. Seven years.
Q. When does your present term expire?
A. On the 31st of December 1904.
Q. Will that make you eight years' service?
A. Yes sir.
Q. That would carry you back then——
A. To 1897.
Q. 1897 as the year in which you started?

A. Yes sir. I was appointed by Governor Foster in 1897.

Q. Have you made the assessment rolls of the parish of Saint Bernard from 1897 up to 1903 inclusive?

A. Yes sir.

Q. Are you making the assessment rolls for the year 1904?

A. I am listing the properties now.

Q. Who was the assessor prior to your appointment as assessor of the parish of Saint Bernard?

A. Mr. J. C. Bourg.

Q. How long was Mr. Bourg the assessor of the parish of Saint Bernard, prior to your incumbency of that office?

A. I think Mr. Bourg was assessor about four years prior to my appointment.

Q. Do you know whether or not there was ever a fire in the parish of Saint Bernard which destroyed the courthouse of that parish?

A. Yes sir.

Q. When was that?

A. I think it was in 1883.

Q. Were the assessment records of the parish of Saint Bernard kept in the court house prior to its burning and were they in the court house at the time that the court house burned?

838 A. Yes sir.

Q. Have you, under your control, or is there in the courthouse, any of the assessment rolls or records, prior to the year 1883, so far as you know?

A. I do not think, Mr. Dymond.

Q. What became of them?

A. I don't know.

Q. Were they or were they not burned up in this fire?

A. They said they were burned. I don't know anything about that.

Q. You were not the assessor at that time?

A. No sir.

Q. What is the common repute or story in regard to the old assessment rolls or records?

A. That they were burned.

Q. How, then did the assessor proceed to make up his new assessment rolls after the fire?

A. I could not say.

Q. To what would he have to have access in regard to making up his assessment rolls?

A. He had to guide himself by the conveyance and mortgage books in the clerk's office.

Q. Was the clerk's office in the same courthouse that was burned up in 1883?

A. Yes sir.

Q. Were the conveyance and mortgage records of the clerk's

office burned up at the same time as the assessment records
burned up?

A. I think some of them were burned.

Q. Have you any idea how many were saved?

A. No sir.

Q. If the assessor did not have his old assessment rolls, bec
they were burned up, and if he did not have access to the con
ance records of the clerk's office, describing the prop
839 bought and sold because they were burned up, how w
the assessor go about making up his assessment rolls?

A. By listing the properties.

Q. In what way, where would he get his information?

A. From the tax payers.

Q. Could that be easily obtained?

A. Not so very easy on account of not having anything to g
himself, you know.

Q. Could the assessor be sure that he had all of the property,
same as it was on the original rolls prior to 1883, on his rolls ag
without being able to refer to the old rolls or to the clerk's reco

A. It is a pretty hard matter to say.

Q. Would it, or would it not be possible for any property in
lying sections to escape being put on the rolls after a fire such as
have mentioned?

A. Yes sir.

Q. Have you examined the rolls from the year 1889 up to
year 1903 inclusive?

A. Yes sir.

Q. Have you, at the request of counsel for the State of Louisi
made extracts from said rolls showing the assessment of prop
within the disputed area in this case?

A. Yes sir.

Q. Will you please look at this document which, for the pur
of identification we will call Document No. 65, and state by wh
it was made?

A. This document was made by me.

Q. From what source did you get the information that is set f
in this document?

A. From the assessment rolls filed in my office.

Q. Of what parish?

A. Parish of Saint Bernard.

Q. Does this document show the assessment of certain p
840 erties for each year running from the year 1889 up to the y
1903 inclusive?

A. Yes sir.

Q. Is this a duplicate of your assessment rolls or is it simply an
tract showing the assessment of particular properties for partic
years?

A. That is an extract——

Q. Showing what?

A. Showing the assessment of those described properties.

Q. Of particular properties?

A. Yes sir.

Q. Is this a correct extract as to the particular properties for the particular years as taken from the assessment rolls of those particular years?

A. Yes sir.

Q. I notice that there appears a certificate at the end of each year, to the correctness of the extract. Were those certificates signed by you and is that your signature thereto attached?

A. Yes sir.

Q. Where a piece of property appears on the conveyance records of the clerk's office as having been sold by one party to another party, is there any change made on your assessment rolls the following years?

A. Yes sir.

Q. What change is made?

A. I assess it to the man who purchases it.

Q. Are those changes shown on this extract marked Document No. 65, as to the changes in ownership of particular property?

A. Some, yes sir.

Q. For instance, the extract shows that for the year 1889, certain property was assessed in the name of W. V. Gilmore and J. C. Gilmore. Under what name is that property assessed today?

A. Under the name of the Louisiana Navigation Company
841 Limited.

Q. I notice that this extract of the assessment rolls, Document No. 65, shows an assessment of certain properties for the year 1903, in the name of the Louisiana Navigation Company Limited, and I notice no properties assessed for that year in the name of Joseph C. Gilmore or William V. Gilmore; why was that? or why is that?

A. Well, when I took charge of the office in 1897 I had no such name as J. C. Gilmore or J. W. Gilmore; all of those lands were assessed in the name of the Louisiana Navigation Company Limited.

Q. Was that, or was that not, due to the fact that Joseph C. Gilmore and W. V. Gilmore had previously sold their lands to the Louisiana Navigation Company Limited?

A. Yes sir.

Q. Would that same condition apply to other lands which had been sold to subsequent purchasers which showed in subsequent assessments under a different name?

A. Yes sir.

Q. Will you please look at the original assessment roll for the year 1889 and state whether that roll shows any other property assessed to either J. C. Gilmore or W. V. Gilmore, than what you have shown on this extract marked Document 65?

A. No sir.

Q. Will you please look at the original assessment roll for the

year 1890 and state whether that original roll shows any property assessed to W. V. Gilmore or J. C. Gilmore, other than that which you have set forth on your extract marked Document No. 65?

A. No sir.

Q. Will you please look at the original assessment roll for the year 1891 and state whether that original roll shows any property assessed in the names of William V. Gilmore or J. C. Gilmore,
842 other than that which you have shown on your extract being Document No. 65?

A. No sir.

Q. Will you please look at the original assessment rolls for the year 1892, and state whether the said original rolls show any property assessed in the name of J. C. and Wm. V. Gilmore other than that shown on your extract being Document No. 65?

A. No sir.

Q. Will you please look at the assessment rolls for the year 1893 and state whether or not you find on that assessment roll assessed in the name of J. C. Gilmore, property which does not appear on your previous assessment rolls?

A. Well——

Q. To find any additional property assessed to J. C. Gilmore, you will have to look at the rolls to find that out?

A. Of course.

Q. Will you look at the rolls?

A. You mean for that particular year?

Q. For the year 1893; and then compare it with the previous year.

A. Yes sir.

Q. In what year?

A. 1893.

Q. In the name of J. C. Gilmore?

A. W. V. and J. C. Gilmore.

Q. What is the description of the property in the name of J. C. Gilmore which for the first time appears on the assessment rolls of 1893?

A. In the southeastern land district embracing the whole of Isle à Pitre and other lands, viz: First, fractional sections Nos. 23, 24, 25 and 26, township 10, south range 20, east, containing 460 78/100 acres; second, fractional sections 33 and 34, township 10, south range 20, east, containing 569 72/100 acres; third, fractional sections Nos. 27, 28 and 32, township 10, south range 20, east,
843 containing 380 40/100 acres. J. C. Gilmore again. In the southeastern land district of Louisiana, adjacent to Isle à Pitre, viz: Three islands in sections 20, 21, 28 and 29, township 10, south range 20, east, Southeastern, East of River land district, containing 50 40/100 acres.

By Mr. McCLURG:

Q. Please let us have in this case, the valuation returned?

A. 50 dollars.

Q. For how many acres?

A. For 1418 90/100 acres, assessed at $50. 56 40/100 acres assessed at the same price, $50.

Q. At what rate is the tax levied on these assessments?

A. The rate is ten mills on the levee, ten mills on the parish, and six mills on the State.

Q. On those assessments there?

A. Those? I was not assessor then, but I guess it was at the same rate of taxation.

By Mr. DYMOND:

Q. You have described in your answer, the property assessed to Mr. Joseph C. Gilmore, which appears for the first time on the assessment roll of 1893, and did not previously appear on the former assessment rolls. Now will you please look at this certified copy of the original Exhibit L, attached to complainant's bill?

A. Yes sir.

Q. If Henry J. Leovy had sold to Joseph C. Gilmore, on March 2nd, 1892, the lands described in the act of sale as Isle au Pitre and giving the detail of the other sections, townships and ranges, and if that act of sale had been registered in the year 1892 in the conveyance office of the parish of Saint Bernard, would it appear upon the assessment rolls for the following year in the name of Joseph C. Gilmore?

A. Yes sir.

Q. Suppose a party were to own land in an outlying sec-
844 tion, of the parish, remote from ordinary travel, and were to fail to register his deed, would the assessor have any way of knowing of the transaction so that he could assess the property?

A. No sir, he would not.

Q. When land stood in the name of the board of commissioners for the Lake Borgne Basin levee district, did you put them on the assessment rolls?

A. I did.

Q. Have you, on your assessment rolls, any lands assessed in the name of the board of commissioners for the Lake Borgne Basin levee district?

A. Yes sir; but they are not—it is only to keep a register of the lands of the parish; I do not extend the taxation. I can show you on my assessment rolls.

Q. But do they pay any taxes?

A. No sir.

Q. Will you let us see one of your assessment rolls that has that on it?

A. Yes sir. They are brought forward from year to year. I mark them levee board property.

Q. Why do you carry those on your rolls?

A. Well, in the event of a sale.

Q. By whom?

A. By the levee board commissioners.
Q. To whom?
A. To certain parties; to anybody.
Q. If the lands are sold by the levee board are they then put on the assessment rolls?
A. Yes sir.
Q. Have such instances occurred in your jurisdiction where the levee board sold lands and then they were put on the assessment rolls?
A. Yes sir.
845 Q. Do you know how these lands were acquired by the levee board?
A. From the State.
Q. In what way?
A. I don't know exactly the year, but they were transferred to the board of commissioners for the Lake Borgne Basin levee district.
Q. Were they, or not, forfeited to the State for non-payment of State taxes, by previous owners?
A. They were, yes sir.
Q. Have you, on your assessment rolls, in the name of the board of commissioners for the Lake Borgne Basin levee district, any of these marsh of swamp lands which were transferred by the register of the State land office, to the board of commissioners for the Lake Borgne Basin levee district?
A. I have.

Mr. McCLURG: Let me understand now, Mr. Dymond, so that I may keep a run of it. Do I understand that all of the lands that were owned by the Lake Borgne Basin levee district, were lands that had been previously owned by anybody else?
Mr. DYMOND: No sir.
Mr. McCLURG: I understood, from his answer, that they were all so acquired.
Mr. DYMOND: Under section 11 of act 14 of 1892, the reg-
846 ister of the State land office was authorized to deed to the board of commissioners for the Lake Borgne Basin levee district, all swamp and overflow lands standing in the name of the State, originally acquired by the State from the United States under the swamp land act of 1849. In addition to the above the State was authorized to transfer to the said levee board all lands which had been or would be forfeited to the State for non-payment of taxes and it is in regard to the latter lands that the witness referred to when he said that they had been previously assessed to other parties.

Q. What memorandum, if any, have you, showing the swamp and overflow lands acquired by the board of commissioners for the Lake Borgne Basin levee district, from the State, through the register of the State land office, under the deed of May 24th 1895 which I will now show you, being marked Document No. 65?

A. I have not got that memorandum.
Q. Do I understand that these do not appear on the assessment ls?
A. They do not appear.
Q. Does the board of commissioners for the Lake Borgne Basin ee district, pay taxes on its lands?
A. No sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said Document No. 65, showing the essments for taxes on the part of the State of Louisiana and the rish of Saint Bernard for the years 1889 to 1903 inclusive, of the operties designated in said Document No. 65, and tender to unsel for the State of Mississippi a certified copy of said document.

Q. For what taxes do you extend the valuations of property on ur assessment rolls, for what departments of the government and what government?
A. I extend the taxation for the parish.
Q. State the parish?
A. Parish of Saint Bernard. State of Louisiana, and the levee strict taxes.
Q. What levee district?
A. Lake Borgne.
Q. Is the rate of taxation based upon the valuation which you ve put upon the properties as listed by you on your assessment ls?
A. Yes sir.
Q. By whom are those taxes collected?
A. By the sheriff of the parish of Saint Bernard.
Q. Does he collect the State taxes, as well as the parish and levee strict taxes?
A. Yes sir.
Q. You will please note in this extract, Document No. 65, the fact at Mess. George W. Dunbar, John B. Honor, the Louisiana Navition Company Limited, Lazaro Lopez, and W. K. M. Dukate, George Ruppel, Charles Sanger, Albert L. Hunt, Charles F. Forsyth and John McGraw, are assessed for taxes as owning certain properties. Will those assessments appear in the curnt assessment roll which you are making up for the year 1904?
A. They will appear.

Cross-examination.

By Mr. MCCLURG:

Q. Since 1899 have your assessments of real estate been taken om the deed records of Saint Bernard, or, do you call upon the wner personally to return his assessment?

A. In listing the properties?

Q. Yes?

A. I generally serve them with an assessment list.

Q. And they make out the list and return it to you, including the valuations?

A. Yes sir.

Q. I notice on Exhibit No. 65 which appears to be a non resident assessment roll for the parish of Saint Bernard for 1890, in ward 6, lands designated as swamp lands on the gulf of Mexico, assessed to the Gilmores, W. V. and J. C. It is true, is it not, that this assessment does not show what section township or range this land is in?

A. Yes sir.

Q. What is meant in this assessment roll by the words "on gulf of Mexico"?

A. Well, those assessments were made, or the descriptions rather, were made by my predecessor. I never made those descriptions.

Q. This roll does not indicate the number of acres or rate of the assessment?

A. The rate of assessment, yes; they are extended right here.

Q. I see division of tax, but not the rate.

A. It——

Q. The State gets 30 cents and the parish 50 cents and the levee district 50 cents?

849 A. It does not mention the rate.

Q. The rate per cent. of the levies is what I want; does this roll show it?

A. No sir. When I file my books I fix the rate of taxation; when I am ready to file my books.

Q. Don't get away from this 1890–1891; that was before you came in?

A. Yes sir.

Q. I want you to explain this, if you can?

A. That is only an extract of the original roll that I made.

Q. And the same is true of the non-resident assessment roll for the — 1891?

A. Yes sir.

Q. And also for the year 1892?

A. Yes sir.

Q. No acreage or——

A. No acreage taxed at that time.

Q. Nor the rate levied?

A. No sir.

Q. All describing the Gilmore land as on gulf of Mexico; is true?

A. Yes sir.

Q. Now, the non-resident assessment roll for the parish of Saint Bernard for the year 1893 assesses also to the Gilmores the lands previously assessed on the gulf of Mexico as shown on the rolls for the previous years; without other or further description, and then

to that, in 1893, is added the whole of Isle au Pitre and other lands including 468 78/100 in one tract and 569 72/100 in another, 380 41/100 in another aggregating thirteen or fourteen hundred acres. I notice the cash value of all those lands is fixed at $50.00?

A. Yes sir.

Q. And that of the taxes paid on it 30 cents went to the State, 50 cents to the parish, 50 cents to the levees; that makes $1.30 taxes paid on thirteen or fourteen acres of land. Does it not?

850 A. Yes sir.

Q. In the description of this land that I asked about in the last interrogatory, I noticed fractional sections in the township is not given except as to part of it, in township 10. What do you understand those fractional sections to mean?

A. Well, that description was made also by my predecessor.

Q. Is there not a fixed definition or understanding in your parish as to what is meant by a fractional section?

A. Yes sir.

Q. What is it?

A. It is a part of a section.

Q. Is it a part of a full section or is it a section of land smaller than the usual sub-division of the township?

A. Smaller.

Q. It means a smaller section then?

A. No; a smaller piece of a regular section.

Q. It does not mean a smaller section than a regular section?

A. No sir; all sections are supposed to have 640 acres.

Q. I noticed for the year 1894 that the thirteen or fourteen hundred acres owned by the Gilmores and mentioned a few moments ago, are assessed at $38.00, the State getting 22 cents the parish 38 cents and the levee board 38 cents that was all the taxes that were paid and that was the valuation of the land at that time?

A. Yes sir. I could not state how they made the reduction; I was not in the office at that time.

Q. I also notice, in this roll for 1894, assessed to J. C. Gilmore, 650 acres of land adjacent to the Isle au Pitre, at $38, and that it was assessed to him for the year 1893 at $50. That is correct?

A. Yes sir.

Q. Then, is it not true that this assessment roll shows that for the years 1893 and 1894, that about 2,000 acres of land, assessed to the Gilmores, were valued at $100 in 1893 and $76 in 1894. Is that true?

851 A. Yes sir, that is true, according to the tax rolls.

Q. I believe you said Mess. Gilmores obtained this land from the Lake Borgne Basin Levee commissioners?

A. No sir; I never *siad* that; not the Gilmores.

Q. Do you know how they obtained it?

A. Well, no sir, because when I was appointed assessor, all those lands were assessed in the name of the Louisiana Navigation Com-

pany Limited, but they were acquired by Mr. Leovy and J. C. Gi more acquired them from Mr. Leovy.

Q. Do you know whether the Gilmores are members of the Loui iana Navigation Company?

A. I think they are, yes sir.

Q. Do you know whether they were at the time of the organiz tion of that company?

A. Yes sir.

Q. I believe it is true, is it not, that there was no warranty of titl by the State to the levee board or by the levee board to the indi viduals purchasing this land?

A. Yes sir.

Q. The titles were warranted?

A. No sir, I don't think.

Q. These land- embracing Isle à Pitre, as I understand it, th lands theretofore assessed to the Mes-. Gulmore, were assessed o this roll for 1898 to the Louisiana Navigation Company Limited 6312 31/100 acres, at a valuation of $400; the State getting a ta of $2.40, the levee district $4.00 and the parish getting $4.00, aggre gating $10.40 taxes, paid on 6312 31/100 acres?

A. Yes sir.

Q. And the same for the year 1899?

A. Yes sir, same assessment.

Q. And Charles Sanger, I see is assessed on this roll in 1899, fo 4320 acres of land, in township 11, south *rang* range 19, east, at a valuation of $540, and upon which he paid taxes for tha 852 year, to the State, of $3.24, to the parish, $5.40, to the leve district, $5.40, or $14.04 taxes on the 432*L* acres of land?

A. Yes sir.

Q. And the same conditions appear in 1900, as to the assessment and valuations of the Louisiana Navigation Company, Charle Sanger and others?

A. Yes sir.

Q. It appearing on this roll that Mr. Sanger was assessed for thi same land with other parties, 4320 acres?

A. Albert L. Hunt, Charles F. Forsyth and John McGraw, they are assessed for the same land.

Q. Are you able to state whether Mr. Sanger executed warranty deeds to these other gentlemen?

A. Yes sir.

Q. They are warranty deeds?

A. No sir. He sold it without warranty; he sold it with the same warranty as the levee board commissioners gave him.

Q. I see from the assessment roll of Saint Bernard parish for the year 1900, 5132 acres, in township 12, south range 18, east, assessed to George W. Dunbar, at $641.?

A. Yes sir.

Q. Upon which he paid the State, a tax of $3.84, parish $6.41 and the levee board $6.41?

A. Yes sir.
Q. Making $16.66?
A. Yes sir.
Q. The same as to the year 1901 with reference to the same land?
A. Yes sir.
Q. For the year 1901 I see the lands of the Louisiana Navigation Company, 6332 31/100 acres, is valued at $200, and the Sanger lands at $540?
A. Yes sir.
Q. Do you know the cause of the decreased valuations of thise lands?
853 A. No. Mr. Gilmore asked for a reduction of assessment for that year. They were assessed at $400, the Louisiana Navigation Company's lands.
Q. They were reduced to $200?
A. Yes sir, in that year.
Q. And in 1902 I see the Dunbar land is assessed for $641, the same as before?
A. Yes sir, always have been the same assessment since they were purchased.
Q. And for the year 1902, I notice that 2432 28/100 acres, assessed to John B. Honor, valued at $316?
A. Yes sir.
Q. On which he paid to the State, $1.89, to the parish $3.16 and to the levee district $3.16, or a total tax of $8.21?
A. Yes sir.
Q. Now, the 6332 acres assessed to the Louisiana Navigation Company, in 1902 stood at the assessment of $200?
A. Yes sir.
Q. I understand these to be extracts from your assessment rolls of particular pieces of land?
A. Yes sir.
Q. What was your criterion in making these particular assessments; I mean these particular transcripts or abstracts of particular property for particular years. Why did you do that?
A. I was asked by Mr. Dymond to do that.
Q. How do these assessments compare with the balance of the valuations in that vicinity?
A. Well, since my appointment in 1897 I have assessed all marsh lands in that vicinity at the rate of 12½ cents per acre.
Q. What is the levy, tax levy?
A. Ten mills.
Q. For all purposes?
A. Yes sir.
854 Q. And these particular pieces of property which you have noted for particular years, are the maximum valuations of lands in that section, are they not?
A. Which ones have you reference to?
Q. These that we have been talking about on this abstract?

A. They are assessed, except the Louisiana Navigation Company I don't think they are assessed at the rate of 12½ cents, all the balance are?

Q. These are assessed at a higher rate?

A. Yes sir, I think they are. Well, they are assessed for the same price they were acquired. They paid 12½ cents, and I have assessed them for the actual cash value they paid.

Q. Do you understand why you were requested to segregate these particular assessments from all others on your rolls?

A. Yes sir.

Q. Why; why did you take these particular pieces of property out of your rolls and——

A. Well, they are in this dispute, in this boundary case, in that boundary line between Louisiana and Mississippi.

Q. That is all you know?

A. Yes sir.

Q. How far is it, in a direct line, from the Saint Bernard courthouse, to the northeast point of Isle à Pitre?

A. How many miles?

Q. Yes?

A. I can't state, I don't know.

Q. Can you approximate it?

A. I am not familiar with that territory; I could not tell.

Q. Have you ever been out in that country?

A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. What is the rate of State taxation?

A. Six mills.

Q. What is the rate of parish taxation?

A. Ten mills.

Q. What is the rate of levee board taxation?

A. Ten mills.

855 Q. Was I correct in understanding you a moment ago, in answer to a question from the counsel for the State of Mississippi, to state that the whole tax paid by any one on these properties, was only ten mills?

A. No sir; 26 mills.

Q. The total tax paid was 26 mills?

A. Yes sir. You have got the acreage tax also, but that does not belong to those marsh lands.

Q. You were asked as to why you picked out particular properties in making out your abstract from your assessment rolls. What did that have to do with this boundary suit and are or are not those properties located in the disputed area?

A. Yes sir, they are.

Q. They are what?

A. They are the properties in the disputed area except John B. Honor, I do not think that is in the disputed territory.

Q. And are those properties taxed by the State of Louisiana as part of the parish of Saint Bernard?

A. Yes sir.

Q. And have they been so taxed as shown by your assessment rolls?

A. Yes sir.

JOHN MCGRAW, witness re-called on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you the Mr. McGraw who has previously testified in this case?

A. Yes sir.

Q. Are you the co-owner with Mr. Albert L. Hunt, Charles Forsyth, of property purchased from Mr. Charles Sanger?

A. Yes sir.

Q. Is that property in the disputed area as shown by the map Exhibit A of Mississippi?

A. Yes sir.

856 Q. Will you please look at this document, which, for purposes of identification we will call Document No. 66, and state whether or not that is your title to the property in question?

A. Yes sir, it is.

Mr. DYMOND: In connection rith the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, a certified copy of the act of sale before William F. Brewer, a notary public for the parish of Orleans, on January 16th 1900, by Charles Sanger to Albert L. Hunt, Charles F. Forsyth and John McGraw, of the following described property, to-wit: Fractional south half of the northeast quarter and fractional south half of section 15, east half; fractional southeast quarter and fractional east half of northwest quarter of section 21; all of sections 22, 27, and 28 north half of section 33 north half of section 34. Containing three thousand, four hundred and forty acres. And the south half of northwest quarter and southwest quarter of section 23. West half of northwest quarter and west *g*alf of section 26. West half of northeast quarter and northwest — of section 35. Containing eight hundred and eighty acres. All situated in township 11, south range 19, east, in the southeastern land district, east of the Mississippi river,

857 and aggregating four thousand, three hundred and twenty acres. Together with the certificate of the said notary thereto, and the clerk of court and *ex-officio* register of conveyances; the

said offer to be marked Document No. 66, and a copy thereof being tendered to counsel for the State of Mississippi.

Q. Have you and your co-owners erected any improvements on this property?
A. Yes sir.
Q. Have you paid taxes on this property?
A. Yes sir.
Q. To whom have you paid taxes?
A. To the sheriff of the parish of Saint Bernard.
Q. In what State?
A. In the State of Louisiana.
Q. What taxes have you paid?
A. We paid the parish tax, State tax and the levee board tax.
Q. Did you ever pay any taxes to the State of Mississippi?
A. No sir.
Q. For this land?
A. No sir.
Q. Were you ever asked by any official of the State of Mississippi to pay taxes on this land?
A. No sir.
Q. Were you ever disturbed in your possession by any official of the State of Mississippi, on the ground that this land was within Mississippi and should have been bought from that State?
A. No sir.
Q. Has your title to this land ever been questioned by any official of the State of Mississippi as being Mississippi land?
A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. How many acres of land are embraced in this deed if you remember?
858 A. I don't remember the exact figures, about 4,000 acres.
Q. How much of that is covered with water?
A. At times?
Q. At the usual mean tide?
A. I could not answer correctly; I do not know.
Q. The greater portion of it?
A. Yes sir; it is all subject to flood tide, every inch of it.
Q. And this is the same land about which you testified the other day?
A. Yes sir.
Q. And that you bought it for oyster planting?
A. Yes sir.
Q. Not for agricultural purposes or for horticultural purposes?
A. No sir; it could not be used for agriculture because it is subject to tide water.

J. C. GILMORE, witness recalled on behalf of the State of Louisiana, testified as follows :—

Direct examination.

By Mr. DYMOND:

Q. Are you a stock-holder in the Louisiana Navigation Company Limited?

A. Well, the company is in a state of escrow on account of the inability or impossibility of developing its territory owing to it being subject to the raids of fishermen and boatmen taking shells, shell products, and quantities of shells from the property and the insecurity of investment of capital to promote the development of the natural resources of the property.

Q. Was there ever a company organized called the Louisiana Navigation Company Limited?

A. Yes sir.

Q. Was it chartered?

A. Yes sir.

859 Q. Did you appear as a stockholder therein?

A. I think so; I can't remember now.

Q. Did you ever make a sale of your property to that company?

A. Well, there was no one interested, practically, in the company except my family, my immediate family.

Q. According to the assessment rolls of the parish of Saint Bernard, that property is assessed as belonging to the Louisiana Navigation Company Limited; how did that company acquire that property?

A. That is property which I, or my brother William V. Gilmore, as the names would appear on the titles, acquired from the State of Louisiana. And also, I acquired Isle à Pitre myself from Mr. Henry J. Leovy who was a distinguished lawyer and published a history of our bar, and he had held it since about 1867 and it was transferred to him or purchased from his brother-in-law Richard Pindell who was the brother-in-law of Henry Clay also, he said.

Q. Have you been paying and has the Louisiana Navigation Company Limited been paying taxes on this property?

A. We had, in so far as we could, all our titles recorded, and they are subject to assessment and we paid whatever the assessment may have been made.

Q. To whom did you pay the taxes?

A. To the officials of the parish of Saint Bernard.

Q. To what State?

A. In the State of Louisiana.

Q. What taxes did you pay?

A. We paid the State and parish taxes, whatever they were. We paid the levee tax too, but we did not think we were subject to the levee tax because we were isolated, in fact our property was called islands, and we did not see how we should pay levee tax, but still

we had to carry the burdens rather than the annoyance of making a test suit.

860 Q. Have you paid the taxes?

A. Yes sir, we paid all the taxes.

Q. To the State of Louisiana?

A. Yes sir.

Q. Every year?

A. Yes sir.

Q. Have you ever been called on by the State of Mississippi to pay any taxes on this property?

A. No, sir, never was such a case in the remotest way suggested.

Q. Has your title to this property ever been questioned by the State of Mississippi in the ground that the property was in the State of Mississippi?

A. It never has been questioned, no sir.

Q. Will you please look at this map which, for purposes of identification will be called map 53, and state from whom you acquired that?

A. This map?

Q. Yes.

A. My impression is it came from Mr. Leovy in connection with the negotiations to buy his property.

Q. What Leovy do you mean; Mr. Henry J. Leovy from whom you bought Isle à Pitre?

A. Yes sir.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now, offer, produce and file in evidence, the said original map to be marked map No. 53, with the understanding that a blue print thereof will be furnished to the witness and to counsel for the State of Mississippi.

Cross-examination.

861 By Mr. MCCLUNG:

Q. This is the same land about which you testified the other day?

A. Part of it is the same; we have a much larger area. Here is a tracing map denoting the extent of our area.

Q. How much land do you own in that vicinity altogether?

A. I think, 6,000 acres, more or less, as it lies, land and water.

Q. The greater portion of it is covered with water?

A. No; I think the greater portion of it is good firm soil, shell land.

Q. Shell bank?

A. Yes sir. I went there with a lugger man from Bastian bay, the great oyster country of Bayou Cook, who was afterwards drowned in a storm down there in 1900, and he said this is high land, Isle à Pitre, much higher than Bayou Cook, you can garden there.

Q. You bought it with the object of finding phosphate there?
A. Some mineral deposit and the quantity of shell all broken
p.
Q. It is skirted with a broad deep shell bank, is it not, nearly all
ound Isle à Pitre?
A. Yes sir, we thought that it might be developed with oranges.
Q. Did you ever plant any oranges?
A. No sir, but I could see from the soil that if it was leveed it
ould do very well.
Q. I though you said that leveeing wouldn't do much good?
A. Leveeing, draining and filling in.
Q. There has not been any actual adverse possession by you of
is property?
A. Yes sir, we have assumed the same civil possession as we have
any other property that belongs to us that is not fenced in or im-
oved.
Q. It is not fenced in or improved?
2 A. No sir.
Q. Nor is there any cultivation of anything upon that
lan- *island*?
A. No sir.
Q. Or upon any of that land?
A. No sir, except we have planted oysters there.
Q. There in no kind of physical or industrial life on the surface
ywhere?
A. We have inspected there for mineral deposits and I though-
was a good place to experiment for oil wells; there is a mound
ere and——
Q. But there is no physical demonstration of actual adverse pos-
ssion of it, is there?
A. Yes sir, we have been there and asserted our ownership, put
signs and advertised it in the Mississippi papers
Q. That is evidence of ownership, I am talking about evidence of
ssession?
A. Living on it?
Q. Yes?
A. There used to be a man camping there.
Q. Fisherman?
A. I don't know what he was; he had a camp there.

Redirect examination.

By Mr. DYMOND:

Q. You said you put up signs?
A. Yes sir, signs "No trespassing, private property" that is not
r the ordinary hunting which we never interfered with.

By Mr. ZACHARIE:

Q. Did this fisherman camp there by your instructions?
A. No sir, but I understand that he lived on that land where there were some thick trees.
Q. Since you owned the property?
A. No sir, before.

863 By Mr. DYMOND:

Q. What sort of notice did you publish in the Mississippi newspapers?
A. A notice that Isle à Pitre was not a public oyster territory, but was the property of Gilmore Brothers, and that boats were notified not to take away cargoes of shells from there deposits of shells from the shell deposit on the island or cargoes of oysters. But there was no objection to the ordinary hunting and fishing of the public.
Q. Where were these publications made?
A. In the Pass Christian Beacon.
Q. In any other paper in Mississippi?
A. I think we published it once before, but I have forgotten the paper, in the Biloxi Herald.
Q. How long ago was that?
A. I am under the impression that we put a notice in the Biloxi paper but this Pass Christian notice was about two years ago.

Recross-examination.

By Mr. MCCLURG:

Q. Why did you find it necessary to make those publications in Mississippi?
A. Because the island is so convenient to the shore of Mississippi that very few, if any, Louisiana boats come there for oysters, as far as I know, they only take shells from there, I should think, the Louisiana boats, and they can't take very many tons of shells from there as the capacity is necessarily limited and the haul is too long; but Mississippi is quite adjacent, it is just about 11 miles, I think, in a direct line to Pass Christian, and all the shells that are used on the walks there, sidewalks and garden walks, are brought from this Louisiana shore, and those shells from Isle à Pitre are particularly acceptable they have a pinkish tint or shade and are more sought after.

864 Q. Mississippians have been taking oysters and shells from that vicinity before?
A. Yes sir.
Q. For how long, do you know, for how many years?
A. Since we have owned it; I don't know how long before; Mr. Leovy told me he had bought it for the shell deposit.
Q. I believe you stated the other day that your titles to that land did not have the usual warranty——

A. They are the ordinary warranty sale; the acts contain warranty—I could show you one of them, if you want. He was very much grieved to sell it to me he had held it so long. He had other large shell deposits back at Fort St. Philip and he wished to cultivate oranges there and being a little short of money for that purpose he sold this to us at this price.

Q. That was like a visionary idea, rather problematical?

A. All these things are in a measure visionary when they begin.

At this stage of the proceedings, the commissioner adjourned the hearing for recess, to be resumed at the hour of 2.15 p. m. at the same place and date.

2.15 P. M.

Pursuant to adjournment the hearing was resumed at the hour of 2.15 p. m. at the same place and date. All parties present.

Lieut. Governor ALBERT ESTOPINAL, witness, recalled on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. I desire you to note this map of the parish of Saint Bernard and state what official connection you had with its authorization and compilation?

A. I was the president of the police jury at the time this map was made and there is my signature as president of that body attached to the map.

Q. Was that or was that not for the purpose of showing your approval of the map as made?

A. My signature?

Q. Yes.

A. Yes sir.

Q. Was this map made by authority of the police jury of the parish of Saint Bernard?

A. Yes sir.

Q. What was the purpose of making the map?

A. The purpose of making the map was to establish the limits of the parish and show the lands that belonged to the parish.

Mr. DYMOND: Counsel for the State of Louisiana now desires to have that the witness is shown map known as map No. 52, so that the same may be identified.

Q. Had there been any prior official map of the parish of Saint Bernard, so far as you know?

A. No sir.

Q. What had become of any pre-existing maps, if there were any?

A. There were a few fragments of maps, I call them fragments

because they were not whole maps in the clerk's office, and that were referred to whenever lands wanted to be described, and there were some fragments of maps, but none of them were complete.

866 Q. Was there any official map prior to the burning of the courthouse of Saint Bernard in 1883?

A. I don't remember.

Q. What became of the fragmentary maps you refer to?

A. I believe they were consumed by the fire in the burning down of the courthouse in 1884.

Q. Will you please note the limits of the parish of Saint Bernard as shown by this map and state whether you know of any adverse possession ever having been urged by the State of Mississippi or any official of the State of Mississippi to any of the property or territory shown by this map, other than the recent dispute which is now at issue in this case?

A. No sir; I know of no contention on the part of Mississippi and never heard of any contention on the part of Mississippi to the claim—of any claim to this territory by the State of Mississippi.

Q. What has this territory in the southeastern portion of the parish of Saint Bernard always been accredited as?

A. As part of the parish of Saint Bernard, in the State of Louisiana.

Q. When was the first time that you ever heard that there was any contest as to the title or ownership or control of the Louisiana marshes not being in the parish of Saint Bernard?

A. At the time that a conference was held with Mr. Neville who was district attorney for a judicial district in Mississippi, and it was about the year 1900 or 1898, I don't remember exactly, but the parish of Saint Bernard attempted to drive away Mississippians, or, rather, notified them to keep off the Louisiana marshes where they were fishing oysters and they refused to leave, whereupon there was a conference with Mr. Neville who represented, as district at-

867 torney, that portion of Mississippi, I believe including Biloxi and Pass Christian.

Q. Had you ever previously heard any claim by the State of Mississippi to ownership of this territory or any part of it?

A. No sir, never, never before.

Cross-examination.

By Mr. McCLURG:

Q. It is true, is it not, Governor, that prior to the time that the authorities of Saint Bernard undertook to drive the Mississippians out of that territory, that District Attorney Neville protested that they had been fishing and taking oysters in the disputed territory for many years?

A. Yes sir.

Q. And there had been no controversy about it until up to the

e that Louisiana undertook to exercise exclusive ownership by
ing the Mississippians out.
. Yes sir. There had been no dispute about it? Louisiana had
ered asserted her right up to that time, until she knew or the
norities knew, that Mississippians and Alabamians were dredg-
on the oyster region in Louisiana territory.
. That is, according to Louisiana's construction of it?
. Yes sir, of course.
. Now, I think you made an unguarded answer to one of Mr. Dy-
nd's questions, awhile ago, when you said it had always been re-
ded as Louisiana territory. I presume you meant to say, as far
our information went?
. As far as I can remember it had always been regarded as
isiana territory. I meant what I said.
. This map was made when you were president of the police
?

A. Yes sir.

Q. It was approved by that board as correct?

A. Yes sir.

. I notice here in the disputed territory, Governor, Half Moon
nd, just east of the mouth of Pearl river, is marked 31 and 32,
ch I judge from this map to indicate sections of land and I un-
stand by this map that this is claimed to be within the Louisi-
territory?
.. Yes sir.
. And I see to the northwest of that island and unnamed island;
isiana claims that also?
.. Yes sir.
. And to the southwest between that and Petite Bois is another
named island; that Louisiana claims?
.. I don't know of the island, I know nothing of Petite Bois——
. Petite Bois island Louisiana claims that?
.. Yes sir.
. That is marked as clearly and distinct an island as well as
g named an island?
.. It is an island.
. I don't see it named here, but we have been calling it Mal-
reux point. Nevertheless that point is separated from a portion
he marshland just south of the Bayou Pointfilou which cuts off
point entirely from any other land. That is true, as you ob-
e it from this map?
.. According to the map, yes sir. I don't know about the topog-
hy of the country.
. That part of the map which is marked township 11, range 17,
, is shown on this map as an island, is it not?
.. Yes sir.
. Now, I notice also, that by Nine Mile bayou, around some other water outlets into the Mississippi sound, from Bay Boudreaux, that there are other islands there. I don't see Three Mile bayou marked east of Nine Mile bayou, but the land just east

of Nine Mile bayou, to these water courses of which I spoke, shows an island in there. In other words you can go down Nine Mile bayou and then into Bay Boudreaux and then north again into the sound, in a water craft?

A. I presume so; I never navigated those waters.

Q. Are you familiar with that coast?

A. Not at all.

Q. I beg your pardon; I though- you were?

A. No sir; the map shows for itself; I suppose it is correct.

Q. I though- if you had personal knowledge——

A. No sir, I never have been, I never saw the country——

Q. At all events if this map shows a string of islands from Malheureux point to the northeast point of Isle à Pitre, you think it is correct?

A. The map is a correct one, yes sir.

Q. Now, these fragments from which the map was made I understand you to say have been destroyed?

A. Yes sir.

Q. When did your courthouse burn——

A. I think they referred in part to these maps, I do not think this map was constructed entirely from those fragments that I refer to, but in part they were referred to by the makers of this map.

Q. Have you any idea how far it is from the Saint Bernard courthouse up here to the northeast point of Isle à Pitre?

A. No sir.

Redirect examination.

By Mr. ZACHARIE:

Q. What time did you state, on your former examination, that you were sheriff of the parish of Saint Bernard?

A. I say, in 1873, '74, '75 and '76.

Q. Do you remember, if, during those years, complaints
870 were made to you and the authorities of the parish of Plaquemines about Mississippians fishing in those waters, if so by whom and what were the complaints?

A. Yes sir; frequent complaints were made.

Q. By whom?

A. I know of two persons distinctly and many others I don't remember now. Captain Ruiz who testified before this court and Doctor Albrecht who owned the property near the gulf of Mexico on Bayou La Loutre, he is dead now, his family owned property there and they made complaint frequently of the incursions of these boats into Louisiana waters.

Q. Then what was done about those complaints made to you?

A. Nothing could be done as there was no statute prohibiting any citizen of the United States from fishing in those waters.

Q. Was it referred to anybody, to any official body in your parish?

A. It was referred to the police jury, but they were powerless to ct.

Q. Then when you say there was no dispute, you heard of no ispute up to the time that the conference was held with Mr. Neville, ou mean——

A. I mean there was no contention on the part of—or any claim n the part of Mississippi or any notice to Louisiana that Mississippi ad any ownership of this territory. Mr. Neville did not say he laimed or that Mississippi claimed ownership but simply said that ney thought they had the right to fish there as they had been fish- ng there for many years and — never interfered with.

Q. Then there was or was not some friction between the property olders in the parish of Saint Bernard and these Mississippi fisher- nen?

A. Yes sir. I understand there was with some of the own-
71 ers of property near the gulf of Mexico, I believe, the Gil- mores.

By Mr. McCLURG:

Q. That is hearsay with you?

A. Yes sir. There was no complaint ever made to me about it ut these gentlemen are property owners down there, the Gilmores. But I know they complained of depredations on the part of the Mississippians and aliens.

By Mr. ZACHARIE:

Q. Then when you testified on cross-examination you never heard f any controversy, did you allude to any official controversy or an nofficial controversy?

A. To an official controversy.

LEWIS FRITCH, recalled, on behalf of the State of Louisiana, testi- ied as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you the same Lewis Fritch who testified in this case as a vitness the other day, to the effect that you were in the employ of he Romanski Photo-engraving Company, and had the making of ertain negatives which were used in this case in reproducing cer- ain maps?

A. Yes sir.

Q. Will you now, please, look at the photo print of map No. 52, nd state whether the negatives from which this map was printed vere made by you?

A. Yes sir; they were.

Q. From what map were they made?

A. They were made from the map right in front of me, this la
map.

Q. Made from map No. 52 of the parish of Saint Berna

872 A. Yes sir.

Q. Were your negatives correct reproductions of the m

A. Yes sir.

Q. Did you compare the negatives after you had made them w
the map from which you were making the photographs?

A. Yes sir.

Q. As a result of that comparison, did you find, or did you
find, that the photographic reproductions were as correct as it
possible to make photographic reproductions?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. I notice on the photographic copy, deep markings by L
Eugenie, and to the northward and to the eastward. Do you no
this disparagement in the colors on the original map that you p
tographed than you find on this photographic map?

A. Yes sir.

Q. You notice the same difference as to Isle à Pitre color, you
a difference in the coloring, don't you?

A. Yes sir.

Q. The shading in the disputed territory is heavier than it i
the other portions of the map, is it not?

A. Yes sir.

Q. How do you account for that?

A. That is accounted for by the color of the map and beir
very big copy. It is the best we could do with it, in reproducin

Q. Have you any personal knowledge of this territory?

A. No sir; none whatever.

873 OSCAR HOOPES, witness sworn and examined on behal
the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. 123 South Roman street.

Q. In the city of New Orleans?

A. Yes sir.

Q. Where are you employed?

A. At Eugene Dietzgen Company 145 Baronne street.

Q. What business is that company engaged in?

A. In drawing materials and reproducing prints.

Q. Do they have a blue printing plant there?
A. Yes sir.
Q. Did you have delivered to you any negatives by the Romanski Photo-engraving Company, for the purpose of printing therefrom?
A. Yes sir.
Q. Will you please look at this photographic map No. 52 and state whether that was printed by you from the negatives received by you from the Romanske Photo-engraving Company?
A. Sure; these are the prints that we reproduced?
Q. Was that carefully and properly done in reproducing from the negatives?
A. Yes sir; they were made over several times to get what we did.

Cross-examination.

By Mr. McClurg:

Q. You did not do the photographing of the map?
A. No sir.
Q. Nor the making of the plates from that photograph?
A. No sir; that is the photographer makes the plates; if you make a photograph of the map you make the plates.
874 Q. The map is photographed onto the plates?
A. Yes sir, the map was photographed on to the plates but not by us.
Q. You never compared the work that you had to do, with the original map?
A. No sir. We had nothing to do with that whatever?

Mr. Dymond: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence the said photograph copy of map No. 52, being the official map of the parish of Saint Bernard, Louisiana, with notification to counsel for the State of Mississippi that the original map will be produced before the Supreme Court of the United States in the trial of this case; but owing to the official map being the property of the parish of Saint Bernard, that it could not be offered in evidence; and counsel now tenders to counsel for the State of Mississippi a copy of said photographic map No. 52.

E. E. Nunez, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. Dymond:

Q. As sheriff of the parish of Saint Bernard, are you, or are you not also the official tax collector of that parish?
875 A. Yes sir. I am sheriff and *ex-officio* tax collector of the parish.

Q. What taxes do you collect?

A. State, levee, parish and acreage taxes and all licenses.

Q. When you speak of State tax, is that tax levied by the State of Louisiana?

A. Yes sir.

Q. And when you speak of parish tax, by what parish is that tax levied?

A. Parish of Saint Bernard.

Q. And when you speak of levee tax, by what body is that levied?

A. By the levee board, Lake Borgne levee board.

Q. What parish comprises the Lake Borgne Basin levee district?

A. Saint Bernard and part of the parish of Plaquemines.

Q. There has been testimony this morning to the effect that certain properties in the name of J. C. Gilmore and W. V. Gilmore, the Louisiana Navigation Company, Ltd., George H. Dunbar, Charles Sanger, John McGraw, Albert L. Hunt, Charles F. Forsyth, Lazaro Lopez and W. K. M. Dukate, were assessed for taxes. Did you, as tax collector of the parish of Saint Bernard and *ex-officio* tax collector for the State of Louisiana in that parish, ever collect any taxes on these properties?

A. Yes sir.

Q. Have you collected the taxes as shown by the assessment rolls?

A. Yes sir, just exactly as shown by the assessment rolls.

Q. Beginning with the year 1889 and extending down to the year 1903, inclusive?

A. Yes sir.

Q. Did you, or did you not, ever receive from the State of Mississippi, or any officials of said State, any notification that this
876 property should not be taxed by the State of Louisiana because it belonged to the State of Mississippi?

A. I never did.

Q. Have you ever heard of the State of Mississippi ever endeavoring to collect any taxes on any of the property assessed by the State of Louisiana and set forth in Document No. 65 being an extract from the assessment rolls of the parish of Saint Bernard, State of Louisiana?

A. Not to my knowledge.

Cross-examination.

By Mr. McCLURG:

Q. Did you ever collect any taxes on lands in Half Moon island?

A. I don't know that it is described, that it is mentioned as Half Moon island. I collect as it is described on the assessment roll.

Q. You collected, I believe, taxes only upon lands claimed by individuals?

.. I collected taxes on all lands assessed in our parish on our as-
ment roll.
Q. And the levee taxes are not assessed, are they?
.. Yes sir, they are imposed.
Q. I mean to say that the lands belonging to the Lake Borgne
ee Basin board, are not taxable?
A. No sir; they are not assessed. Property is assessed and the
is levied on the assessment.
Q. You have no independent recollection of having collected
es upon the lands in Half Moon island?
A. I have no recollection, no sir.
Q. Have you any recollection of having collected taxes on Petite
s island?
A. No, sir, I have no recollection of collecting—of course I would
e to refer back to my assessment rolls.
Q. I think the assessment rolls will speak for themselves,
and I want to get your independent recollection. Have you
been testifying from your assessment rolls when you say you
lected taxes from Lopez and Dukate?
A. Yes sir.
Q. You have no independent recollection of that?
A. From what, I don't understand?
Q. You stated a while ago that you had collected taxes from Lopez
Dukate and the Gilmores and others?
A. Yes sir.
Q. Do you state that as an independent recollection or from the
essment rolls?
A. From the assessment rolls.
Q. You have no independent recollection of it?
A. Because I looked over it a few days ago. I took the names
vn who paid me taxes on that land.
Q. Have you any recollection of having collected or who paid
es on the lands at Malheureux point?
A. Yes sir. The lands are not described by names in our assess-
nt roll, they are described by section and quarter section, in town-
p so and so, it mentions no names that I remember.
Q. You have no independent recollection then of collecting any
on any lands from Malheureux point to Grand pass?
A. By name I have no recollection. I have certainly collected
es from those marsh lands back there, but they have not been
essed by the names, they are assessed by section and quarter sec-
n etc. township.
Q. When did you first begin to collect these taxes?
A. I think in 1889. I found out——
Q. I mean that you——
A. I collected taxes before, but I have no books to show what I
lected.
Q. You were collecting in 1889?

A. In 1880; but in 1889 was the first time I collected any tax
878 that I remember; I don't find the records of those back years. I know the property of Gilmore in 1888 belonged to the Gilmores, I know that of my personal knowledge but they were not assessed.

Q. Don't you mean to say that you know they claimed it?

A. They claimed it. I put it down myself in lead pencil on my assessment roll in 1888, but didn't collect any tax from them.

Redirect examination.

By Mr. DYMOND:

Q. You stated a moment ago, if I understand you correctly, in answer to the question of counsel for the State of Mississippi, that you have no independent recollection except by refreshing your memory by your records, as to anybody's paying any of these taxes. Is that correct?

A. I may have misunderstood him. I certainly recollect very well that I collected taxes from Mr. Gilmore, from Mr. Sanger and Lopez and Dukate, Mr. Dunbar, and Mr. McGraw, Mr. McGraw pays me taxes for the Sangers and Company. I know one of the Gilmores intimately, I meet him in the streets, he sends me checks; Lopez and Dukate, yes, I have recollection that they paid me taxes, of course.

Q. Do you know of your own knowledge——

A. I misunderstood the gentleman. I thought he meant to say if I had any recollection of the piece of property, description of the property. That you can't have any recollection of, but you can of the names of the parties who pays the taxes.

Q. You have been living in the parish of Saint Bernard how long?

A. Since I was born, I was born in the parish of Saint Bernard

879 Q. How old a man are you?

A. I was born in 1846.

Q. Have you ever heard of anybody from the State of Mississippi claiming that any of those Louisiana marshes belonged to the State of Mississippi from your boyhood up until the time you met Judge Neville in 1898?

A. I never did.

Q. Did Judge Neville claim then, that those lands belonged to Mississippi, or not?

A. He did not really claimed they belonged to Mississippi but he thought so.

Q. What did he say.

A. He said he wanted to have a conference with us to try and fix the matter amicably, because he was afraid there might be trouble between the Mississippians and Louisianians fishing out there.

Q. Now understand this question. Did Judge Neville claim the right on the part of the Mississippian fishermen to fish there because Mississippi owned part of the Louisiana marshes, or was it be-

cause the Mississippi fishermen had been fishing there for a number of years and he thought they ought to be allowed to continue fishing there?

A. That was his reason, because they had been fishing there.

Mr. McCLURG: The State of Mississippi reserves an exception to the leading character of these questions.

At this stage of the proceedings the hearing was adjourned by the commissioner, to be resumed on the 29th day of April 1904, at the hour of 10.30 a. m. and at the same place.

880 Resumption of Proceedings.

NEW ORLEANS, April 29, 1904—10.30 a. m.

Pursuant to adjournment the hearing was this day resumed, at the hour of 10.30 a. m. and at the same place.

Present: Hon. Frank H. Mortimer, commissioner.

Present: Hon Walter Guion, att'y gen. State of Louisiana.
Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.
Hon Monroe McClurg, associate counsel for the State of Mississippi.

GEORGE H. DUNBAR, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. I believe that you are the same gentleman engaged in the oyster canning business who was on the stand as a witness in this case the other day?

A. Yes sir.

Q. Do you own any land in the disputed area in this case?

A. I do.

Q. From whom did you acquire that land?

A. From the State of Louisiana or levee board, I believe, I have my titles here. (Witness looks at his titles.) I bought that from the commissioners of the Lake Borgne Basin Levee district.

881 Q. Of what State is that levee district or levee board a part?

A. Of the State of Louisiana.

Q. In what territorial sub-division of the State of Louisiana is this land situated?

A. In the parish of Saint Bernard.

Q. Will you please look at this document which is marked Document No. 58, and state whether you recognize it as being a copy of your title to the lands which you purchased as you have just testified?

A. Yes sir. This agrees with my title, as well as I can get i going through it pretty fast.

Q. When you purchased that land did you visit it?

A. I did not visit it before I purchased it, that is, right in th immediate place, but I had been there.

Q. Have you been there since you purchased it?

A. Yes sir; several times.

Q. Have you any oyster bedding grounds located any where nea it?

A. Well, near Raccoon island at Pirate point, yes sir, I have oy ter grounds located.

Q. Have you any intention of doing anything in regard to im provements at that point and if so what?

A. When I purchased it?

Q. Now, I mean?

A. Yes sir; I have.

Q. What do you propose to do?

A. I am going to build there next week on Raccoon island.

Q. What are you going to build?

A. I am going to build a house, a residence, where I propose t try and get a family to locate there and take charge of those oyste beds that we have leased from the State, from the oyster commis sion.

Q. Have you ever paid taxes on this property?

882 A. I have paid right up to the present year.

Q. Regularly since you purchased it?

A. Yes sir.

Q. To whom have you paid your taxes?

A. To the sheriff I think Mr. Nunez.

Q. Of what parish and State?

A. Parish of Saint Bernard and State of Louisiana.

Q. Have you ever paid any taxes to the State of Mississippi?

A. I never have.

Q. On this land?

A. No sir.

Q. Have you ever had any claim made by any of the officials o tax collectors of the State of Mississippi, asking that you shoul pay to that State taxes on these lands?

A. No sir, never have.

Q. Have you ever had your title to these lands questioned by an official of the State of Mississippi on the ground that they were i Mississippi and should have been purchased from that State?

A. No sir; never have.

Q. Have you ever been disturbed in your possession in any wa of these lands by any officials of the State of Mississippi?

A. Not in the least, no.

Q. Have you leased oyster bedding grounds from the State o Louisiana, through the Oyster Commission of Louisiana?

A. Yes sir.

Q. Are those oyster bedding grounds in waters within this disputed area as contended by Mississippi?

A. Yes sir.

Q. Are these lands which you have purchased in the disputed area?

A. Yes sir.

Q. Have you any maps of these lands, Mr. Dunbar, which you purchased from the board of commissioners for the Lake Borgne Basin Levee district?

A. Yes sir.

883 Q. Are these the maps which you refer to and which you now produce?

A. Yes sir, these are the maps.

Q. From whom did you acquire those maps?

A. From, I suppose the Lake Borgne——

Q. From the board of commissioners of the Lake Borgne Basin Levee district?

A. Yes sir.

Q. Did they accompany your title at the time you got the title?

A. They did.

Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana, now offer, produce and file in evidence, the said original maps to be numbered maps 54 and 55, and inasmuch as the said maps have just been obtained, counsel would ask of the counsel of the State of Mississippi his consent to give the counsel for Louisiana an opportunity to have the said maps blue printed and copies thereof properly colored furnished to the State of Mississippi.

Mr. MCCLURG: That will be satisfactory.

Q. Will you please look at map No. 54 and you will notice certain colored lined, one set of colors being in red, another in yellow, and the third in blue. Will you please state what those colored lines indicate?

A. The yellow lines indicate my holdings.

Q. Do those colored yellow lines surround and outline the lands that you own in that locality?

A. They do.

884 Q. What do the red lines just to the left of your yellow lines indicate?

A. From the best of my knowledge they are the possessions of Mr. John McGraw.

Q. Is that the locality where Mr. John McGraw has his house erected at the mouth of Turkey bayou or Bayou Johnson?

A. Bayou Johnson, I suppose this is Bayou Johnson marked Jones bayou.

Q. What do the blue lines indicate as the property of, on the right or eastern part of said map?

A. To the best of my knowledge, I always understood they belonged to Mr. Gilmore, I think Joseph C. Gilmore.

Q. Will you please look at this map No. 55, and state what the yellow lines surrounding Preachers island, indicate?

A. My holdings.

Cross-examination.

By Mr. McCLURG:

Q. I notice that the date of your deed is June 1899?

A. Yes sir.

Q. That is the correct date of your purchase?

A. Yes sir, that is the date I see here, I think it is the 17th of June, 1899.

Q. That you bought from the Lake Borgne Basin Levee District commissioners, 5122 24/100 acres?

A. Yes sir.

Q. For which you paid 12½ cents per acre or $641.53?

A. Yes sir.

Q. I read from the deed as follows:—"It is understood that the board of commissioners transfer only such title as it acquired from the State of Louisiana under its charter, and the aforesaid deeds of transfer." You have no other warranty of title except what is contained in this clause?

A. That is all.

Q. Is it not true save as to the Isle à Pitre, purchased; that the purchase of land in this disputed territory is of comparative
885 recent date?

A. My purchase is, but I could not answer beyond lands purchased by myself.

Q. Don't you know, as a matter of fact, that Mr. McGraw's is a recent purchase?

A. Ahead of mine I know, may be not very long, possibly a couple of years.

Q. These purchases, except the Gilmores and the Isle à Pitre, land; have been generally within the last ten years have they not?

A. I could not say, I can't answer that, I don't know.

Q. What sort of a house is it you expect to put out there; have you made your plans yet?

A. Yes sir, I have made my plans.

Q. What kind of improvements do you propose to make?

A. Well, it is a two room house upon piling.

Q. What material do you propose to make it of?

A. Well, wood, wooden piers and galvanized roof?

Q. To be occupied by your tenant or manager?

A. Exactly, by my manager.

Q. You are not much afraid of its destruction by storm or the subsidence out there, are you?

A. Those are chances we have to take you know. Well, of course

you know, in cases like that, there are always boats and these fellows generally manage to get out of the way.

Q. You own the most of the water front between Jones bayou, rather the east branch of Jones bayou, to Grand pass?

A. Yes sir.

Q. And eastward from Grand pass to Isle à Pitre?

A. Northeast.

Q. Northeast from Grand pass to Isle à Pitre?

A. Yes sir, northeast.

Q. When you go to your possessions at Preachers island, in that neighborhood, how do you travel?

A. Either through Nine Mile bayou or Three Mile bayou either one.

886 Q. Into Bay Boudreaux?

A. Bay Boudreaux, yes.

Q. Then around by Nigger point——

A. That is Pirate point.

Q. How do you go?

A. Go through Nine Mile bayou, go right on through Nine Mile bayou down through the pass here and up in here. I go through Nine Mile bayou to the southward, then in a southeasterly direction to Point Pirate and then east to Raccoon island or Preachers island.

Q. If you should go through Three Mile bayou, what is your route?

A. Direct south.

Q. Into what?

A. Into Bay Boudreaux; then to Preachers island.

Q. You say the oyster beds are rich in that vicinity? Preachers island?

A. Well, there are some few natural reefs.

Q. How are they around Raccoon island?

A. There are a few small reefs in the neighborhood of Raccoon island.

Q. How are the oysters on your possessions between Jones bayou and Grand pass, on to the southward?

A. From my knowledge, I cannot tell you.

Q. There are oysters in that territory?

A. Yes sir, from what I understand, quantities of them.

Q. You spoke of never having been called upon by the Mississippi authorities for taxes, nor had your ownership of this land been disturbed by Mississippians?

A. Yes sir.

Q. You never made any inquiry of ant official of that State as to any claim they might have had to this land when you went to make your purchase?

A. I did not.

Q. And there has been no visible occupation of this land since you purchased it?

887 A. No sir.

Q. Nor before, that you know of?
A. No sir.
Q. There has been no animal or industrial life on it?
A. Nothing at all.

GEORGE W. NOTT, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. 807 Esplanade street in this city.
Q. Are you a resident of the State of Louisiana?
A. Yes sir.
Q. Born and raised here?
A. Yes sir.
Q. What is your present profession?
A. I am president of the Citizens Bank of Louisiana.
Q. How old a man are you?
A. I am sixty years old.
Q. Have you been living in Louisiana all your life?
A. Yes sir.
Q. Were you here before the war?
A. Yes sir.
Q. Did you know a gentleman by the name of William H. Wilder?
A. Yes sir.
Q. What was his business?
A. I think he was a surveyor.
Q. Do you know whether he was ever in the employ as a surveyor of Gen. Ben. Butler of the United States Army?
A. No sir, I do not.
Q. Will you please look at this map which is called map No. 49, and state whether it was ever in your possession?
888 A. Yes sir.
Q. From whom did you get it?
A. From Mr. Wilder who gave it to me as a present.
Q. Was that the William H. Wilder concerning whom you have testified just now?
A. Yes sir.
Q. Where is Mr. Wilder now?
A. He is dead.
Q. Did Mr. Wilder ever state to you the circumstances under which this map was prepared by him?
A. Yes sir.
Q. What did he state to be the circumstances under which he prepared it?

A. He told me that the map had been made, or the original, I think this is a copy, that the original had been made under instructions of General Butler while occupying the city of New Orleans during the war.

Q. What Butler was that?

A. Benjamin F. Butler.

Q. Do you know whether or not a tracing was ever made of this map?

A. Yes sir.

Q. In whose possession would that tracing most likely be now?

A. In Sully's, the architect.

Q. What Sully is that, Thomas Sully?

A. Yes sir.

Q. What was the purpose in your obtaining this map; did you, or the Citizens bank, own any property in Saint Bernard parish?

A. No sir. I think I was looking for certain hunting grounds, and he told me he had a map that had been made under Butler and he had a copy of it and would bring it to me, and after the war he gave it to me.

By Judge GUION:

Q. Did the Citizens bank hold any mortgages on any of this property out here in this territory represented on this map?

A. No sir; they had some below.

By Mr. DYMOND:

Q. To whom does this map at present belong?

889 A. I gave it to Mr. Andrieu, the real estate man.

Q. Do you think he would be willing to give it to us for use in the record?

A. I have no doubt if you asked him he would do it; he could get it back again couldn't he?

Q. No.

A. You had better try and get a blue print.

No cross-examination.

JOHN DYMOND, JR., witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. You are one of the attorneys representing the State of Louisiana in this case?

A. Yes sir.

Q. What official positions do you hold or occupy in relation to boards or commissions?

A. I am attorney of the Oyster Commission of Louisiana, and

also of the board of commissioners for the Lake Borgne Basin levee district. I am attorney for several other levee districts in the parish of Plaquemines, and if you desire me to give them in detail I will be glad to do so.

Q. It has been noticed that in these deeds from the Lake Borgne Basin levee district, that is the proper name is it not?

A. Board of commissioners for the Lake Borgne Basin levee district.

Q. That there is an exclusion of warranty in these deeds. Will you please state how that exclusion came to be placed, and for what reason, in these various deeds?

A. When the board of commissioners for the Lake Borgne Basin levee district was created, under section 11 of act 14 of 1892,
890 authorizing the creation of that levee district to take charge of the protection of the parish of Saint Bernard and a portion of the parish of Plaquemines, from overflow by the high waters of the Mississippi river, the legislature authorized the register of the State land office to transfer to that levee board all unsold State lands that were within the territorial limits of that district. For the purpose of raising funds with which to construct levees, in carrying out the objects and purposes of the act, I was consulted *as* the board as its attorney, as to whether or not there should be any warranty clause put in these deeds, and I advised the board not to put any warranty clause in the deeds because as a department of the State government, the board was not in a position to warrant its deeds to these lands, as the proceeds of sale of these lands were used in constructing levees and were therefore converted into other form which would not be available or on hand for meeting any warranty obligations of a contract of sale, and that any purchaser would have relief by applying to the legislature in case there was any difficulty as to warranty and it would be the safest plan and would be less likely to embarrass the board if that policy was proceeded with, and the board acted on my advice.

Q. Now, Mr. Dymond, in connection with that map which was prepared by Mr. Pilie, which has been offered in evidence in this case, state under whose instructions that map was prepared and what was followed in its confection?

A. The maps which are known as diagrams 1, 2, 3 and 5, made part of the original bill of complaint filed in this cause, were originally prepared by Mr. Edgar Pilie under my instructions, the purpse being to attach to the bill of complaint an outline series of maps showing, in a general way, the boundary descriptions of the States of Louisiana and Mississippi. I gave to Mr. Pilie the map of Louisiana by S. H. Lockett and it was from this map he made the map of Louisiana which forms one of the diagrams on the bill of complaint.

891 The map of Mississippi was prepared by Mr. Pilie from a — of Mississippi which he had, and he was requested to pre-

pare these diagrams on the scale shown on the diagrams in accordance with the proportions of the maps which he had used.

By Judge GUION:

Q. In the preparations of these acts of sale from the Lake Borgne levee board, or, rather the board of commissioner- for the Lake Borgne Basin levee district, was the idea uppermost in your mind, or did you consider it at all, at the time, in excluding warranty, that the State of Louisiana had a definitive title to this property?

A. No sir, no sir. As the attorney of the board I considered that the State of Louisiana had a perfect title to the property, and the idea of there being any uncertainty in the title never at any time affected me in my conclusions or in my advice.

Q. Then, it was an entirely different reason, that you had, than any defect in the title of the State or of the levee board holding from the State, that prompted you in giving the advice you did?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

Q. Does the act of the legislature, to which you refer, limit the title to a release; does it prohibit a warranty being given to these lands?

A. No sir. It vests full authority in the levee board to determine the price and conditions under which the land shall be sold.

Q. It does not undertake to say whether it shall warrant the title or not?

A. No sir.

Q. And that act was passed when?

A. In 1892; it was act 14 of the legislature of the State of Louisiana for that year.

892 Q. Of course that was before there was any suspicion of this controversy?

A. Yes sir.

Q. Now this original map from which you made the exhibits to your original bill, I will ask you to look at it, Mr. Dymond, and say whether or not all islands including Half Moon, Shell Bank, Cat and Ship islands, as well as Isle à Pitre and the Chandeleurs, are not indicated by the coloring to belong to the State of Louisiana?

A. Yes sir. But the idea of ownership is not indicated on this map coloring; the idea is to show the geological formation and the question of ownership is not shown by that. If you will notice the legend of the map, you will see here that the colors have a special significance different from ownership.

Q. Those islands have the general coloring that the State of Louisiana has, as distinguished from the coloring of Mississippi or the other States on this original map?

A. Yes sir, in a qualified way, because Louisiana bears many different colors on this map, due to the different geological formations of the particular areas represented by the different colors and the map maker has seen fit to designate these islands as of the same geological formation as the land in the immediate neighborhood of them and has therefore given to them that color.

Q. As a matter of fact the geological formation of Cat island and Ship island and of Marsh island, is not the same as that of Isle à Pitre or the main body of Saint Bernard?

A. No sir, they are different, one is the alluvium of the Mississippi river and the other is the sand of the sea.

Q. But it is not so shown on this map?

A. No sir; I think the map is in error in regard to that.

Q. In indicating the boundary between the two States, on the exhibits filed with your original bill, I wish you would say what islands are north of the red line which indicate your contention for the boundary?

A. In what portion of the line?

893 Q. Beginning at the mouth of Pearl river, going eastward, what islands are north of your red line indication of boundary?

A. The islands are Cat island, Ship island, Horn island, and the west end of Petite Bois, with Deer island lying just off the mouth of Biloxi bay. I want to state, General, in connection with these maps that I expected there would probably be a more detailed map to show the islands when the actual trial of the case came up and that these maps were prepared more with the idea of showing the general trend of the boundary.

Q. How long have you been the attorney for the Lake Borgne Basin levee district?

A. Since its organization.

Q. When was it organized?

A. It was organized, if I recollect correctly, on the first of September 1892, or somewhere in that immediate neighborhood; the original meeting was held at the Slaughter house in the parish of Saint Bernard.

Q. Is it not true that up to that time, not much attention, by the State of Louisiana, had been given to these marsh lands in controversy?

A. I can hardly answer that affirmatively, for the reason that it would be difficult to determine what you consider not much attention. I would say, that in my opinion, there had been considerable attention given to these marsh lands because they had been selected by the State as marsh or swamp or overflowed lands enuring to the State under the provisions of the swamp land act of 1849 they had been approved to the State and listed with the register of the State land office at Baton Rouge and were therefore carried on the books of the State and were deeded by the State to the levee board of which I am the attorney, under the provisions of this act of 1892; but it

was not until 1895 that the transfer to the levee board by the
State was actually made in the shape of a deed.

Q. Except as to the Gilmore lands or Isle à Pitre, there had
en no large sales of any land by the State of Louisiana within this
puted territory, until after the organization of the levee board?
A. No sir; there had not. I might in explanation of my answer
that question, say, that the development of the oyster industry
s gone through a sort of evolution in this State as well it has in
e State of Mississippi, and that it is with the development of this
ster industry that this area and the adjacent lands have increased
value and more attention has been paid to them.
Q. Do you know when the selection of these lands under the act
Congress of 1849, was made by this State?
A. Of my own knowledge I do not; but I think we can show
m the records, perhaps from document Exhibit G which is on
in this case, the date, I think it may be furnished there.
Q. Have you any independent recollection as to about the date?
A. I cannot say, off hand; it would be entirely a question of guess
t about 1855, somewhere in that neighborhood.
Q. And was subsequently approved by the Secretary of the In-
ior.
A. Yes sir.

Redirect examination.

By Mr. ZACHARIE:

Q. At what date were the Pindell grants from the State and the
ovy grants——
A. In 1867.
Q. Both of them?
A. There were two Pindell patents that were granted at that time.
Q. Well, in regard to Leovy?
A. Leovy subsequently acquired from Pindell and I think
Mr. Leovy also subsequently got a patent direct from the
State some years afterward for other lands in that general
ality.
Q. What other patents, prior to the date named by counsel for
ssissippi, 1895, were there any others?
A. Yes sir, there were other lands sold by the State to Pindell, to
ovy, to Gilmore, to Meloche, and perhaps to others, in this local-

By Mr. MCCLURG:

Q. Those were Isle à Pitre lands?
A. No sir; they were other lands in this disputed territory.

By Mr. ZACHARIE:

Q. Then, were you, or not, correct in the answer which you made
the last cross interrogatory of counsel for Mississippi, that there

had been no grants of any considerable portion of territory by the State or the levee board, prior to 1895?

A. Well, I was incorrect if you were to say that a considerable portion was an ordinary grant. I gathered from the counsel that he meant a sale of a very large area. That was my intention in answering it; that there had — sundry grants, but there was no transfer like the State to the levee board or anything of that sort.

Recross-examination.

By Mr. McCLURG:

Q. There were no such grants as those made to Dunbar and McGraw of later years, prior to 1890, were there?

A. Well——

Q. No large grants like those, made to individuals, prior to 1890?

A. I would have to look at the records in order to be able to accurately state the acreage of the grants in order that I might make a fair comparison. I would not like to venture an answer to that, offhand.

896 Q. I will not trouble you to look up the acreage. My question was only of a general nature. You said something, it could be found from the records, it will not be necessary to do that.

A. The Gilmores received patents direct from the State, prior to 1890, of an area, I think, almost as large as either Dunbar or McGraw purchased from the levee board. Mr. Meloche also acquired an area of some considerable proportions. I must again state that I could not give you the exact acreage of either of these grants, and therefore make a fair comparison, without referring to the grants themselves, as I did not burden my memory with the acreage of each grant.

Q. The Gilmore and Meloche grants were about — dates?

A. I think about 1887 or 1888.

F. BILDSTEIN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. In New Orleans.

Q. Whereabouts in New Orleans?

A. 119 North Roman.

Q. What is your present occupation?

A. Photo-engraver. Manager of the Photo-engraving Company.

Q. Will you please look at these plates and state whether they were made by you?

A. Yes sir. This map was made by me.

Q. You say map, do you mean plate?
A. Yes sir.
Q. Will you please look at the other two plates which are before you and state whether they were also made by you?
97 A. This here also.
Q. Will you please look at the third plate?
A. Also the third one.
Q. Will you please look at these diagrams numbers 1, 3 and 5 nd state whether they were used by you in the preparation of these lates which are now before you.
A. I recollect having used diagram No. 3 in preparing this plate.
Q. Will you please now look at diagram No. 1 and state whether ou used it in preparing the correspondence plate?
A. Yes sir; I also used diagram No. 1 in producing this plate at I hold in my hand.
Q. Will you please now look at diagram No. 5 and state whether ou used it in preparing your plate representing that diagram?
A. Yes sir; plate No. 5 was made from diagram No. 5, this plate ere.
Q. In having these diagrams delivered to you, what was the pur- se of having them delivered to you?
A. To establish these plates, to make these engravings.
Q. For what purpose were the plates to be used, if you know?
A. I did not know that at the time.
Q. I don't mean for any technical purpose in any particular case, at why were the plates made?
A. To take impressions from, to print from.
Q. To make more copies of the original, is that the idea?
A. Yes sir.
Q. Do these plates represent correctly the diagrams which were ven to you to reproduce in plate form?
A. Yes sir, they represent them correctly because we photograph ese diagrams and thereby we get an accurate copy, so there can no omission of any details.
Q. Did you then transfer that to the metal?
A. Yes sir, transfer the photograph to the metal by aid of the negative.
98 Q. Will you please look at the copy of the original bill of complaint in this cause, and state whether you recognize agrams 1, 2, 3 and 5, as having been printed from the plates pre- ared by you?
A. I recognize No. 5; I recognize No. 3; and I recognize No. 1; t No. 2 is the same as No. 1.

Cross-examination.

By Mr. McCLURG:

Q. You did not make the original diagrams?
A. No sir, they are made from maps.

Q. And turned over to you?
A. Yes sir.
Q. And then you did what, first?
A. We take a photograph of these diagrams and establish a negative and from that negative we print on to the zinc, the metal, the metal is called zinc, we print on to that zinc and we etch it chemically.
Q. What do you mean by that?
A. We make the excavations you see here and there caused by the action of the acid on the plate, leaving only the lines which are supposed to print, in relief.
Q. Then, if there is any incorrectness or defections of any kind in the original map from which the diagrams are made, that same incorrectness or deficiency will be carried into the plate?
A. Yes sir, the plate will show that same deficiency; show it also correct if it is correct.

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence, the map of the State of Mississippi
899 with a large portion of Louisiana and Alabama, compiled and published by John La Tourret of Mobile Alabama, the original to be marked map No. 56 and to be filed in evidence and a copy of same to be furnished to counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from the Abridgement of Debates of Congress by D. Appleton of New York, 1857, vol. 4, page 320 *et seq.* Orleans territory, to be marked Document No. 34, and a copy thereof being furnished to the counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from the Abridgement of Debates in Congress by D. Appleton and Co. of New York, 1857, vol. 3, page 8; boundaries of the province of Louisiana; to be known as Document No. 35, and a copy thereof being tendered to counsel for the State of Mississippi.

Also offer, produce and file in evidence, extract from De Bow's Review vol. 23, pages 513 *et seq.* to be known as Document No. 36, and a copy thereof being furnished to the State of Mississippi.

Mr. DYMOND: In closing the evidence in chief for the State
906 of Louisiana, in this cause, at this time, counsel for Louisiana reserve the right to introduce the further evidence of two or three witnesses now absent from the city of New Orleans, who were to have been examined on Saturday April 30th 1904, and also two or three maps and some other documents, in connection with the evidence of said witnesses. Said evidence and testimony shall be taken at New Orleans during the month of May, at such date as may suit the convenience of the counsel for Mississippi, after agreement with counsel on both sides. In view of the expiration of the time (April 30th 1904) allowed counsel for Louisiana to introduce evidence in chief, counsel for the State of Mississippi agree and consent to the taking of the testimony and evidence hereinbe-

fore mentioned, in this reservation under the conditions hereinbefore expressed, and in modification of the prior agreement as to the time for taking of evidence in chief on the part of the State of Louisiana, counsel for Louisiana further agree, in consideration of the consent of Mississippi hereunto, to extend the time of taking testimony and other evidence by counsel for Mississippi, should a similar emergency occur.

Mr. DYMOND: Counsel for the State of Louisiana, announces
901 that the evidence in chief for the State of Louisiana is closed except as hereinbefore provided.

NEW ORLEANS, May 30, 1904.

Pursuant to the agreement between counsel for the State of Louisiana and counsel for the State of Mississippi, entered into on the 29th day of April 1904, the further taking of evidence was this day resumed.

Present: Hon. Frank H. Mortimer, commissioner.
" Hon. Monroe McClurg, associate counsel on behalf of the State of Mississippi.
" Hon. Walter Guion, attorney general of the State of Louisiana.
" Mess. John Dymond, Jr., F. C. Zacharie and Albert Estopinal, Jr., associate counsel for the State of Louisiana.

WILLIAM BEER, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. When you were last on the stand on cross examination by counsel for Mississippi, you made certain measurements on the Lafon map and gave certain distances as measured by you as so many leagues or so many miles; did you or did you not measure them by the scale that was on the Lafon map?

A. I did. My evidence was based entirely on the scale of
902 the map itself.

Q. Did you notice, or, have you since noticed that on the Lafon — the scale was the French word *lieues*, the French league?

A. I noticed on the particular map which we are speaking of, or which I think we are speaking of three distinct scales, one to French leagues, one to English leagues and of miles.

Q. By which measure or scale, did you measure your distance?

A. The one at the top which I believe was of French leagues. I am speaking from memory, you know.

Q. What is the difference between a French league and an English league?

A. French league measures in France vary a great deal and to speak of the French league of a particular period would lead to identify that period.

Q. Is it not a fact that the common definition of a French league is 2½ English miles instead of three English miles as to the English or American league?

A. It is a fact that there are more French leagues to the degree than English leagues and therefore it is less. I am not prepared to say 2½ miles.

Q. You are not prepared to say the difference between——

A. No sir.

Q. Have you not looked in a dictionary or some works to discover the difference?

A. No sir.

Q. Then if it be a fact that the French league is 2½ English miles and the English league is 3 English miles, then your testimony on that point ought to be corrected?

A. It ought to be supplemented by a change for English leagues.

Q. For English miles?

A. Yes sir. My testimony was correct so far as it applied
903 to those particular leagues.

By Mr. DYMOND:

Q. In your testimony on cross examination, when you were last on the stand, if I recollect, you were interrogated on the subject of Chef Menteur, as the channel of travel between Lake Pontchartrain and the waters to the east of Pearl — you were asked, I believe, a leading question, responding in the affirmative. Have you had occasion since, to acquaint yourself with what history shows to have been the facts in regard to travel between New Orleans via Lake Pontchartrain and this coast to the eastward?

A. So far as I can remember the examination was on the [illegible] channel and therefore of commercial travel from New Orleans [illegible] of Lake Pontchartrain. I was asked whether it did not enter the gulf of Mexico from Lake Pontchartrain by way of Bayou Chef Menteur and at that time I believed—not knowing the position, was not strongly against it, I believe I gave a weak consent to the possibility of the line having been pursued by way of Bayou Chef Menteur. I have since studied the question and found that for all time within my knowledge, within my power of obtaining information, the regular channel has been by the Rigolets. I found that Bayou Chef Menteur, which, although a possible channel, has not been in use for the purpose.

Q. Will you please examine this map, being entitled map of the United States with contiguous British and Spanish possessions, compiled from the latest and best authorities by John Melish, engraved by J. Vallance and H. S. Tanner, entered according to the act of Congress the 6th day of June 1816, published by John Melish of

Philadelphia, improved to the first of January 1818. Have you examined the map?

904 A. Yes sir; I have examined the map before.

Q. Whose map is this?

A. It is my map.

Q. Does it belong to the collection in the Howard Memorial library or to you personally?

A. To myself personally.

Q. Will you please look at this photo print, and state whether you have compared it with the original map?

A. I have compared it with the original map.

Q. Except for the reduction in size and the difference in color is that photo print a true and faithful photo print of the original?

A. The photo print of the entire map and also of the portions under discussion, are true and faithful photographic reprints of the original.

Mr. DYMOND: Counsel for the State of Louisiana, for the purpose of identification now desires said photo prints to be known as map No. 57 and 57-a.

Q. Will you please examine map bearing the title "A new chart of the West Indies, gulf of Mexico, and the northern provinces of South America, compiled from the most recent Spanish and other surveys by Joseph Dessiou, published March 1st, 1813, by James Whittle and Richard Holmes Laurie, No. 53 Fleet street, London, improved edition with additions to 1818?

A. I have examined this map, especially the parts under discussion.

Q. To whom does this map belong?

A. To myself.

Q. Will you please look at this map with particular reference to the territory at present in dispute in this case, and compare with the map and with the disputed territory the photo prints which are now handed to you?

A. I have examined the maps and compared them with
905 the photographs in my hands.

Q. Except for the reduction in size and the absence of color, how do these photo prints compare with the original map?

A. They are correct photographic prints of the original map.

Mr. DYMOND: Counsel for the State of Louisiana now desires the photo print to be known as map 58 and 58-a.

Q. You will note Mr. Beer that there has been no coloring put by hand on these photo prints and that the division lines between the political sub-divisions on the map are very broad in the photo print. Will you please state if you are able to, why those broad lines appear in the photo prints?

A. The red and green lines take black under photography. The

representation is better in its present state, than if colored in attempted imitation of the original.

By Mr. ZACHARIE:

Q. Mr. Beer, in the photo prints the islands which lie north of the Saint Bernard territory, the peninsula or archipelago and then between the peninsula and the coast of Mississippi how are they colored on the original map; as to what State they belong. I am talking about map 58–*a*?

A. They are not colored with any attempt to give them a State belonging.

Q. Are they not the same color as the Louisiana territory?

A. No; the sea is colored blue and the blue color has been run over the islands and there are other small islands in black. This is distinctly green.

Q. What would you call that?

A. This is blue, but there is no attempt at all in that.

By Mr. DYMOND:

Q. How is the Saint Bernard peninsula colored on this
906 map No. 58–*a* and as belonging to what State?

A. It is colored as belonging to Louisiana. The whole of the lower parishes of Louisiana are colored green together with that of Saint Bernard.

Q. How is the Saint Bernard peninsula colored on this map No. 57–*a* as belonging to what State?

A. It is colored yellow the same as the whole State of Louisiana.

Cross-examination.

By Mr. CLURG:

Q. Mr. Beer, in the statement you have made with reference to to Chef Menteur; as I understand you, your statement is intended as a kind of a summary of your recent historical researches; am I correct?

A. Yes sir.

Q. It is not based upon any personal observation or personal knowledge of Chef Menteur?

A. No sir.

Q. Have you ever seen that outlet?

A. It is because I have seen it frequently and seen its width that I am willing to assent to the proposition that it might have been used as a channel. After having assented to the proposition I wondered if it were correct and endeavored to discover some traces of its use commercially, of its use as a regular channel, but was unable to do so.

Q. Is there not an old fort on Chef Menteur somewhere?

A. Yes sir, and there is the difference between a possible passage and an actually used passage. On the expected invasion of New Or-

leans, forts were placed on all passes which might possibly be used for the purpose, not necessarily inferring that they were regular passages.

Q. Did your investigation of history inform you as to when that fort was built?

A. No. I had no special—I had not that in view.

Q. Or by whom it was built?

A. No sir.

907 Q. There is also a fort on the Rigolets is there not?

A. I only remember in passing rapidly by the railroad, seeing one fort within easy distance of the railroad and another fort more distant.

Q. With reference to your measurements according to the French league of which you testified this morning, are you clear in your statement that you made those measurements when you were on the stand once before, by the French league rather than by the English league or mile?

A. I made them by the uppermost scale on that map, so far as I remember correctly, or *lieues Francaise.*

Q. Your recollection is that that was the French league scale?

A. Yes sir.

Q. The Melish map about which you have been testifying; is that the same map that we have been using in this case *be* before?

A. This is another map of another date. I think this is of a later date, later or earlier. This map is of interest because it is spoken of in the treaty between the countries between the United States and Spain.

Q. You find nothing on this Melish map No. 57 about which you have testified this morning—improved to the first of January 1818—that indicates any deep water channel as a dividing line between Mississippi and Louisiana?

A. Nothing.

Q. You had something to say this morning and heretofore, with reference to coloring. I will ask you in view of your qualifications as an expert on these maps and on all other matters with reference to which you have qualified yourself, whether you give any special significance to the geographers or map makers with reference to coloring of outlying islands?

A. Very little indeed.

Q. I note upon the map now under inquiry, the Melish map of 1818, that the Chandeleur islands are not colored at all, while

908 Horn, Dog, Ship and Cat islands bear the Mississippi coloring. I see no sign of Half Moon and Round islands. That is true is it not?

A. I see no sign of distinctive coloring for those islands. The only islands colored to signify State ownership are the four you name, Dog, Horn, Ship and Cat islands, and that coloring is Mississippi coloring.

Q. The Chandeleur islands are not colored.

A. They are not colored at all.

Q. Calling your attention to the map of the West Indies by Joseph Dessiou, I will ask you to examine it and say whether there is anything upon it to indicate any deep water channel out of Lake Borgne through the Mississippi sound?

A. There are lines of soundings; those lines of sounding are along the coast of Louisiana and the coast of Mississippi; there is nothing to show that they indicate specially a deep water channel.

Q. And there is nothing to indicate any line dividing the two States, upon that map?

A. There is nothing in the way of indicating a division between the two States.

Q. And there is nothing on either of the maps about which you testified this morning, that names or marks the Mississippi sound as distinguished from the gulf of Mexico?

A. The word Mississippi sound does not appear on either map.

Q. I have noticed in the examination of witnesses for Louisiana and especially of yourself, that frequent mention has been made of the Saint Bernard peninsular or archipelago——

A. I don't remember archipelago.

Q. —or synonymous words. I would like to ask you whether you have seen on any map, any designation of any part of this disputed territory as an archipelago or peninsular?

909 A. I would not admit that the word archipelago could be used in connection with it, archipelago being a collection of islands and this being a peninsular being a part of the main land. I have never seen it designated on a map as a peninsula nor as an archipelago.

Q. I ask you this question in order that there may be no confusion in reading the testimony and that it may be clearly understood that the use of peninsular, archipelago and similar terms are the words of counsel rather than history or geographers or map makers? That is correct, is it not?

A. Yes sir.

ERNEST J. BELLOCQ, witness, recalled, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Will you please look at these maps which are known as map 57 and map No. 58, and look at these photo prints which are known as map 57 and 57–*a* and 58 and 58–*a*, and state whether these photo prints were made by you or under your supervision, the same as the other photo prints offered in evidence in this case and concerning which you have previously testified?

A. Yes sir.

Q. You have compared them with the map and found them to be correct photographic reproductions of the map?
A. Yes sir.
Q. Except as to color and dimensions?
A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. These photo prints were made exactly like the others, about which you have testified in this case?
910 A. Yes sir.

Mr. DYMOND: Counsel for the State of Louisiana in connection with the testimony of Mr. William Beer and Mr. Ernest J. Bellocq, now offer, produce and file in evidence the said photo prints marked maps 57 & 57–*a* and 58 & 58–*a*, and tender to counsel of the State of Mississippi copies of said photo prints.

THOMAS P. THOMPSON, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. Where do you live?
A. 1812 Calhoun street, New Orleans.
Q. How long have you resided in New Orleans?
A. I first came here in 1880. I have resided here regularly since 1890.
Q. Have you paid much attention and study to the history and cartography of the State of Louisiana?
A. I have paid considerable attention to the history of Louisiana, incidentally the cartography.
Q. Have you a large collection of works?
A. I have a large collection of works.
Q. How many volumes do you suppose altogether?
A. I have several thousand volumes, perhaps four thousand altogether, volumes and maps and pamphlets and books.
Q. We have offered in evidence in this case map No. 20, being a map by William Darby published in 1816. We would like
911 to get from you, so far as your research and study has gone, what was the history of William Darby the author of this map and his opportunities for observing and preparing the cartography of the State of Louisiana?
A. William Darby was a surveyor. His original employment, from what I have read, was to assist in drawing the boundary line between Canada and the United States. He came to the Mississippi valley, or Louisiana, in the latter part of the eighteenth century

about 1799, with Andrew Ellicott, and was commissioned to determine the boundary line between the American possessions and the Spanish possessions north of what is now known as the Florida parishes. Darby resided in Louisiana after that time, from what I can gather, and began to gather data to construct a map of the State of Louisiana. After 11 years of work on that, surveying, and collecting material, he published a map of Louisiana on the 8th day of April 1816.

Q. What do you know, if anything, about William Darby's familiarity with the section or territory which is now in dispute in this case?

A. William Darby acting under Andrew Jackson established a fort at about the Terre Bœuf bayou which is marked on his map Fort Darby. He is referred to by H. H. Breckenridge as being qualified because of his indefatigable research to give a correct representation of Louisiana which Breckenridge incidentally says is the most difficult State to survey.

Q. Do you know, in so far as the preparation of this map is concerned, how it was regarded by eminent authorities, if you know of any, will you please mention, in regard to its correctness?

A. I have seen printed endorsements of the accuracy of the map from Breckenridge, Thomas Jefferson, and Andrew Jackson,
912 and many other names. I have not a memorandum of them just now.

Q. Do you remember whether General Wilkinson, Governor Claiborne and General Gaines also endorsed him?

A. All of those names I remember having seen as endorsers of the map.

Q. Will you please examine this extract taken from Appleton's Encyclopedia and say whether that is a correct transcript.

A. That is a correct transcript.

Mr. ZACHARIE: We offer in evidence this extract from Appleton's Encyclopedia of Biography 1856, to be marked Document No. 67; copy being furnished to counsel for the State of Mississippi.

Q. Do you remember, Mr. Thompson, whether Mr. Darby wrote any works in regard to the geography of Louisiana?

A. Darby wrote a book printed in 1816, entitled the Geographical Description of Louisiana. Nearly two years later he wrote a second book and added to the title, with a part of the State of Mississippi and Territory of Alabama, I think the title is. He also wrote a little later, one year later, an Emigrant's Guide which included data on Louisiana.

Q. Will you be kind enough to examine this document and state whether those extracts are correct?

A. It is a correct transcript. The only thing I notice there, is, .Preface to First Edition; that Preface to First Edition is published in both volumes, first and second volumes, this data is from the

second edition, published in 1817; in the second edition of Darby's Geographical Description of Louisiana.

Mr. ZACHARIE: We now offer in evidence extract from the
913 Geographical Description of the State of Louisiana etc., by William Darby, to be known as Document No. 68, and a copy thereof is furnished to counsel for the State of Mississippi.

Q. Will you look at and examine this document, extract from Emigrant's Guide by William Darby, 1818, and say if those extracts are correct copies?

A. I have examined these extracts and they are correct copies.

Mr. ZACHARIE: Counsel for the State of Louisiana offer, produce and file in evidence the said extracts being known as Document No. 69; and tender a copy thereof to counsel for the State of Mississippi.

Q. Will you examine these additional extracts from the Emigrant's Guide by William Darby and state whether they are correct?

A. I have examined the additional extracts from Emigrant's Guide and they are correct.

Mr. ZACHARIE: Counsel for Louisiana offer in evidence additional extracts from Emigrant's Guide by William Darby, to be filed as Document No. 70, a copy thereof furnished to counsel for the State of Mississippi.

Q. Will you please examine and state whether that is a correct copy from the article third of the treaty of 1819 between Spain and the United States?

A. I have examined it and it is a true and correct copy of it.

Mr. ZACHARIE: Counsel for Louisiana offer, and file in evidence, copy of article third of the treaty between the United States
914 and Spain of February 22nd 1819, a copy thereof furnished to counsel for Mississippi, the same to be known as Document No. 71.

Q. Have you ever compared that extract?

A. I have not made a comparison of this extract. I have a book that this refers to.

Mr. ZACHARIE: Counsel for Louisiana offer and file in evidence, an extract from the Report upon the Physics and Hydraulics of the Mississippi River by Capt. A. A. Humphreys and Lt. W. L. Abbot. And counsel for Mississippi has no objection as to it being a correct copy from that work. A copy of said extract is furnished counsel for the State of Mississippi, and the said extract to be known as Document No. 72.

Q. Now, Mr. Thompson, in one of these extracts on page 308 of the Geographical Description of Louisiana by William Darby, he

says "The islands of Malheureux, Marianna, and Cat island, are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possessions of each State. The islands are in themselves of no great consequence, they are mere banks of sand, decorated with sea myrtle and a few pine trees. There are two good harbors contiguous to Cat island, but its position will render them in a great measure useless to navigation, except as a temporary shelter to vessels approaching the coast." Now will you please examine the map and state how they appear upon the map?

915 A. The Marianne group—by appearance do you mean?

Q. The coloring?

A. The Marianne group are colored green as the main land of Louisiana is colored, also Cat island. The Malheureux islands, group, are colored red as the State of Mississippi is colored.

Q. Now, you have one of these maps have you not?

A. Yes sir.

Q. How are those islands colored on the map which you have?

A. They are colored the same as Louisiana with the exception of a little dip at the end of one of the Malheureux islands has a reddish look.

Q. How do you account, as a student of cartography, for these divergencies between the maps?

A. The coloring is not done by Darby; I should judge the coloring was done according to instructions from Darby and perhaps the colorist made an error in an island.

Q. So that there is a divergence between this map of Darby's and the one you have.

A. Yes sir.

Q. They are by the same author?

A. Yes sir, William Darby.

Q. Do you know, Mr. Thompson, from your reading about William Darby, was he his own cartographer and draftsman?

A. From all I can gather from what he says and what has been said about him, he went personally over the entire State and got his data together, in a period of ten or 12 years.

Q. I have understood that he personally drew these maps and superintended—so he did not trust to anybody drawing his maps of the actual surveys by William Darby.

A. Some question has been raised about the word peninsular. In some of these extracts he speaks of the projection of Saint
916 Bernard as a peninsular. Do you observe on this map anything where he calls it a peninsular?

A. This parish of Plaquemines which is now Saint Bernard, the tongue or peninsular is referred to on the peninsular; the following is printed on the peninsular. "This peninsular has never been surveyed northeast of Bayou Terre aux Boeuf. The coast and interior

remain but imperfectly known. The surface is flat and but little elevated above the level of the sea."

By Mr. DYMOND:

Q. I notice, Mr. Thompson, from Document No. 69, the following description of Lake Borgne, as published by William Darby in 1818, to-wit: "Lake Borgne is a prolongation of the strait reaching from the Rigolets to Mobile. It is thirty-five miles in length from Cat island to the mouth of Bayou Bienvenu, with a medial width of twelve miles. Lake Borgne is checkered with two groups of small islands, Malheureux and Marianne islands. It is extremely shoal; excepting a narrow channel running along its north-western border, there is not more than two feet of water to be found in the whole expanse of the lake. Lake Borgne is terminated on the northeast by the beautiful Bay St. Louis; on the east by Cat island, and south-east by a long flat peninsular already noticed." Will you please look at this large map, which we will now for purposes of identification call map No. 59, which purports to be parts of Lake Borgne and Mississippi sound, Louisiana, composed of parts of charts 190, 191 and 192, issued in March 1904 by the Coast and Geodetic Survey published at Washington, D. C. and glance at the soundings of the depth of water in Lake Borgne and state what is about
917 the average depth of Lake Borgne as shown by those soundings.

A. The average depth would appear to be about 3½ feet, 3 or 3½ feet.

Q. Are you familiar, Mr. Thompson, with the history of the River Iberville, now known as Bayou Manchac?

A. The Iberville river, this bayou or river is referred to in the early books as Iberville and later on as Manchac.

Q. Have you any knowledge, historical or from historical sources as to when Bayou Manchac or River Iberville was closed at the point connecting it with the Mississippi river?

A. Gayarre states that by the order of Andrew Jackson the Bayou Manchac was closed in 1814, and that it has remained closed ever since.

Q. Who was Gayarre; what Gayarre do you refer to?

A. Charles Gayarre is known as the historian of Louisiana; his first published history was in 1830; since that time he has published at least five—there have been published at least seven editions of Gayarre's history.

Q. Is his history accepted as an authority on Louisiana?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

Mr. MCCLURG: Counsel for the State of Mississippi excepts and objects to so much of the testimony of Mr. Thompson and of Mr.

Beer, as undertakes to give excerpts from history, upon the gr
that such matter cannot be proven by witnesses, but speaks for i
and counsel for Mississippi excepts to Documents 67, 68
918 70, 71 and 72 for the same reason, that it is historical ma
not to be proven by the testimony of witnesses in the ma
offered to be proven by Louisiana in this cause. Counsel does
intend to except to the documents being correct transcripts from
books, but to the proving of the matter in the manner adopted
Louisiana.

Q. You spoke, Mr. Thompson, of there being some difference
tween the Darby map before you and one which you persona
own, with reference to the coloring of the islands especially. Ple
give the dates of these two maps?

A. The dates are identical, of the two maps that I refer to;
to make it clear, Darby's original map was published on the
day of April 1816, according to act of Congress. Later when Mi
issippi was erected into a State, Darby published June 17, 1817
new map revising the map of 1816. I refer to the latest Darby m
of 1817 which I have before me. The map that I speak of as
own is of the same date. The Malheureux islands are colored
my map as Louisiana is colored, except a small point near the coa
of Mississippi which has the color of Mississippi, a part of o
island.

Q. Do you know of any other difference between the two maps
A. Between the two latest maps?
Q. Yes?

A. There are no other differences that I can see, except in th
coloring.

Q. The one that you personally own is not before you and you
have not critically compared it with that one you have before you

A. I have examined the particular matter of the coloring
919 of the Malheureux islands on my map and I know that all
of the Malheureux islands are not colored alike, that a smal
part of one island is colored like the color on Mississippi State.

Q. Do you not gather from the map before you, that Darby be-
lieved that the Malheureux islands belonged to Mississippi, a Terri-
tory then, and to Mississippi State after it was organized?

A. Darby published a description with this map in which he dis-
tinctly states that those three islands have become involved by the
acts creating the States so that the boundaries lap, and he does not
know to which State they belong. He speaks in that way of the
Malheureux, of the Marianne and Cat islands.

Q. But he indicates on the map before you, that the Malheureux
islands belong to Mississippi, by the coloring?

A. They are colored similar to Mississippi?

Q. The Marianne and Cat islands are colored similar to Louisi-
ana?

A. Yes sir.

Q. Are these Marianne islands known by that name now?
A. They have subsided into the water.
Q. Well, Round island is not marked, or Half Moon island, is it?
A. It is not marked on this map.
Q. As a matter of fact do you attach much significance to the map coloring as a distinguishing line between two States?
A. I do, with Darby, in a measure, because having given this so much attention that his coloring was certainly the current idea of the time. But as he excepts, in the case of these three outlying, the three groups of outlying islands, and also the two maps printed at the same time varying a little, I would say that I would not depend much on that particular—those particular islands,—on the color of those particular islands.

920 Q. I believe you stated that whether Mr. Darby was his own cartographer, that he gave it his personal supervision?
A. I can only state that from everything I can gather that this map is Darby's from actual survey; he does not state whether he did the coloring.
Q. You cannot state whether he gave it his personal supervision, or not?
A. It was Mr. Darby's enterprise and it was commercial, in a measure, he sold the map and I imagine that he gave it the attention that it deserved during 11 years' preparation.
Q. He was by profession a surveyor?
A. Yes sir, he was an engineer and surveyor.
Q. You spoke of a large library of four thousand volumes. Have you found in any of those books, especially with reference to the history of Louisiana, anything that undertakes to designate the deep water channel out of the mouth of Pearl river and Lake Borgne to the southwest of Cat island or, in other words, the line claimed by Louisiana to be the boundary line in this case. Can you find anything designating that line as the true dividing line between these two States?
A. I don't remember seeing any direct reference; but I have not investigated with a view to finding—in books of travel the route is indicated by which a person would cross from Mobile to New Orleans by water.
Q. That is intended for navigation and commercial purposes?
A. Yes sir. And then travellers in telling of their own travels mention the route through which they came.
Q. Have you any idea, Mr. Thompson, how far it is by sea around the coast of Louisiana from the mouth of Pearl river to the mouth of the Sabine river?
A. Without the data before me I have no idea, definite idea.
Q. What is your estimate of that distance?

921 A. I would not make an estimate. The coast line is so indented that it would be almost as impossible, without data, as it would be to give the length of the Mississippi river to some point.

Q. I will ask you to take the scale marked here and make a rough estimate, not intending that it shall be correct, of the distance around the coast of Louisiana from the mouth of the Pearl river to the mouth of the Sabine river?

A. This will be very rough measurement, I don't know that the coast includes all around in those bays and inlets. It is about 463 miles, roughly.

At this stage of the proceedings the hearing was adjourned for recess by the commissioner until 2 p. m. to be resumed at the same place and date.

922 Resumption of Proceedings.

2 P. M.

Pursuant to adjournment for recess, the hearing was resumed at the same place at the hour of 2 p. m.

It is agreed between counsel for the State of Louisiana and counsel for the State of Mississippi that the following extract from a letter by W. C. Hodgkins to Judge Walter Guion under date of May 2nd 1904, shall be copied in the record as a correction of a typographical error in the list of maps accompanying the report of Mr. Hodgkins, marked Document 11, which agreement is made at the request of Mr. W. C. Hodgkins, to-wit:

"WASHINGTON, May 2nd, 1904.

Hon. Walter Guion, att'y general of Louisiana, New Orleans.

DEAR SIR: I have received your letter dated April 29th 1904, and thank you for calling my attention to certain apparent discrepancies in the list of maps attached to my report dated January 30th 1901.

923 In reply to your letter, I beg to state that the discrepancy in the statement as to the Melish maps of 1820 in the "Louisiana list" is due to an error of the typewriter in copying my manuscript notes in 1901 for the original report, by which my note about the Melish map of Mississippi was cut in two and a note about Tanner's American Atlas was interjected between the two parts. It should have read thus: 1820. John Melish's map of Mississippi does not color islands, but apparently puts the Malheureux islands in Louisiana. Melish's map of Louisiana, 1820, differs from above. (See Miss. list) Here I will add that on both of these maps, the islands are not colored, but at that time and for the purpose of that report, it was assumed that if on a map of a certain State the coloring proper to that State was not extended to the islands, the latter must be considered abandoned to some other State. I am not certain that that was the best assumption to make, but you can see from this how the conclusions stated were reached.

With reference to the Hardee map of 1868 in the "undeterminate list" I would say that the entry cited should read:

924 1868. T. S. Hardee's official map of Mississippi does not color Cat island.

It was intended to convey no further meaning than that direct statement.

* * * * * * *

Very truly yours,
(Signed) W. C. HODGKINS."

Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence map No. 59, being map of part of Lake Borgne and Mississippi sound, Louisiana, composed of parts of charts 190, 191 and 192, published at Washington, D. C. March 1904 by the Coast and Geodetic Survey, with copy thereof being tendered to the State of Mississippi.

FRANK HASTINGS MORTIMER,
Commissioner.

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926 Frank Hastings Mortimer, Commissioner.

Resumption of Proceedings.

In accordance with the agreement of counsel and pursuant to the adjournment had at Jackson, Mississippi, Saturday August 20th 1904, proceedings in the taking of testimony and evidence were herein re-commenced on Thursday August 25th 1904.

Present: Hon. Frank H. Mortimer, commissioner.
Hon. Walter Guion, att'y general of the State of Louisiana.
John Dymond, Jr., Esq. and F. C. Zacharie, associate counsel representing the State of Louisiana.
Hon. Monroe McClurg, associate counsel of the State of Mississippi.

J. M. BREAUX, witness, re-called, on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Mr. Breaux, you have testified in this case and if I am not mistaken you are the president of the Oyster Commission of Louisiana which made an agreement with the Oyster Commission of Mississippi in September 1902 creating a neutral zone or territory in which the vessels and oyster boats of the two States could fish. Is that correct?

A. Yes sir; that is right.

Q. The State of Mississippi, in its evidence, recently taken, has placed witnesses on the stand to testify to the effect that there was no danger of an armed conflict between the authorities of the State of Louisiana and the State of Mississippi previous to the filing of this suit which was filed in October 1902. Do you recall in what month it was that the two oyster commissions of the two States met in the city of New Orleans?

A. I think it was in September.

Q. Of 1902?

A. Of 1902.

Q. Do you know what the provisions, and did you know at the time, what the provisions of the Louisiana law were in regard to the jurisdiction and control of the Oyster Commission of Louisiana over the oyster waters of the State of Louisiana?

A. Yes sir.

Q. Did you, at the time, consider that the territory which we commonly call now, the neutral territory was part of the State of Louisiana?

A. Yes sir.

Q. Would you or would you not, have considered it necessary in the absence of an amicable agreement between the two States to have enforced the Louisiana law in what is now called the
927 neutral territory?

A. Beyond a doubt.

Q. Were you authorized by the Louisiana law, as the Oyster Commission of Louisiana, to maintain an armed patrol boat, in patrolling the waters of the State of Louisiana and enforcing the Louisiana law?

A. We were.

Q. Did you maintain such a patrol boat in that territory?

A. We did.

Q. In the event there had been resistance on the part of the authorities of the State of Mississippi or the people of the State of Mississippi, to the enforcement of the Louisiana law in that territory, would you, or would you not, at that time, have felt compelled to have recourse to your armed patrol boat to enforce Louisiana's right in that territory?

A. Certainly I would.

Mr. McCLURG: The question is leading and is objected to on that account, and the answer is excepted to.

Q. Mr. Breaux, you, of course, know there was an agreement made between these States which happily avoided any crisis. Suppose there had been no such agreement at that time, what would you have done as president of the Oyster Commission of Louisiana in regard to this disputed territory?

A. I would have protected the oyster territory of Louisiana in any way—well, with armed force as we had equipped our patrol boat for that purpose.

Q. Was this boat actually armed?

A. It was, yes sir.

Q. At the time and just immediately prior to this conference of those two commissions, which occurred in September 1902, was there any danger of a conflict and if so on what do you base your idea?

A. Was there any danger of a conflict before the understanding between the two commissions?

Q. Yes sir.

A. Well, we thought there would be probable danger of a conflict, yes, sir; in other words we were satisfied there would be unless there would be an agreement made between the two commissions and as president of the Oyster Commission of Louisiana I was determined to protect the Louisiana territory.

Q. In what way would that conflict have come about, and what facts, if any, made you think there would be a possibility of a conflict?

A. Well, the possibility of a conflict between the two States in regard to the territory would have been if we couldn't have come on some mutual agreement in regard to this territory.

Q. Did anyone say anything that would in any way indicate to you that there might be a conflict?

A. Well, when the two commissions met there was a great argument, as you know yourself, you were present, there was a great argument as to whether we could come on some agreement or not, and it was mentioned by some members of our commission that we would have to enforce our laws, if we couldn't come on some agreeable understanding and the president of the Oyster Commission of Biloxi, which was Mr. Hatlested——

928 Q. Of what State?

A. Mississippi. He said when that remark was made—he said that would be a doubled handed game.

Cross-examination.

By Mr. McCLURG:

Q. He said what would be a double handed game?

A. Well, if we attempted to defend our territory.

Q. As I understand it, the Oyster Commission of Louisiana, of which you are president, was created in 1902?

A. Yes sir.

Q. And that in 1902 you set about the organization of about ten districts reaching from the mouth of the Pearl river to the mouth of the Sabine river?

A. Yes sir.

Q. And procured patrol boats?

A. Yes sir.

Q. That at a mass meeting held in Mr. Dymond's office in New Orleans, or at a meeting of the Oyster Commission of Louisiana, you invited the Oyster Commission of the State of Mississippi to meet you in joint session?

A. Yes sir.

Q. Do you remember whether anything was said in that joint meeting of the two commissions as to a threatened armed conflict between the sheriff and the officers of the St. Bernard parish of Louisiana and the sheriff and other officers of the county of Harrison, in the State of Mississippi?

A. I am not certain that I heard anything about the sheriff—any difficulty with the sheriffs.

Q. Or officers of that county?

A. Or officers. The only——

Q. Well——

A. The only difficulty, the only talk of a difficulty—came between the two commissions.

Q. Yes, in September, 1902?

A. 1902, no——

Q. That was about the 27th day of September?

A. Somewhere near about that, as well as I can remember.

Q. As chairman or president of the Louisiana Oyster Commission

can you cite me any instance where there was in truth and in fac an impending crisis of a conflict between the sheriff and othe officers of the parish of St. Bernard and the sheriff and other officers of the county of Harrison, Mississippi?

A. No, I couldn't positively say that; no more than all I can say in regard to the difficulty that we thought might arise was between the State of Mississippi and the State of Louisiana in regard to this disputed territory provided we couldn't come on an agreement with the Oyster Commission of Mississippi, and of course, we had made up our minds positively, I had as president of the board, that if we couldn't come on some friendly agreement in regard to this territory, that I would certainly see that the property of Louisiana would be protected by arms.

Q. How did you propose to protect the property of Louisiana?

A. With arms.

Q. How were you going to use arms?

A. Use them by our crew.

Q. Going to shoot them?

A. Why certainly if it was necessary, if we couldn't protect
929 it any other way.

Q. What other way did you have in contemplation? Suppose you had gone out with that patrol boat and found a Mississippi boat on what you thought to be Louisiana territory?

A. But there was no thinking about that. We knew where the Louisiana territory was and we were determined to defend it.

Q. All right, I will correct my question. Suppose you had gone out and found Mississippians fishing on Louisiana territory, what would your patrolman have done?

A. Ordered them away.

Q. Suppose they had refused to go?

A. We would have made them go by force of arms.

Q. If they had not gone, you would have fired on their boat?

A. We would have forced them away if we had had to use arms.

Q. By what authority do you think you had the right to shoot those men on Louisiana territory?

A. By the authority vested in us by the oyster law.

Q. Now, Mr. Breaux, you don't undertake to take the position, do you, that even though you had police authority to patrol the waters of the sound within the State of Louisiana, that you had authority to shoot men who refused to leave?

A. We have.

Q. You have got that authority?

A. We have the authority to arrest them and pull them out of there, or if we couldn't do otherwise we could take them by force of arms.

Q. Suppose they had submitted to arrest?

A. We could have arrested them and sent them out of our lines or prosecuted them.

Q. You knew of no such armed boats, at that time, in the waters of the Mississippi gulf on the Mississippi side, did you?

A. No, we knew of no armed vessels on the Mississippi side, of course not.

Q. Now then as a matter of fact, you rather anticipated what might happen in your action rather than acting upon what had actually happened, did you not?

A. There was no anticipation about it. We had made up our minds positively as to what we would do.

Q. Under certain conditions?

A. Yes sir; under the condition that Mississippi would not defer to our conditions.

Q. In other words you intended to lay down the line and compel Mississippians to abide by it?

930 A. Of course, we intended to draw our lines and show Mississippi where we were certain Louisiana territory was and, of course, this disputed territory we wanted to give Mississippi a fair show and we told them we were willing to go on a compromise if they were willing; at the same time if they were not willing that we would certainly protect our territory.

Q. You took all those steps, all of those precautions before *they* had been any effort made to have the boundary between the two States judicially determined?

A. Why, of course, we——

Q. And you undertook to decide for yourself where the boundary was, as I understand it?

A. Not at all. We knew exactly where the boundary line was and Mississippi knew, and we were satisfied of the facts that Mississippi was intruding on our territory, but as we didn't want to rush things over them, we made them the proposition with the determination that if they didn't accept it we would defend our rights.

Q. So, then, after all, without undertaking to have the boundary otherwise determined than as your commission chose to determine it, you fixed the line and laid the law down to Mississippi?

A. Not at all; we didn't fix the line at all; the lines were already fixed.

Q. By whom?

A. By the Government.

Q. Which government?

A. United States Government. We guided ourselves entirely by our maps. We guided ourselves entirely by what we knew a fair and just cause as far as our territory was concerned.

Q. But you understand there was some doubt as to about where that line is in the waters?

A. You say that we have some doubt?

Q. No I say there is in fact some doubt?

A. I don't think there was any doubt in the Louisiana mind. I think there seems to be a little doubt from Mississippi.

Q. Now, then, Louisiana—you say there is doubt as to Louisiana's line?

A. No, sir.

Q. And you judge that by the acts of Congress admitting Louisiana into the Union?

A. Yes, sir.

Q. Very well. Now, then, you didn't wait until your own Louisiana courts or the Mississippi courts or the United States courts interpreted that act of Congress for both States and for the people of all the States, did you?

A. What?

Q. You said by your action, that we know the line is here?

931 A. Yes, sir.

Q. And we are going to defend it here?

A. Yes, sir.

Q. That was——

A. That was the determination of the Oyster Commission of Louisiana to defend it.

Q. And it is true, as I understand you, at that time there had been no real armed conflict or threatened armed conflict between St. Bernard parish and Harrison county?

A. Well, no, I don't see it was necessary to have any armed conflict where there was no law practically in regard to the oyster industry. This was a new law; we were appointed to execute those laws and defend the rights of the oyster territory of Louisiana. We had our attorney to consult. We examined the boundary line between Mississippi and Louisiana. We came to the firm conclusion that Mississippi fishermen were intruding on our rights. Consequently, we made up our minds to defend our rights, but before taking any serious action we thought we would act fair with the Mississippi people and ask them to join us and see what agreement we could make, which we did. We came to an agreement which you know what has been——

Q. Commonly called the neutral zone?

A. Yes, sir the neutral zone or neutral territory, and we agreed that this thing would be done in an amicable way and let the court decide whether Louisiana was right or not.

Q. Right or wrong, you were going to do it and let it be decided hereafter?

A. We had that power and we thought the authorities of Mississippi would back their commission just as the authorities of Louisiana were willing and have been willing to back our commission.

Q. As I understand you, you went about this matter deliberately? You first examined the statutes admitting these two States into the Union; then you conferred with the attorney of your commission and came to the firm conclusion that the boundary was as stated in your bill of complaint, I mean the bill of complaint by Louisiana against Mississippi?

A. Yes, sir.

Q. And after coming to that fixed conclusion, you then offered Mississippi an opportunity to agree to that?

A. To agree to what?

Q. That your line was correct, did you?

A. No, that is not it. Our object was to have a conference with the Mississippi Oyster Commission to let them be aware of our action towards this boundary line and see what conclusion they would come to.

Q. After you had fixed it in your own minds?

A. There was no fixing of it in our own minds; we found it already fixed on the map; we made no line at all in regard to the boundary line; the boundary line was visible.

Q. Then after the interpretation of the acts of Congress by your side of the question, you desired to hear from the Mississippi side and invited the Mississippi Oyster Commission in joint conference with you?

A. We did it to try and avoid the necessity of protecting our territory by force of arms, if possible. Consequently, we thought it nothing but right and just to give Mississippi a hearing in regard to it.

Q. You did give them a hearing?

A. Yes, sir, and at our conference there is where—after great argument—there is where we came to the conclusion it would
932 have to go in court and we came to the conclusion of creating this neutral territory or zone pending the decision of the United States Supreme Court.

Q. Did the Louisiana Oyster Commission believe they had any authority in law to establish and fix the boundary between these two States?

A. Certainly; we wouldn't have taken the steps we did if we did not.

Q. And that both States would be bound by the line you established?

A. I don't understand.

Q. And did you believe that both States would be bound by the line you established?

A. We established no line at all. We only established the neutral territory. The lines were already established on the maps; we merely established the neutral territory.

Q. I agree with you that the law does establish the line somewhere, but there might be some controversy about where that line is and what I meant to ask you is this: That your commission after examining the statutes and after conferring with your legal officer determined where the line was that the law had fixed, did you?

A. Why certainly, we couldn't help determining where the line was when we could see the line plainly on the map.

Q. Who made that map determining that line?

A. I can't exactly name who made it, but I suppose it was by some United States surveyor.

Q. Was that the deep-water channel line?

A. Yes, sir.

Q. So that——

A. That was the line made on the map that fixed it.

Q. So that this boundary line, which you say has already been fixed by law, the acts of Congress, you have reference to the deep water channel or what is marked on the Government map the sailing line out of the mouth of Pearl river?

A. No, not sailing line at all; the boundary line between Louisiana and Mississippi.

Q. Is not the deep water channel line the same thing going out the mouth of Pearl river southwest of Cat island into Cat Island channel through——

A. Which is considered the boundary line between Louisiana and Mississippi.

Q. That is the line which you say the law fixed?

A. As far as that is concerned I don't say what the law fixed only say we found it fixed on the map.

Q. So you were governed by the map?

A. Yes, sir.

Q. Which map?

A. The map furnished us by our attorney.

Q. Is it not true that you fixed the boundary according to instructions of your attorney rather than by map or law?

A. No, sir we fixed no boundary whatever; we only fixed the neutral territory. As far as the boundary was concerned, we were satisfied that that was fixed already.

Q. Why were you satisfied?

A. Because the map says it was fixed.

Q. Tell which map it was?

A. Mr. Dymond which map was that?

933 Mr. DYMOND: That is Exhibit E.

Q. That is the map that has the red lines drawn. You remember Exhibit E.

A. Yes sir.

Q. And that map says that the deep water channel is the line between the two States.

A. As far as that is concerned it might have run into deep water a certain distance and it might have run in shallow water other distances, I don't know.

Q. What did your attorney and other members of your commission say to the Mississippi commission and her attorney in September when you first fixed this neutral line? Did you tell them your determination to protect the interest of Louisiana up to the deep water channel?

A. Yes sir. And that we desired, however, to try and protect in an amicable way if possible.

Q. And if not possible to do it that they might look for a fight?
A. Yes sir, that we would protect it at all hazards.
Q. And then you offered Mississippi the alternative of agreeing with you on a neutral zone to be enjoyed until the termination of this suit, or fight?
A. Well, we didn't exactly offer it; we merely stated to the Oyster Commission of Mississippi that we wanted this thing settled in a friendly way if possible, and if not that we were determined to defend our rights at all hazards, and that we thought it best to have a conference with them and to settle this in an amicable way if possible and the suggestion was made then as to how we would do it.
Q. Who made that suggestion; didn't Mr. Dymond make the suggestion?
A. No, sir; if I am not mistaken it was made by Mr. Hatlested, the president of the Mississippi commission as to how it could be settled.
Q. Then, who answered him?
A. Several of us spoke up.
Q. You mean of the Louisiana commission?
A. Yes, sir, and the Mississippi commission. You know how it was; it was an argument as to how we should settle it.
Q. Mississippi, as I understand it, asked Louisiana how it was to be settled?
A. Yes, sir.
Q. Then you submitted your map showing——
A. The map had been submitted.
Q. During that meeting?
A. Before this thing came up; in fact I think Mississippi had examined the map before they met us in Louisiana.
Q. So, then the Mississippians tumbled your way?
A. Not at all, they had quite an argument before they did tumble.
Q. Well there was more wind than action.
A. They wanted more than we could grant them. We had considerable argument on the matter and we finally wound up by allowing them Isle à Pitre harbor.
Q. But they made us keep out of the marshes?
A. Yes, sir, certainly; we thought they were far enough in as it was.
Q. Didn't you think they were a little bit too far?
A. Yes, sir; considerably so.
Q. They were south of the deep water channel?
A. Yes, sir; considerably so.
Q. But you held them to it?
934 A. Yes sir. And we would have held them to it if not in an amicable way we would have held them to it any how.
Q. Well, after you got the neutral zone fixed, collared the Mississippians and dragged them out of the marshes——
A. No, we didn't drive them out.

Q. Wait until I get through. And sent them over east of Grand pass, then they came back with hats off and asked you to confer with them again with reference to the protection of that neutral zone didn't they?

A. Did they come back?

Q. In November.

A. You mean when Gov. Longino——

Q. Yes?

A. And Gov. Heard?

Q. Yes.

A. Gov. Longino communicated with Gov. Heard and asked for a conference between himself and Gov. Heard, and the commissions of Louisiana and Mississippi.

Q. Didn't he say to the governor of Louisiana that the Mississippians were circumscribed under the line that the oyster commission had agreed to and he wanted it modified?

A. I don't know that he mentioned anything in regard to the commission——

Q. He said they were dissatisfied?

A. No sir; he did not mention his commission. On the contrary I think he treated them with a great deal of discourtesy.

Q. I mean to say, didn't Governor Longino say to Governor Heard and especially to your commission, that the Mississippi people were not satisfied?

A. Yes sir. Now you come right to it.

Q. And that he wanted a modification?

A. Yes sir. And Governor Heard communicated with me and I called a special meeting and we had a conference with Governor Heard and Governor Longino and the minute we explained to Governor Longino and showed him the map and the situation he then asked me to excuse him, and Governor Heard and he withdrew from the conference and still left it to the two commissions.

Q. Well, now is it not true that a motion was made that all persons present at that meeting in November be excused except the two commissions and their attorneys?

A. Yes sir.

Q. And that by virtue of that motion that the governor and attorney general of Louisiana and the governor and attorney general of Mississippi retired?

A. Well, the motion was made by the governors.

Q. Governor who?

A. Governors Longino and Heard, and it was then——

Q. Wait a minute. I want you to be sure——

A. I am sure of what I am saying.

Q. Because, I don't mean to say that you wouldn't say what you believed——

A. I don't believe about that; I am certain——

Q. You are certain Governor Longino made——

A. Longino and Heard both said that the best thing they could

do was to withdraw; after they saw the maps and saw the situation of the boundary line and the neutral territory they had little or no more to say; then they decided to withdraw and asked me to excuse them and they submitted the whole matter again to the two commissions.

935 Q. Now wait. I want you to refresh your memory and answer me distinctly in the presence of your attorney, Mr. Dymond, if it is not a fact that at that meeting in November, no maps were exhibited during the time that the governors and attorneys of the two States were present?

A. No sir. Mr. Dymond exhibited the map. I called on him to exhibit it. Mr. Dymond didn't you exhibit the map?

Q. Was Governor Longino there?

A. Yes sir, and we explained it to him.

Q. When you were on the stand before, Mr. Breaux, I called your attention to this meeting that we are discussing now in November held at the office of the Chamber of Commerce in this city and in calling your attention to it now, for the purpose of showing the protest on the part of Mississippi or at least Mississippians and especially Mississippians interested in the raw oyster trade, do you not remember that Governor Longino asked that this neutral line which had been fixed in September be abrogated or materially modified, and he stated his reasons for doing so, that the Mississippians were dissatisfied with it. Do you remember that?

A. No, I don't remember that Governor Longino made any strenuous effort in regard to overthrowing the recommendations of both commissions either one way or the other.

Q. Did he not request a modification of that line and was not that the cause that called that meeting together to secure some changes in the neutral line that had been previously made?

A. Well, when the chair announced that it was ready for the question, Governor Longino did get up and stated the object of having communicated with Governor Heard in regard to this territory and that the Mississippi people were very much dissatisfied and that his object in having the conference was to see what could be decided in regard—or what could be done, in other words, in regard to the agreement made between the two commissions.

Q. In September?

A. Yes sir.

Q. Well, do you remember Mr. Dymond catechising the governor at some length while the governor was speaking; do you remember that?

A. I don't know that he did it at any great length; he asked him some questions, he asked him a few questions, yes sir.

Q. Do you remember after Governor Longino made his statement that Governor Heard made a few remarks?

A. A few remarks, yes.

Q. And Mr. Dymond made a statement as to Louisiana's claim?

A. Yes sir. I called on Mr. Dymond then to produce the map

which he did and explained — Governor Longino in regard neutral territory that we had compromised on with Mississipp

Q. Since we are reviewing again your testimony on this su want to ask you if you remember that I was there then as the ney general of Mississippi?

A. Yes sir.

Q. And that I stated that in my judgment there was no re troversy between the two States within the meaning of the Do you remember that?

A. No, sir; I don't remember.

Q. Do you remember that I stated that I thought the safer, cl and most satisfactory way to settle this matter would be to re to the legislatures of the two States and let them let each legis appoint a commission with power to choose an umpire and sett line that way.

936 A. I cannot re-call exactly your words. I know yo cussed the matter with Attorney General Guion; I can actly recall——

Q. Do you remember that is the substance, the view I took at that time?

A. No, I can't say that I can remember or think that it was views.

Q. Well, can you say whether or not that I suggested——

A. As far as that is concerned I do remember that you some talk on the subject. You discussed it with Attorney Ge Guion, but as to the exact words of your discussion I can't——

Q. I don't ask you for the exact wording——

A. I am candid with you; I don't remember your words.

Q. And do you remember whether, without undertaking to my language for it, that I stated that in my opinion the agreem between the two commissions was not founded in law, that might have been acting on an amicable line, but it was not bind on either State?

A. I remember of your making some kind of remark——

Q. Along the lines I have indicated?

A. I can't say positively that I remember you mentioned th words exactly.

Q. What line was it that those two commissions fixed for the n tral territory or neutral zone line?

A. Well, I would have to have a map to show you exactly. think Mr. Dymond could answer that for you.

Q. I just want to get in the record what line they fixed?

Mr. DYMOND: It is the area bounded on the waters by a li emerging from the mouth of Pearl river, south, to Malheure point, thence extending eastwardly along the coast to Grand pa thence south along the coast through Grand pass to Sundown islan thence northeasterly to the deep water channel between Cat isla and Isle à l'Itre, thence following the deep water channel back the point of beginning at the mouth of Pearl river.

A. That was the neutral zone.

Q. Neutral territory. As I understand it, south and southwest of that line, in other words what we call the Grand marsh or Louisiana marsh was exclusively for Louisiana and north of this line was exclusively for Mississippi?

A. North of the deep water channel.

Q. North and east of the deep water channel?

A. Yes sir.

Q. That Mississippi boats having licenses from Louisiana could fish in Louisiana territory provided they marketed their oysters in Louisiana?

A. That is correct.

Q. And as I understand it—perhaps you understand it the same way—that Louisiana boats having a Mississippi license could fish in Mississippi territory and market their oysters where they please?

A. Yes sir.

Q. Now——

A. And both licensed vessels from both States could come into the neutral zone, Louisiana boats carrying oysters to Louisiana and Mississippi boats carrying oysters to Mississippi or Louisiana as they chose?

937 Q. In regard to the Mississippi boats, I think Mr. Breaux, you will recollect this, that where they operated in Louisiana they had to operate for some Louisiana employer.

A. They could not come in here like the Louisiana boats.

Q. Finally now, Mr. Breaux, you have no knowledge of any actual conflict or any crisis amounting to a threatened armed conflict between the sheriff and officers of Saint Bernard parish and the sheriff and officers of Harrison county Mississippi?

A. No sir; I have not.

Redirect examination.

By Mr. ZACHARIE:

Q. Prior to the meeting of the conference of the boundary commissions of the two States and of the two oyster commissions, you have stated that it was in contemplation by the Louisiana Oyster Commission to act against the Mississippi fishermen in this disputed territory. What did you propose to do; to drive them out by force or to arrest them?

OBJECTION.—Mr. MCCLURG: That is objected to because he not only said that when he was on the stand before, but has stated it this morning in direct examination over and over again.

Q. I want to lead up to another question. What did you intend to do.

A. Why, I intended to do just exactly what I told Mr. McClurg; I intended to defend the rights of Louisiana.

Q. Mr. Breaux, I have asked you what physical acts you intended

to do; did you intend to warn them off or drive them off or to arrest them?

A. We had to drive them off. That is all there is about it.

Q. Suppose they would not be driven off?

A. Then we would have used arms and destroyed them; that is all.

Q. What would you do with them; what do you mean by destroying them Do you mean arrest them or kill them?

A. That is a question that I can hardly state. It would have depended a great deal on the circumstances at the time being.

By Mr. McCLURG:

Q. You were rather disposed to shoot them if they resisted?

A. Why, certainly.

By Mr. ZACHARIE:

Q. Did you apprehend that any such contingency, that these Mississippians would call upon anybody for protection, if so who?

938 OBJECTION.—Mr. McCLURG: I object to that on the ground that it is leading; that it is without foundation in fact so far as the testimony shows anything to that effect. It is only to build up.

Q. If so who?

A. Why, if they had to call for protection, I suppose they would call on Mississippi to protect them.

Q. Did you apprehend they would do so?

A. I did, yes sir.

Q. What would be the consequence of that, if the authorities came to their rescue?

A. Well then the Louisiana authorities would have come to our rescue to help us out.

Q. What condition of affairs would that have produced?

A. Well it would have produced anything but an agreeable situation of affairs.

Q. I am not speaking about agreeableness, I am——

OBJECTION.—Mr. McCLURG: Mississippi objects to this course of prospective facts being brought out in this manner, as it is wholly irrelevant, impertinent and incompetent.

Q. Would it have brought about a condition of peace or war between the two States?

A. Very naturally it would have brought about a condition of war.

Q. Now, for what purpose were these conferences of the two boundary commissions and these two oyster commissions brought about?

A. For what purpose?

Q. Yes.

A. To try and avoid the difficulty of war, if possible.

Q. Then the agreement to the neutral zone affected what on this apprehended condition?

A. Well it affected it this much, that everything has been going on very quietly.

Q. What effect did this agreement upon the neutral zone have upon the prior condition? You stated a moment ago that it would have brought about a condition of peace or war. Now what effect did this agreement upon the neutral zone bring about?

A. Brought about the effect of peace.

Q. Peace until what time?

A. Well, until the decision of the Supreme Court of the United States.

By Mr. McCLURG:

Q. Wouldn't it be peace after the end of war?

A. It is no war exactly no more than the war now in court.

By Mr. McCLURG: I want it to be understood that we are still objecting to all this contemplated trouble to which the witness is testifying.

Q. Mr. Breaux, I want you to tell the commissioner how it is that you can testify, and I don't mean to say that you do not tes-
939 tify truly, but I want to get the solution of your testimony,— I want to get at the kernel of it. You told me on cross-examination that prior to the 27th of September, 1902, when the joint commissions met here, that you knew of no crisis, you knew of no threatened armed conflict and you never have known of any existing between the sheriff and officers of St. Bernard parish and the sheriff and officers of Harrison county, Miss. I want you to tell me how it is in the face of that you say you anticipated war and prepared for it by arming your boats and sending them out there to drive out the Mississippians, or shoot them out if the emergency demanded it?

A. Well as regards any controversy between the sheriff of St. Bernard and Mississippi I still state that I am not aware of any; but if you want to know the reason why that we anticipated trouble, was from a simple fact that that law had just been made, the law to protect the oyster industry of this State, and this commission was appointed by the governor, and very necessarily it was the commission's duty to investigate every point we possibly could in regard to the oyster industry of Louisiana; and on our investigation and on the examination of the maps, we came to the firm conclusion that the Mississippi boats were fishing oysters in Louisiana territory. Consequently, being authorized by the house bill of the oyster law to have a patrol boat, we bought a boat, and we armed it to protect our oyster industry here in Louisiana against not only Mississippians, but any body else that would come and intrude on the territory.

Q. And you have no information at all have you, that any Mississippians, any Mississippi boat, or any Alabamian or Alabama boat or any other person or boat ever resisted the laws of the State of Louisiana.

A. I have no opportunity of knowing that. When I was appointed on this board I knew nothing about the oyster industry, nor I knew nothing about the disputed territory, nor Mississippi or St. Bernard boundaries either one or the other.

Q. After you were appointed and up to the time of your September meeting, or up to the time of the November meeting that we have been discussing here, I ask you to tell me, if you can, of any violation of your law or any resistance to your orders by any Mississippians or any Mississippi boat?

A. Why no they couldn't have any resistance for the Louisiana people never paid enough attention to the oyster industry to interfere with them in fishing in the Louisiana marshes.

Q. So previous to the two meeting- of September and November, 1902, there had been no trouble between the two States?

A. Before the commission was inaugurated?

Q. Yes.

A. Not that I know of. I knew nothing about it.

Q. Answer me this question directly. Is it not true that the most of this commotion about what might happen was discussed by your own commission with the Mississippi commission in September and November? You never heard of any threat coming from Mississippians or the officers of Mississippi prior to that time to disregard your law and force themselves in to Louisiana?

A. Why no, they had no right to that, to take such steps as that; they had no right for Louisiana had not interfered with them so far as in regard to them fishing in Louisiana territory.

Q. Then don't you think you declared war when there was no gale sweeping from the Gulf?

940 A. If you understand me right, I don't think you can exactly state we declared war, but we anticipated——

Q. And prepared for war in time of peace?

A. Yes sir. But rather than to have war, we tried to fix it on an amicable plan, but if we couldn't——

Q. You told the Mississippians to come over here if you don't want war, we will give you a chance to avoid it?

A. No sir; we told them nothing of the kind. We only called for a conference, as I stated before, and we had an argument in regard to it. I don't think that anybody has any reflection to throw on the Louisiana commission in regard to that conference because——

Q. I am sure the Louisiana commission is perfectly satisfied with the action of the Mississippi commission?

A. I think the Mississippi commission is perfectly satisfied because we gave up more than what we first thought we were entitled to.

Q. The Oyster Commission of Mississippi was very much dissatisfied as you stated a while ago?

A. I want to say had the Oyster Commission of Louisiana thought that the Oyster Commission of Mississippi would not have been backed—their actions would not have been backed—by the authorities of Mississippi, I hardly think we would have called upon them for a conference.

Q. I will be as candid as you are with me. I do not think Mississippi fully endorsed their actions.

A. I am well aware of that fact myself.

Q. I think that your commission, under the leadership of a strong lawyer rather got the upper hand out of the Mississippians on that deal.

A. Well, we were very thankful to our lawyer for what he did, but at the same time the commission was there to act for itself, which it did.

By Mr. DYMOND:

Q. Mr. Breaux, as I understand it, you lived in the parish of Terrebonne before you were appointed on the oyster commission?

A. Yes sir.

Q. Is that parish located on the waters of the Mississippi river?

A. Yes, sir.

Q. About how many miles is it from the disputed territory by water, going around the coast. In a rough way?

A. I couldn't exactly tell you.

Q. How many miles is it by land?

A. About 110 or 112 miles by land.

Q. It must be more than by water?

A. Yes sir, I should judge it is.

Q. Had you any knowledge of the events pending in St. Bernard parish prior to your appointment on the oyster commission?

A. No, sir.

Q. Therefore, am I correct in understanding that in your testimony where you say that you knew of no conflict between the officers and sheriff of the parish of St. Bernard and the officers and sheriff of the county of Harrison, Miss.,—does that refer to the fact that you simply didn't know it or does it refer to the fact that you knew as a fact it didn't exist?

A. I didn't know it at all.

941 Q. You don't mean to say that affairs of that character did not happen in St. Bernard parish?

A. No sir.

By Mr. MCCLURG:

Q. Notwithstanding you were president of the joint commission and of your own commission, you never heard it?

A. No sir.

Q. You have stated in this re-direct examination that at that time you lived in Terrebonne parish, west of the Mississippi river?
A. Yes sir.
Q. Can you say whether there are any oyster fields between the mouth of the Mississippi river and the mouth of the Sabine river?
A. Yes sir, there is.
Q. What is the distance, if you can say between the Mississippi river and the Sabine river?
A. I can't exactly say.

By Mr. DYMOND:

Q. In answering my questions Mr. Breaux, were you referring to the time prior to your appointment as president of the oyster commission?
A. Yes sir.
Q. And that was prior to all of these conferences?
A. Yes sir.

EXCEPTION.—Mr. MCCLURG: Counsel for Mississippi excepts to the foregoing testimony of Mr. Breaux, on the ground that it is not in rebuttal, but testimony in chief, and to facts that he testified while on the stand heretofore.

NEMOURS H. NUNEZ, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Are you a practing lawyer in the city of New Orleans?
A. Yes sir.
Q. Where do you live?
A. I live in the parish of St. Bernard.
Q. Were you born and raised in that parish?
A. Yes sir.
Q. Is that the parish within whose limits is included the area in dispute between the States of Louisiana and Mississippi in this case?
942 A. Yes sir.
Q. Are you a member of the Oyster Commission of Louisiana?
A. I am.
Q. You were a member at the time the oyster commission was created in 1902?
A. Yes sir.
Q. You were aware of the conditions existing in the parish of St. Bernard in the matter of the Mississippians fishing in what was considered the parish of St. Bernard prior to the creation of the Oyster Commission of Louisiana?

A. To a certain extent.

Q. Did you or did you not know that Mississippians were fishing in Louisiana prior to the creation of the oyster commission in 1902?

A. Well, I had been told so; I didn't know it of my own knowledge.

Q. Had you ever heard any remarks in the nature of complaints as to that fact?

A. Yes I did.

Q. Were you familiar with the provisions of the Louisiana oyster law as inaugurated in 1902?

A. Yes sir.

Q. Were you aware of the fact that it gave to the Louisiana Oyster Commission jurisdiction and control over the waters of the State of Louisiana?

A. Yes sir.

Q. Were you aware of the fact that this same law authorized this commission to maintain and operate an armed patrol boat to enforce the law of Louisiana in the waters of Louisiana?

A. Yes sir.

Q. Were you aware of the fact that an amicable agreement was made in September, 1902, between the Oyster Commissions of Louisiana and Mississippi creating a neutral territory pending the boundary settlement by decision of the Supreme Court of the United States.

A. Yes sir I was aware at the time.

Q. As a member of the Oyster Commission of Louisiana?

A. Yes sir.

Q. You took part in all their discussions?

A. Yes sir.

Q. In the event that this amicable agreement had not been made between these two commissions, what would you consider to have been your duty under the law and under the facts as they existed in regard to this disputed territory.

OBJECTION.—Mr. MCCLURG: Mississippi objects to this as suggestive and leading and incompetent. Let the witness state the facts and not his imagination as to what might happen as to a certain given state of facts not shown by the record.

A. We considered this territory the territory of Louisiana. It would therefore have been our duty to have arrested parties found fishing in that territory who were not fishing with a Louisiana license. I am sure that the commission—I am sure that I would have insisted upon the law being enforced, and if this agree-
943 ment had not been entered into, it is possible that the fishermen of Mississippi would have resisted the officers of the commission, and trouble I am sure would have happened between the officers of the commission and the fishermen.

Q. Were you prepared for that trouble?

A. Well we necessarily had patrol boats armed. No patrol boats

under any circumstances could do any good in such open waters without being armed.

Q. Would you, as a member of the Oyster Commission of Louisiana, have felt it necessary to have carried out the Louisiana law to the extent of using your armed patrol boats in the event of resistance on the part of violators of the law in that territory?

OBJECTION.—Mr. MCCLURG: Objected to as suggestive and leading.

A. Unquestionably.

Q. From your knowledge of the facts, what condition would have existed there in the absence of this agreement?

OBJECTION.—Mr. MCCLURG: Objected to for the same reasons as above stated.

A. I really don't know, Mr. Dymond, what would have happened. Of course, as I say, it all depends exactly on how the fishermen of Mississippi would have taken it. It all depends on whether they would have resisted. The commission would have been forced to have arrested every fisherman from Mississippi. Now it all depends on whether or not they would have resisted.

Q. Did the Oyster Commission of Mississippi or its officers at the conference had on September 27th, 1902, in any way indicate what the action of Mississippi would be in the absence of an amicable agreement?

A. Well, there was something said in reference to that, but I will be frank, I always thought the trouble would be with the Mississippians and not with the Mississippi authorities. I do not consider I am sure that we for instance—of course I don't want to be understood as saying that I believe that the commission of Louisiana would have prepared an armed vessel, and, for instance, gone out to kill Mississippians; try to [illegible] Mississippians and engage in a fight. Of course, if we had gone out to arrest Mississippians and the patrol boat of Mississippi would have come in to assist them, of course we would have been forced to attempt to arrest them also, because we considered that Louisiana territory.

Cross-examination.

By Mr. MCCLURG:

Q. How long did you say you had been a member of the Louisiana commission?

944 A. Since 1902, since its creation.

Q. When was it that your patrol boat was armed and prepared for action against Mississippi?

A. I don't think it was armed and prepared for action against Mississippi.

Q. Against Mississippi fishermen?

A. Not even that. It was armed to patrol the entire Louisiana coast and it could have been used against Louisiana fishermen just as well.

Q. When was that?

A. I couldn't say just exactly when it was, just a few months, I suppose, after the commission was created; I don't remember just exactly when it was.

Q. That boat was purchased and armed for patrol purposes under an act of the Louisiana legislature to protect your oyster industry in the State of Louisiana?

A. Well, it was especially—it was purchased especially for that coast—for that area which happens to be the disputed territory.

Q. It was not purchased and put into operation as patrol boat within the contemplation of the act authorizing it, purely in reference to the Mississippi boundary, was it?

A. I didn't look at it that way.

Q. Well, at the time of these meetings in September, and I believe I remember to have met you in the middle of November,——

A. Yes.

Q. I wish you would please state if prior to these meetings, you had any knowledge or reliable information as to any crisis or threatened armed conflict between the sheriff and other officers of St. Bernard parish and the sheriff and other officers of the county of Harrison, Miss.

A. As well as I remember, the sheriff of the parish of St. Bernard, sometime before September, 1902, sent out, as per instructions of the police jury—sent out some deputies in that territory, where they met quite a number of Mississippi fishermen, and they were informed by these deputies that they had to move or procure licenses from the parish of St. Bernard. As I understand it they said, the fishermen said, they wouldn't do it; that they would prefer fighting as I understand it before they would be driven off the territory. Some of them did not admit it was Louisiana territory but territory where they had been fishing so long. That was the first trouble I heard. I couldn't tell when that was.

Q. You are testifying to the same facts that Sheriff Nunez and his deputies testified last April?

A. Yes sir.

Q. Then, independently of that fact, is it not true that the action of the Louisiana commission in arming a patrol boat and in these meetings in September and November were rather in anticipation and for the purpose of avoiding any conflict, than to stop one already

A. Well, there was certainly no actual conflict in that sense of the word, before that. Of course, I presume the commission believed that in time of peace prepare for war, and looked at it that way. Of course, as far as ' ; agreement was concerned, I will be frank with you. I would prefer it to have closed up the entire territory until the decision of the Supreme Court.

945 Q. You have testified that you are a practicing attorney i the city of New Orleans. I want to put this question to yo in connection with the issues here involved, and notify you to an swer it in your own way: That if the State of Louisiana had de termined by her legislature or by her supreme court, or by he State Oyster Commission and authorities of the parish of St. Bernar that the boundary between Louisiana and Mississippi lay in th deep water channel, contended for by Louisiana in this case, an of which, I am sure, you are familiar, would not the State of Louis ana have had power to have arrested, and dealt with in her courts persons violating her laws within that line.

A. The State would certainly have a right to make such charge against any parties violating any laws in that territory, yes sir.

Q. And if your armed patrol had arrested any person, Missis sippian or other person violating the laws, they would have brough them before some tribunal of your State for trial.

A. Yes sir.

Q. And if your State should have followed the construction place by her upon these acts fixing the boundaries of this State, do yo not think, as a lawyer, that that defendant would have a right t have appealed to the Supreme Court of the United States?

A. Yes sir, unquestionably, if they filed the proper exceptio claiming the act was not done in the State of Louisiana.

Q. Then, is it not perfectly plain to you that the people have pro vided a civil government and preferred that questions of this cha acter should be determined in that way, rather than by force.

A. Well, it certainly would be decided that way unless the fisher men refused to be arrested. That is the only case in which I an ticipated any trouble.

Q. You have no knowledge at all of any fishermen resisting arres before or after this?

A. No sir, nothing but wild remarks.

Q. Mr. Breaux whom you heard testifying, and who is presiden of your oyster commission, seems to have had a pretty strong idea about following the judgment and conclusions of the oyster commis sion. You are a member of that commission and I suppose ha some voice in controlling its action, and I am not familiar with th rules that the commission have adopted in this matter, but is it no true that that commission or that patrol boat had no more authority than a sheriff or other officer who attempts to arrest a man who ha committed a felony or misdemeanor and could not shoot them with any more right than a sheriff could shoot a fleeing criminal?

A. Certainly, it is the same comparison. The deputy inspecto would be forced to arrest the man, if he could, and if the man re sisted, like the sheriff he would be forced to kill him.

Q. Then it is true, is it not, that prior to the organization of thi oyster commission, prior to purchasing their equipment of the armed patrol boat, prior to the meeting of the commissions in Septembe

and November, and subsequent to that time, there has never been an arrest or attempted arrest.

A. There could not be since then unless the agreement was violated. Before, I don't know of any except that trouble as I stated before. But there was no resistance to any effort to arrest anybody and could not be unless the agreement was violated.

946 Q. I mean, as a matter of fact, there never has been, within your knowledge, any resistance to any attempt to arrest anybody? I understood you to say and I understood Sheriff Nunez to say in April, that they warned off fishermen and some of the fishermen protested, but what I am asking you is a question of fact whether there has been, before the dates I have mentioned or subsequently,—in other words, has there ever been, previous to this date, any attempt to arrest anybody that you know of.

A. Where? To arrest anybody where?

Q. In the disputed territory for violating the Louisiana law.

A. That is a question of fact. No one that I know of, except that our deputy inspector found there, I believe, at one time, some people from Alabama and had them to leave, that is all.

Q. He made no arrest?

A. No sir.

Q. Now, you heard Mr. Breaux's testimony with reference to what transpired at the meeting at the chamber of commerce in November 1902, which was about a month after the bill of complaint was filed in this cause, and you were present at that meeting as a member of the Louisiana Oyster Commission?

A. Yes sir.

Q. What was the object of that joint session of the two commissions?

A. You speak of the second joint session?

Q. Yes sir.

A. Well we had come to an agreement, that is I say we, the commissions of Mississippi and Louisiana, in September, and if I understand correctly the governor of Mississippi was dissatisfied with that agreement and he wanted us to change it so as to give Mississippi more so as to enlarge the neutral territory.

Q. Do you remember that any officer of Mississippi at that time insisted that this neutral zone was not legal and that within his purview there was no real conflict between the two States; that the matter ought to be referred to the legislature of the two States.

A. I remember something of that kind, but I was under the impression that the point brought up—I believe you were the gentleman that brought it up—was that Louisiana had no right to file suit, more than anything else. That is my impression of it. I don't remember so well though, there was so much said there.

Q. How old are you?

A. I am thirty-one years of age.

Q. Are you related to the sheriff?

A. I am his son.

Redirect examination.

By Mr. DYMOND:

Q. I understood you to say that in the purchase of the patrol boa and its being placed on this boundary line, that the patrol boa could have been used for any other purposes, was it or was it not fact that the commission procured a temporary patrol boat to patro this very locality prior to its acquisition of its permanent patro boat.

A. Yes sir.

Q. Was or was there not any special necessity to patrol thi particular disputed locality more so than any other part of th State.

A. There was more necessity for it there on account of th
947 dispute between Mississippi and Louisiana.

HENRY T. GOODLOE, a witness sworn and examined on behalf o the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. I live in Mobile.

Q. Alabama?

A. Yes sir.

Q. Your family located there?

A. Yes sir.

Q. What is your present occupation?

A. Passenger conductor on the New Orleans division of the Louis ville & Nashville railroad.

Q. Is that between New Orleans and Mobile?

A. Yes sir.

Q. How long have you been in the employ of the Louisville Nashville railroad?

A. Since February, 1872.

Q. Wasn't it called the New Orleans and Mobile railroad the part of that time?

A. It was first called the New Orleans, Mobile & Chattanoog railroad, and then it changed again to the New Orleans and Mobi railroad; and then to the New Orleans, Mobile and Texas railroa and now it is the New Orleans & Mobile division of the Louisvil & Nashville railroad.

Q. Have you been running continuously on that line since 187

A. With the exception of ten years that I was agent at Mobile.

Q. What were those ten years?

A. Between 1880 and 1890.

Q. From 1872 to 1880 you were then running on this route between New Orleans and Mobile?

A. Yes sir.

Q. And from 1890 to date you have also been running on this route?

A. Yes sir.

Q. Now, have you, during that period of time, ever had occasion to experience or go through the storms that took place on the southern coast of the State of Mississippi?

A. Yes sir, I had on three or four occasions.

OBJECTION.—Mr. McCLURG: The question and answer are both objected to and exception reserved, because it is not in rebuttal.

Q. Can you in any way designate about the years in which those storms occurred?

A. Well, we had a storm somewheres in 1872; three or four, 1872 I think; then we had a storm in 1882; then we had a storm in 1893.

Q. Were you in a position at the time of these severe storms to see the effect produced by these storms and more particularly the effect produced on the Louisville & Nashville railroad?

948 Mr. McCLURG: So that I may not be tedious in repeating objections and reserving exceptions to every question of this character, it must be understood now that these objections and exceptions extend to all questions of this character of testimony, because it is original and not in rebuttal of anything that has been shown by the State of Mississippi, the testimony of Mississippi heretofore taken in no wise conflicting with or controverting the testimony introduced by Louisiana in chief as to the severe storms or their material effect upon the shores, coast, and islands involved in this suit.

A. I was.

Q. On the railroad property?

A. Yes sir.

Q. What effect was produced by these storms on this railroad property over which you were operating?

A. Well a storm would raise the water to such an extent that it would wash out our tracks.

Q. Would that suspend the operation of the railroad?

A. Yes sir; we had to suspend traffic until we repaired it.

Q. Did storms at any time affect any of the bridges in this particular section?

A. The storm of 1893 carried all of our bridges away, that is Bay St. Louis and Biloxi bay, the storm of 1893 carried all our bridges away and also West Pascagoula bridge; that was knocked all out of line and the embankment was all washed away between West Pascagoula and Scranton,—three miles of embankment.

Q. How was the track westward of Bay St. Louis through the marshes near Pearl river?

A. We suffered a great deal. We suffered by washing and all the embankments about Pearl river were washed out; and between Gulf View and Pearl river we had a bad wash all through those culverts. Those marsh lands between that, and the sea just carried it away.

Q. What sort of land was this? Was it the ordinary marsh land in the neighborhood of Pearl river?

A. Yes sir; where our washouts occurred was a bottom of marsh land but it was filled and raised you know, the track raised and——

Q. The filling and the marsh was washed out as the result of this flood?

A. The filling all washed out.

Q. Have you ever been through one of those storms yourself while out on the road?

A. I was in the storm of 1893 myself.

Q. Where was your train at the time?

A. My train at the time,—I got as far as Ocean Springs.

Q. Going which way?

A. I was coming south, or west you would call it.

Q. What was the general effect at the time as produced on you, was it a severe terrific storm?

A. It was a very severe blow you know and rain storm with it.

Q. What were the directions of the wind at the time?

A. As near as I can judge at that time it was a gale—a southeast gale.

Q. Was there any change as the storm progressed or later?

949 A. It continued in that velocity for about five or six hours and then it changed from due north right back again over the same direction.

Q. It changed to what? You say it started with a southeast gale?

A. It started as a south-east gale and then whipped around to the northward and blew right out again—blew the water right out again as fast as it came in.

Q. During the course of the storm, Mr. Goodloe, which part of it produced the greatest havoc and damage you refer to. Was it when the southeast wind was blowing or when——

A. When the gale from the south-east was blowing of course it brought the seas outward and carried the track and embankment away.

Q. Was there any damage done when the storm switched around to the north?

A. I think all the damage was done from the south-east.

Q. You say everything was carried away at that time and the water just went back?

OBJECTION.—Mr. MCCLURG: I again note the exception above taken to this testimony.

Cross-examination.

By Mr. McCLURG:

Q. Do you know Mr. Charles Marshall an employee or officer of the Louisville & Nashville Railroad Company?

A. Yes sir; he is superintendent.

Q. He has been introduced as a witness in this case and testified to the same storm, substantially the same facts that you have been called upon to testify. I don't find it just now but my recollection is that he has been connected with the Louisville & Nashville railroad and the corporation of which it is created of which you have spoken for a great many years.

A. Yes sir.

Q. Do you know how long he has been in connection with the road from here to Mobile. Under what other name was it called?

A. I don't know, only the Louisville & Nashville, that is all I know. He has been connected with it since the time the Louisville & Nashville took hold of it. I knew he was agent here at New Orleans at one time.

Q. You don't know how long ago that has been?

A. I don't know how long ago; I don't know when he came into the service.

Q. As superintendent he has been familiar with the roadbed as well as with the operation of the road since he has held that position?

A. Yes sir.

Q. You testified as to the effect of these storms upon the roadbed and their obstruction of the usual use, have you any knowledge as to what effect those storms have had upon the territory in dispute in this case?

A. Not outside the damage to our own roadbed.

Q. You understand your road is not in controversy at all nor any effect upon your road is not in question?

A. Yes sir.

Q. The point about which I desire to call your attention immediately is, can you say whether these storms, of which you
970 have spoken, have had any material effect upon the configuration of the soil of Mississippi along the Gulf coast or Isle à Pitre, or the string of islands down there?

A. I heard——

Q. Never mind what you heard. I am asking you about your own knowledge.

A. I know it overflowed—beyond Pascagoula it was overflowed and a man lost all of his ships out there.

Q. That is not within a hundred miles of this controversy. Now then let me come back to this controversy as referring to the territory reaching from the mouth of Pearl river along the deep water channel going out south-west of Cat island between Cat island and Isle à Pitre. I want to ask you if you have and personal knowledge

of any material effect that the storm of which you have spoken had upon the shore line of Mississippi or these marshes between Malheureux point and the Isle à Pitre to the south of Mississippi sound. Do you know anything about any change in the configuration of the Mississippi shore line, or the coast line, or the surface of those marsh islands down there.

A. No sir; there has been no change; not to my knowledge.

Q. You don't know of any change?

A. I don't know of any change.

Q. Whatever effect that you may know it has had on your road-bed, you know of none it has had on the water shore of Mississippi?

A. No sir; unless it washed in some of the embankments of the coast there; it washed in the embankment all along Waveland to Bay St. Louis.

Q. That is east of Pearl river?

A. Yes sir.

Q. You have seen that change?

A. Yes sir.

Q. Can you say how much change?

A. Some ten or fifteen feet in.

Q. Since when?

A. That was in 1893 it gave way, for ten or fifteen feet.

Q. You don't undertake to say though that any violent or material changes have been made in the water front of Mississippi?

A. No sir.

Q. Now, Mr. Marshall testified in answer to a question by Louisiana that the marsh territory in the neighborhood of Pearl river over which your road ran had been built up by accretions; and if I am not mistaken, he predicated one of the causes of that building up to these storm actions; at any rate that the road at many places where there were formerly trestling that he discovered, in the inspections now in building the road, bridges down there and far below the line of the track, and where there was once bridges and trestles there is now firm soil, and his observation was it had been largely due to the results of accretion; what have you to say about that?

OBJECTION.—Mr. DYMOND: Objected to on the part of the State of Louisiana, by counsel thereof, on the ground that counsel for the State of Mississippi has misunderstood the testimony of the said Charles Marshall and has incorrectly quoted the same to the witness.

951 A. We very frequently put in trestling work and then filled in afterwards. In building the road bed and filling in afterwards we built the embankments afterwards.

Q. I understood that and intended to so frame my question so as to avoid the answer you gave because my question conceded it. That notwithstanding your putting in trestling and filling in with foreign dirt that accretions along the marshes over which your road runs in the neighborhood of Pearl river and if I am not mistaken

Chef Menteur, those sections, whether or not it is true that those accretions brought in by storm actions have built up the soil rather than the soil having subsided.

A. Well that would amount to so little, it would not amount to much. The washing away of the embankment over the entire marsh, about the only building up of the marsh would be from the deposits caused by decayed vegetation gradually building up.

Q. No matter what the substance or causes, is it not true that that marsh territory does build up by accretions?

A. Only from what takes place from decayed vegetation. It does from—from decayed vegetation, it will to a certain extent.

Q. As a matter of fact it builds up whatever it is done by?

A. It is so little you can't observe it, only after a number of years probably.

Q. But in centuries some material accretions may be found?

A. Yes sir.

Q. Your road, as I understand it, crosses Pearl river near its entrance into Lake Borgne?

A. Lake Borgne?

Q. Yes.

A. Why I think the Rigolets—Lake Borgne is by the mouth of the Rigolets.

Q. Lake Borgne is?

A. Yes sir.

Q. What does the eastern mouth of Pearl river empty into?

A. I should call it the Mississippi sound.

Q. Well you are familiar with the territory along there, along your road and west of the Pearl river?

A. Yes sir.

Q. Have you ever noticed any subsidence of the marsh land in southeastern Louisiana, any evidence of it, that is the sinking of the land?

A. Sinking?

Q. Yes?

A. I am very positive; you know when we first put in our track we had to ditch it and throw the embankment up and had filling in there and put it down there. It was a long time before we could keep it up to the level because it would sink.

Q. Do you think the weight of the track of the road-bed had anything to do with that sinking?

A. Yes sir. In fact our track would sink to this day from four to six inches a year. Some portions of that track we forgot to raise.

Q. Geologists state there is four feet subsidence in a century. Have you ever seen any evidence to justify that theory in the neighborhood of where we are talking about?

A. No sir. I have dug a little under the crust of marsh there and it is very soft.

Q. You have reference to what Mr. Marshal said awhile ago and

counsel suggested that I had not correctly remembered his testimony. I will ask you these last questions the same as asked
952 him. And to the question whether geologists' theory that there is about four feet subsidence in a century and whether you have seen any evidence to justify that theory, Mr. Marshal answered: "I have not. I believe the contrary—oh, a moment please. What I believe is that there is an accretion to the surface of the marsh." Do you concur in that view?

A. I do.

Q. Mr. Marshal was asked by what means? He said: "By the rotting of vegetation, deposit of sand and drift from these overflows. If there is any general subsidence discovered by the geologists I don't know of anything about it. I have not observed any." So upon that point you concur with Mr. Marshal as to accretions.

A. Yes sir; only from a washing.

Q. And the sinking of the soil caused by the weight of the bed and the track?

A. Yes sir.

Q. And it does that until this day?

A. Yes, sir; it will give way.

Redirect examination.

By Mr. DYMOND:

Q. Is it not a fact that you have to keep filling in that track all the time?

A. We have to raise our track in there a little every year or two. The last two or three years we have raised it, the last four years we have raised it and ballasted up the soil; at least about four inches and a half that track has settled.

Q. Is that due to the fact that underneath this crust you say the soil is very soft?

A. Yes, sir; it is a very soft mud. You take a pile and start it through that crust and you hit it one lick afterwards with a hammer and it will almost go out of sight in some places.

Q. If you had a pile of material loosely put up what effect in regard to settlement would time have on that pile?

A. After we once put down the pile?

Q. I am speaking of a pile of material; I am not speaking of a wooden pile. Suppose you had there heaped up a pile of sand, would it settle with time?

A. No sir; most all our settlements is caused from the weight of our trains and engines.

Q. I am not asking you anything about that I am asking you about a suppositi-ous case. Suppose you had a pile of loosely put up material, would time have any effect in causing that to become more compact?

A. It wouldn't sink, I can tell you that; it would remain as it is.

Q. Would the surface be lower?

A. The surface would amount to the same thing. It wouldn't give away unless it had a very heavy weight on it.

Q. You don't believe that the material itself has any weight?

A. It has a slight weight, yes.

Q. If the material has a weight then, is there not more weight on the bottom material than on the top material?

A. There would not be probably weight enough to force it.

Q. How do you know, have you ever had any experiments made to determine whether there was or was not any settlement in that section of the country?

953 A. Well only from my experience in seeing piles driven.

Q. I am speaking now of the general surface of the Louisiana marshes which you cross just before you come to Pearl river and which you keep on crossing for many miles going westwardly. Has there been in your experience any change in the surface of that marsh?

A. There has not.

Q. Is it any higher to-day than it was 20 years ago, or lower to-day?

A. It may be some two or three inches higher. It may be, of course, from the taking place of decayed vegetation and what little sand that had washed off from our track, or something of that sort.

Q. Would you be prepared to dispute the statement of geologists that this whole section of the country loosely made by deposits of the alluvium from water, is gradually settling and becoming more and more compact as ages go by?

A. I be*il*eve it is.

Q. You believe it is?

A. Yes sir.

Q. Therefore, was I correct in understanding you to say that you believe there has been no change, or was I correct in understanding you to say that you simply had observed no change?

A. It must be made land because I have got a stack of shells, clam shells, that I got at Gulfport that was dug out twenty-two feet, at the depth of twenty-two feet. I know when *there* were boring a well right here in Lafayette square at a depth of about a hundred feet they cut out through cypress logs.

Q. Now, this coast that you are speaking about of having washed ten or fifteen feet, are you referring now to the high bluff coast which forms the southern shore of Mississippi, after you leave the marsh, east of Pearl river?

A. Yes sir. That was caused by the sea, you know, washing the banks beating up against the banks and washing the banks in there.

Q. In any instance, did the washing out go so far as to damage the public road that runs along the beach?

A. Yes; they had to repair the road all along from Waveland up nearly to Bay St. Louis, and also Pass Christian.

Recross-examined.

Mr. McCLURG:

Q. If within the short time that you observed this delimitation of the shore by storm action the same effect has been produced or the same ratio of shore front has been lost for a hundred years or two hundred years, what do you have to say to about the Mississippi shore line having been down in the neighborhood of Isle à l'itre some time ago?

A. That I can't tell you.

Q. The truth is you do not undertake to testify scientifically about geology and storm actions and the like of that?

A. No sir.

Q. You just tell what you have observed?

A. Yes, since I have been on the line.

Q. And when Mr. Dymond asked you if you were ready to deny what geologists have said, you in fact don't know what they have said about it?

A. No, sir.

Q. You will neither confirm nor deny Mr. Geologist?

A. No, sir.

954 CAMPBELL K. DE LAPPE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. I live in New Orleans.

Q. At what address?

A. 530 Esplanade avenue.

Q. How old a man are you?

A. I am 53.

Q. What is your present occupation?

A. I am agent for the East Louisiana railroad.

Q. Were you at any time connected with the New Orleans, Mobile & Chattanooga railroad, or what is now commonly known as the Louisville & Nashville railroad?

A. Yes, sir.

Q. When was that?

A. From 1872 to 1881.

Q. Where were you located at that time?

A. I was two years in Mobile; one year in New Orleans and six years at Bay St. Louis.

Q. Were you ever on the road at that time in connection with the passenger business or anything of that sort?

A. Well, I travelled backwards and forwards from place to place.

Q. What was your exact occupation at that time?
A. Well, at the time I was at Bay St. Louis I was agent.
Q. You were agent for the road at Bay St. Louis?
A. Yes, sir.

By Mr. McCLURG:

Q. Do you mean local station agent?
A. Yes, sir.

By Mr. DYMOND:

Q. And when you were at Mobile?
A. I was operator.
Q. And in New Orleans, operator also?
A. Yes, sir.
Q. You never have been a conductor, or anything of that sort on the road?
A. No, sir.
Q. Have you ever had occasion to know whether during that period of time, from 1872 to 1881, as I understand, there were any storms affecting the Louisville & Nashville railroad on that occasion?
A. Yes, sir I recollect two especially very severe storms, one in 1873 and one in 1877.
Q. Where was the worst effect of those storms felt, if you have any recollection?
A. Well, the storm in 1873 tore down or washed away all of our East and West Pascagoula bridges. I remember that I was operator at Mobile at the time; that was in 1873. In 1877 there was a terrible storm—I don't know I think it was east of Mobile or at Bay St. Louis, but I was agent at Bay St. Louis at the time and I was in New Orleans at the time; the storm occurred in the after-
955 noon, and I was on the train that was tied up all night, I think, at Lake Catherine. I am not positive.
Q. Was that in the marsh out there this side of the Rigolets?
A. Yes, sir; just west of the Rigolets, twenty-five miles from here, this side of the Rigolets.
Q. Were you ever in what is called Louisiana marshes, south of Mississippi shore, south of Bay St. Louis,—have you ever been out on any fishing trips out there?
A. No, sir.
Q. You have never been in that locality?
A. No, sir.
Q. Where your train was stopping that night, was that the same character of marsh that you generally find around New Orleans?
A. Well, it was a marsh like we have all around south of here I presume. There was a hurricane, and it drove the water up over the track and washed all of the bridges and culverts and we couldn't get any further, and we stayed there all night until ten o'clock the next day.

Q. Did you pass that night through the storm?

A. Yes. It was a through train which left here at eight o'clock, I believe it was, or seven.

OBJECTION.—Mr. MCCLURG: Counsel for Mississippi here notes the same objection and excepts to the testimony of Mr. de Lappe as to the other witnesses examined, on the ground that it is not in rebuttal, that it is the same as the testimony taken in chief along these lines.

Q. Did you get any opportunity to see, with your own eyes, the strife of the elements on the occasion of that storm in 1877? Did you get out of the car?

A. No, sir. Nobody got out of the car; we had to stay inside; it was very severe.

Q. What effect did it produce in your immediate locality, any effect at all, where your car was?

A. We were surrounded by water.

Q. Any washing of the road-bed?

A. Before and behind us, yes.

Q. You were cut right off there?

A. Yes, sir; fortunately there was a construction train on the side that helped us out.

Cross-examination.

By Mr. MCCLURG:

Q. Mr. de Lappe you have no personal knowledge of any material change or changes in the configuration of the Mississippi shore or of the line of the marsh from Malheureux point to Isle à Pitre, have you, caused by storms?

A. Well, I have not been over on that road for nearly 22 years, with the exception of once or twice.

Q. I am not talking about the railroad.

A. I know, but I have not been over on the coast but once or twice.

Q. During all of your knowledge, do you know of any material change in the Mississippi shore line?

A. You mean beyond the marshes?

Q. From Pearl river to Pascagoula river?

A. I know on two different occasions the Bay St. Louis driveway has been washed out almost to destruction. That is where my folks live.

956 Q. That is the only place you can speak of from your personal knowledge?

A. Yes, sir.

Q. And so far as any changes in the configuration of the marshes or south side of the Mississippi sound you don't know?

A. No, sir; I can't say.

Q. Have you any personal knowledge as to whether the marsh

lands east and west of Pearl river along the road have been subsiding or building?

A. Well, as I stated I have only been on the road about three times in twenty-two years. Of course, I couldn't——

Q. I see; that is all.

E. J. BELLOCQ, a witness recalled on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. You are the same Mr. Bellocq who has previously testified in this case and are a photographer?

A. Yes, sir.

Q. Will you please look at this map, which for purposes of identification we will call map No. 60 and state whether you photographed that from the original appearing in Senate Documents, first session, 26th Congress, vol. 4, 1839, 1840?

A. Yes, sir.

Q. Will you please look at this map, which we will now for purposes of identification, call map No. 60 "*a*," and state whether that is an enlarged photograph of the area in dispute, in this case?

A. Yes, sir.

Q. Now, Mr. Bellocq, will you please look at this photograph, which we will call map No. 61 and state whether you photographed it from the General Land Office map of the United States of 1887, which is now before you?

A. Yes, sir.

Q. Will you please look at this map, which we will now call 61 "*a*," and state whether it is an enlarged photograph of the disputed area as taken from map 61.

A. Yes, sir.

Q. Other than being of a different size, are these maps true and correct photographs of the originals which you have photographed?

A. Yes, sir.

Cross-examination.

By Mr. MCCLURG:

Q. What is the date of the map from which you made these photographs?

957 A. 1887.

Q. By whom was it made?

A. By Mayo, civil engineer.

Q. Of what?

A. Chief Drafting Division, G. L. O. I don't know—what is that Mr. Dymond?

Mr. DYMOND: General Land Office.

Q. That map is made by the United States?

A. Yes.

Q. I will call your attention to the originals of maps 61 and 61 " and ask you if you discover upon this map any sailing line out the mouth of Pearl river and between Cat island and Isle à Pi around into Chandeleur sound marked on the map?

A. I don't know anything about any sailing line. All I know to make the prints of those.

Q. You are familiar with what maps indicate by their colori and the position that the islands and the land are on them? F instance, you notice that Ship island and Cat island on the map th I am now showing you are printed white, the same color as Miss sippi is above?

A. Yes, sir.

Q. Do you understand that that white coloring of these islan means that they are of the same jurisdiction of Mississippi?

A. Yes, sir; they are about the same color.

Q. Do you understand they are considered as belonging to Miss sippi?

A. Well, if the map says so I have to consider that to-.

Q. Now, look at Grand island, as on this original map, consid its coloring and position to the State, would you say this map mak assigned Grand island to Mississippi or Louisiana or to either?

A. I don't know anything about what they say. All I know made the negative and I make the prints off of it.

OBJECTION.—Mr. MCCLURG: The testimony of Mr. Bellocq is o jected to and exception now reserved, on the ground that the ma proven by him are in the nature of original and not rebuttal tes mony.

SAMUEL F. HEASLIP, a witness sworn and examined on behalf the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?

A. New Orleans.

Q. Where were you born?

A. I was born in England.

Q. Have you ever lived in the State of Mississippi?

A. Yes, sir.

Q. What is your present age?

A. I am fifty-six years old.

Q. How long and from what period did you live in the State Mississippi?

958 A. From 1851 to 1866.

Q. What year were you born in?

A. I was born in 1848.

Q. Have you ever occupied any official position in Mississippi?

A. Oh yes.

Q. What positions?

A. I was quarter master general for the State of Mississippi at one time.

Q. What other official position did you occupy?

A. I was justice of the peace in Mississippi and mayor of a town there.

Q. Which town?

A. Pass Christian.

Q. How long were you mayor?

A I don't remember; for several years; a number of years; longer than I wanted to be.

Q. How many terms?

A. I don't know. I think I quit in the middle of one. Two or three, I don't remember just exactly.

Q. When did you first go to Pass Christian?

A. In the year 1851.

Q. About 1851?

A. Yes sir.

Q. Then you were about four years old?

A. Three.

Q. Do you know this territory in dispute, or which extends from Isle à Pitre westward towards the Mississippi river?

A. Fairly well.

Q. What is the territory generally known by, along the coasts of Mississippi?

A. Well, I have always known it and heard it spoken of as the Louisiana marshes.

Q. Did you ever hear it spoken of by any other name, as Grand marsh or any other name than the Louisiana marsh?

A. I never heard the term before "Grand marsh" applied to it.

Q. How many years did you reside at Pass Christian?

A. Continuously from 1851 to 1866. And off and on from about 1874 to 1898 I reckon.

Q. Do you know what was generally considered amongst the people along that coast as the boundary line between Louisiana and Mississippi?

A. I never heard the question discussed.

Q. Do you know how it was considered by any one who ever mentioned anything about the boundary line?

A. I could only speak on that point in a general way. I never heard those marshes referred to, the country, say from Pearl river east, I think the eastern end — those marshes, is about south of the middle of Cat island, as well as I recollect the points of the compass along there, and I never heard them spoken of or referred to except simply as the Louisiana marshes. The Isle à Pitre was, in the be-

ginning, as I understand it, the property of Henry Leovy, who quired it in some way. Mr. Gilmore owns that property now.

Q. You have heard the fishermen along that coast speak of t territory?

A. I would not confine it to the fishermen alone that I he refer to it.

Q. When did you first visit this territory?

A. I suppose when I was a boy, a little fellow 8 or 9 years ol

Q. And how often, about, have you visited it since, off on?

959 A. That is hard to say, I can't tell you that.

Q. Often?

A. Oh yes. I suppose a couple of hundred times or more.

Q. Have you ever noticed any changes in that territory oc sioned by natural causes, storms etc.

A. I don't call that natural causes. Those are abnormal co tions. I have noticed continual changes from time to time brou about by storms.

Q. Can you tell us from what changes they have been brou about?

A. For instance, a bayou would take a cut through, that ha head on the mainland, would cut through right on. The best to illustrate that would be, for instance, to take Cat island with light house standing on a spit. I have seen that light house sta ing on an island by itself; then I have seen it connected to mainland. That same condition prevails throughout those marsh

Q. Have you ever seen what you call Coquille disappear?

A. Those shell keys?

Q. Yes.

A. That is always the case after a storm, but it would not be essary to have a storm to change those. A very heavy easterly south-easterly wind would make them disappear from the surf of the water; and they are built up by southwesterly winds.

Q. Do you know where the deep water is that comes out of mouth of East Pearl river, that runs out to the southward of Merr light?

A. It runs out somewhat midway between Merrills Coquille Isle à Pitre.

Q. Does it run between Isle à Pitre and Cat island?

A. Oh, yes sir.

Q. Have you ever heard that spoken of as the boundary line tween Louisiana and Mississippi?

A. I can't say that I have. I have only heard that spoken o South pass and then not in a very conclusive way.

Q. Have you ever heard the question of the boundary line cussed before the institution of this suit.

A. Never. It seemed to be the general accepted conditions t those marshes constituted the boundary line; that is from any I ever heard speak of it.

Q. You mean to say that the extreme eastern limit of these marshes constitute the boundary line?

A. Well, yes, taking the marshes in generally as they present themselves.

Q. Then you don't know or never heard it stated that the boundary line between the two States was that deep water channel from the mouth of East Pearl river.

A. Oh, no.

Q. Have you ever been in the interior of these marshes from time to time.

A. I have, indeed.

Q. Have you ever noticed changes between your visits?

A. Well, some changes. Some of these bayous would cut through, and some close up just according to the way the drift would settle and the direction of the strongest force of the storm. For illustration: A southeast storm would leave one condition of affairs, a north east would produce an entirely different condition of affairs. Consequently the results left would be different. The conditions that would be built up by a southerly storm would be destroyed by a north-easterly storm.

960 Q. How about a north-western storm?

A. That wouldn't do much because that would blow the water all out, and at the same time a north-westerly is a storm of no consequence whatever; that is immediately following the vortex of the south-east or north-easterly storms. And in that particular instance it always carried with it a great deal of damage for the reason that the water is then very high, and it makes it recede with such rapidity that it would create as big washouts as a south-easterly or north-eastorly storm.

OBJECTION.—Mr. MCCLURG: The testimony of this witness, except as to what he has testified respecting the Grand marsh appellation is objected to and exception now reserved on the ground that it is testimony in chief and not in rebuttal.

Cross-examination.

By Mr. MCCLURG:

Q. How long have you lived in New Orleans?

A. I have lived off and on here since 1866.

Q. Most of the time here, I take that to mean?

A. A great deal.

Q. What time was it you served as quartermaster general in Mississippi?

A. When Henry was—what position did Henry occupy and Ben Riggs? Ben Riggs was major general.

Q. Henry was adjutant general?

A. Yes, Ben Riggs was major general and I was quartermaster general.

Q. I was trying to get what year?
A. I forget the year.
Q. About 1880?
A. Somewhere around there. I think Morrill appointed me.
Q. He was governor at that time?
A. I think he was, I am not sure.
Q. Or Lowry?
A. That is right; he was governor.
Q. You stated that you had always known this territory betw
Malheureux point and Isle à Pitre as the Louisiana marsh.
it because of that appellation that you consider it Louisiana t
tory, because it was known as or called the Louisiana marsh?
A. Undoubtedly I stated that fact.
Q. Well the eastern tier of parishes in this State are called
Florida parishes. Do you think there is anything in that to
dence that Florida has any claim upon them now?
A. No, sir, because the designation of parishes are sufficie
That is the distinction that the term applies there.
Q. Yes, but these are marshes?
A. Yes, but Florida is Florida.
Q. Cut off Louisiana in one and Florida in the other, what h
you to indicate——
A. I have a great deal.
Q. I believe you stated that you never heard the boundary
cussed one way or the other?
A. Yes, sir. I did not.
Q. You never heard the deep water channel or any other
discussed as marking the boundary between the two State
961 A. I have not.

Redirect examination.

By Mr. ZACHARIE:

Q. You own property in the State of Mississippi? And if
what?
A. Yes sir.
Q. Where?
A. In Harrison county.
Q. At what place?
A. In Pass Christian, some of it.
Q. Did you ever hear any question raised, and if so, what, ab
these Louisiana marshes being a part of the State of Louisiana
the parish of St. Bernard. How were they considered?
A. The marshes?
Q. Yes.
A. Well I don't know that anything I could say on that po
would be of any material use to you, because I never heard
question discussed in any way before the territory involved acqui

a little market value, its real oyster value, and then I don't think it was discussed from an intelligent standpoint.

Q. You never heard it, when it was spoken of, before that time, as belonging to Louisiana or Mississippi?

A. I think it was a matter of extreme indifference to everybody who it belonged to.

OBJECTION.—Mr. MCCLURG: This re-examination is objected to on the same grounds as stated in the foregoing objection to the testimony taken this day.

OFFER.—Mr. DYMOND: In connection with the testimony of Mr. Ernest J. Bellocq, counsel for the State of Louisiana now tenders to the State of Mississippi vol. 4, 1839 1840 Senate Documents, first session, 26th Congress, and offers in evidence as an extract therefrom beginning at page 163 the report of John Wheeler, engineer, to his excellency N. C. Nutt, governor of the State of Mississippi, December 13, 1839, being a survey of the sea coast of the State of Mississippi, and tenders to counsel for Mississippi a copy of said extract the said extract to be known as Document No. 73; and in connection with the testimony of Ernest J. Bellocq and the offer of this document, counsel for the State of Louisiana now offer, produce and file in evidence a photographic copy of the map or chart of the sea coast of the State of Mississippi, executed by authority of the State of Mississippi, surveyed in 1839, John Wheeler, engineer, accompanying said Senate document, to be known as map No. 60; and a photograph of the disputed area on an enlarged sketch, to be known as map No. 60, a photographic copy of which said maps *are* now tendered to the counsel for the State of Mississippi.

962 OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence map of the State of Louisiana, prepared by the Department of the Interior, General Land Office of the United States, Honorable William A. J. Sparks, Commissioner, dated 1887, a photographic copy of which, marked map No. 61, and a photograph of the disputed area on a- enlarged sketch, marked map 61-"*a*" being now offered, produced and filed in evidence, and copies thereof tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a certified township plat, map of township 10, range 15 west, to be marked as "Exhibit Louisiana 1," copy whereof is now tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a blue print of the official map of Hancock county, State of Mississippi, with the certificates thereto attached, showing its authenticity and the circumstances under which the original was made to be known as map No. 62. To be understood that counsel for the State of Louisiana will furnish counsel for the State of Mississippi a copy of the same.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further

offers, produce and file in evidence a copy under certificate of John H. Metcalfe, Secretary of Commerce and Labor, Department of Commerce and Labor, Washington, D. C. a certified copy of a plan of the coast, of part of West Florida and Louisiana, including the River Mississippi from its entrance as high up as the River Yazous, surveyed by George Gauld, M. A., for the right honorable the board of admiralty, 1778, being map of the British admiralty, to be known as map No. 63, a certified copy thereof being tendered to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence the following certified copies of patents issued by the State of Louisiana to land in the disputed area, being known as follows: together with the certificates thereto attached and certified copies thereof being handed to counsel for the State of Mississippi, to-wit:

Patent No. 726 to Mary C. Gordon, December 27, 1853, marked Document No. 74.

Patent No. 7850 to W. A. Gordon; certificate dated July 5th, 1854, marked Document No. 75.

Patent No. 1035 to Louis Palms, July 31, 1861, said document being marked No. 76.

963 Patent No. 144, certificate dated Nov. 28, 1864, to A. W. Mora, assignee F. M. Stevens, being marked Document No. 77.

Patent No. 143 to A. W. Moss, certificate dated December 8, 1864, being marked Document No. 78.

Patent No. 117 to Henry McGuinn, certificate dated January 9th, 1865, marked Document No. 79.

Patent No. 193 to Richard Pindell; certificate dated March 20, 1867, document being marked No. 80.

Patent No. 706 to J. C. Gilmore; certificate dated March 15th, 1887, being document marked No. 81.

Patent No. 750, to J. C. Gilmore; certificate dated April 7th, 1887, being document marked No. 82.

Patent No. 751, to J. C. Gilmore; certificate dated April 7, 1887, being marked Document No. 83.

Patent No. 761, to W. V. Gilmore; certificate dated April 11th, 1887; document being marked No. 84.

Patent No. 870 to W. V. Gilmore; certificate dated June 22nd, 1887, being document marked No. 85.

Patent No. 961 to Samuel L. Gilmore; certificate dated September 12th, 1887, being document marked "No. 86."

Patent No. 1039 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked No. 87.

Patent No. 1038 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked "No. 88."

Patent No. 1040 to J. C. Gilmore; certificate dated November 7th, 1887, being document marked No. 89.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a copy of the railroad commissioners' map of Mississippi issued by authority of the Railroad Commission of Mississippi by Rand, McNally & Co., 1902, to be known as map No. 64, a copy thereof being presented to counsel for the State of Mississippi.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana having obtained from the General Land Office at Washington, D. C., the following maps—State of Louisiana, Department of the Interior, General Land Office, William A. J. Sparks, Commissioner, 1886; State of Louisiana, Department of the Interior, General Land Office, J. A. Wilkinson, Commissioner, 1879,—now offer said original maps as a substitute for the photographic copy thereof represented by maps 35 and 36, and withdraw the photographic copies thereof heretofore offered, and which are given the same numbers as the photographic copies of the original offered.

964 OFFER.—Mr. DYMOND: Counsel for the State of Louisiana further offer, produce and file in evidence a copy of act No. 65 of 1884 of the legislature of Louisiana, authorizing the attorney general to institute proceedings on behalf of the State of Louisiana, to be known as Document No. 90, a copy thereof being given to the State of Mississippi.

OBJECTION.—Mr. MCCLURG: Counsel for Mississippi objects to all of the documentary evidence, including the maps introduced, and excepts to the same on the grounds heretofore stated, that such testimony is testimony in chief and not in any sense testimony in rebuttal of any new matter brought out by the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings a hearing was adjourned by the commissioner until August 26th, 1904, to be resumed at the same time and place.

Resumption of Proceedings.

NEW ORLEANS, August 26th, 1904.

Pursuant to adjournment the hearing was resumed this day at the same time and place.

Present: Hon. Walter Guion, attorney general for the State of Louisiana.
Messrs. John Dymond Jr., and F. C. Zacharie associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

EUGENE AHERN, JR., witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live at Biloxi.
Q. In the State of Mississippi?
A. Yes sir.
Q. What is your business at present?
A. My business at present, well I have been working at race horses for a couple of years, but all before that I have been in the oyster business pretty much of the time.
Q. Where were you born?
A. I was born in Baton Rouge, La.
965 Q. Have you lived any length of time in Biloxi, Mississippi?
A. I have lived there, I suppose, thirteen years. I would leave there and go away for a couple of years, and since the first time I went there it has been about thirteen years ago.
Q. How long were you engaged in the oyster business in Biloxi?
A. I suppose about five years.
Q. From what time to what time?
A. I couldn't say whether it was—how that was—because sometimes I have been in the oyster business and sometimes in every other *camps*.
Q. When did you first start in the oyster business?
A. I suppose it has been the year of the storm.
Q. In 1893?
A. Yes, sir.
Q. When did you leave the oyster business?
A. Well, you see, that is a thing I can't tell you exactly on account of——
Q. When was the last time you were in the oyster business?

A. The last time I was in it—about a month—that was in the month of February?

Q. This past year?

A. Yes, sir. I stopped working here and went there and worked a month and have not done any work since.

Q. Are you the Mr. Ahern who was a member of the firm of Ahern & Wentzell?

A. Yes, sir.

Q. Were you a member of the firm, or rather when did that firm first begin business?

A. That firm only stayed out there one year. I don't know exactly—it was the year before last.

Q. You started about in the month of October, was that in October 1902?

A. Yes, sir. No, it was October, 1903, was it not?

Q. Was it October last year?

A. That is right October 1902.

Q. Now don't you think it may have been in 1901?

A. I was out there but it was not the same business. I was out there for two years, you understand. The first year I was running a bum-boat; what they call a bum-boat.

Q. Just one moment. When you speak of out there you refer to Three Mile bayou?

A. Yes sir.

Q. In the Louisiana marsh, in the disputed territory in this suit?

A. I don't know anything about it being the Louisiana marsh, disputed territory, or anything like that.

Q. Is that the Three Mile bayou that is—will you please look at this map No. 59 which is now shown to you and Bay St. Louis is pointed out to you on the map and Isle à Pitre and Three Mile bayou on the coast between Malheureux point and Isle à Pitre, and state whether the Three Mile bayou, about the centre of the map, is the Three Mile bayou to which you refer?

A. Yes; that is it right there; that is the Three Mile bayou.

Q. Now you were a member of the firm of Ahern and Wentzell that did business there at Three Mile bayou?

A. Yes sir.

966 Q. You say that you first did business in a bum boat?

A. Yes sir.

Q. Did you afterwards erect a camp, cabin?

A. House? Yes, sir, a camp.

Q. What did you use as a place of business after the year when you had no business in a bum boat?

A. The next year I put up a house.

Q. Was that house put up on the bank or near Three Mile bayou?

A. It was put right on the land, the marsh.

Q. That house, I believe, is still there?

A. I think it is, if it has not blown down in the last couple of *of* months.

Q. What sort of a business did you conduct in that house?
A. We ran a regular grocery business.
Q. Did you also, or did you not, run a bar-room business?
A. We sold liquor, yes sir. We didn't run any bar-room bu
ness.
Q. Did you have a liquor license from the United States?
A. Yes sir.
Q. Will you please look at these bills, which are to be known
Documents Nos. 90, 91, 92, 93, 94 and 95, and state whether or n
you recognize them to be the bill heads of the firm of Ahern
Wentzell?
A. I don't know anything about the 91, 92, 93 and 94 and 95, a
all like that.
Q. Do you understand the question; I have got them number
you understand?
A. Yes sir; I thought you meant the years. Yes, sir; I recogni
the bill heads all right enough; I know they are the same ones.
Q. Were those bill heads used by your firm of Ahern & We
zell at Three Mile for the business you did there?
A. Yes sir.
Q. You will notice that *that* one of these bill heads, Mr. Aher
on which a letter is written, bears date of April 15th, 1902; a
another one bears date of November 23rd, 1901. Will you plea
state whether or not you were in business at Three Mile——
A. We have wrote that——
Q. Just wait until I finish the question first. Will you plea
state whether or not you were in business as Ahern & Wentzell
that point in 1901?
A. No, sir; I was not. I was not in business at all. That w
just a mistake putting one on there; it was two, 1902.
Q. You got a United States internal revenue license——
A. Yes, sir; I don't know whether I have it yet.
Q. For the conduct of your business there?
A. Yes, sir.
Q. That license was sent to you at Biloxi, Miss.?
A. Yes, sir.
Q. It came in an envelope addressed from the United States Go
ernment?
A. Yes, sir.
Q. Will you please look at that envelope which is now, for th
purpose of identification, marked "Document 96" and state wheth
or not you recognize it as being the envelope which contained th
license sent to you by the Treasury Department of the Unite
States?
A. I tell you I can't remember no such thing as that; I don't r
member what kind of envelope it was; it must have been th
one——
Q. Will you please notice the postmark and date of th
967 document and state what year it is?

A. You mean that?
Q. Yes, sir.
A. Well, I don't know whether that is the same time or not.
Q. Please answer the question. I want to know what this is?
A. That is New Orleans, October 30th, 3:30 p. m. 1901.
Q. Does that change your conclusion as to whether you were in business in 1901?
A. I tell you I don't remember exactly, but I thought it was the winter before last.
Q. Would your recollection be influenced by that document. Of course we are trying to get simply the best of your recollection?
A. I don't think I was in business at that time, but it must have been that this is the very envelope.
Q. With your memory refreshed by an examination of this envelope, being Document No. 96, are you or are you not now prepared to say that you were or if you were not in business there in October, 1901?
A. Well, I think yes. It must have been in 1901 when we started.
Q. What was the character of the business that you did?
A. Well, I sold groceries and liquors.
Q. To whom?
A. To the boatmen who caught oysters.
Q. They were fishing oysters there?
A. Yes sir.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana offer, produce and file in evidence said Documents Nos. 90, 91, 92, 93, 94, 95 and 96 in connection with the testimony of the witness.

By Mr. ZACHARIE:

Q. At the time you had that store on Three Mile bayou, was there not another store kept just above you.
A. Yes, there was one fellow that started up there but he didn't stay long.
Q. You remember what his name was?
A. Yes.
Q. What was it?
A. His name was Billy Master.
Q. How do you spell it?
A. M-a-s-t-e-r.
Q. What year was that in?
A. That must have been in the year 1901 or 1902.
Q. Where was he from; where did he reside?
A. He was from Biloxi.
Q. You are sure he was from Biloxi and not from Hattiesburg?
A. He was not from Hattiesburg.
Q. He was from Biloxi?
A. Yes sir.
Q. You know whether he sold or retailed liquor?

A. Yes sir.

968 Q. Do you know whether he had a retail liquor lice from the United States Internal Revenue Department?

A. Yes, he did. I tell you the way it was. He was doing bu ness here; his brother was in business in the city, you see, o think, he said Peters street and he went out there and took same license.

Q. He took—the original license was from New Orleans?

A. Yes sir.

Q. And the license was transferred, was it, to Three Mile bayo

A. Yes, sir.

Q. You think that was in 1901 or 1902?

A. Well I am sure it was in both 1901 and 1902. You see he out the license the last month in the year, like I did. That is wh made me make the mistake about saying 1901.

Q. Do you remember visiting this territory as far back as 1880 1881?

A. No, sir; I don't think I did.

Q. Did you ever hear of the Mexican Gulf Canning Company Pascagoula Canning Company having a store down there in 1880 1881?

A. No, sir; I never heard anything like that.

Q. How old a man are you?

A. I am 25 years old.

Q. The retail liquor license that was issued to you to retail liqu here, did you make application to carry the business on?

A. The year that I got them out myself I got the notary in Bil to get them for me.

Q. To carry on where?

A. To carry on in Three Mile bayou.

Q. Was, or was not, the original license taken out by you to ca on business at Biloxi and then afterwards transferred in——

A. As well as I can remember the man made a mistake, that the way that happened. He made a mistake in writing on it Biloxi, and I changed it and sent it back and had them transfer

Q. That was transferred to carry on business at Three Mile bay La.?

A. Yes, sir; that is the way it read.

Q. You made the application to the Internal Revenue Office the transfer to Three Mile bayou, La.?

A. The same man that filled out the application for me. sent them back; I think his name is Austin.

Q. Who was it that swore to the application for the license?

A. Why it must have been me.

Q. Well did you, when you made the application for the tra fer—did you swear again for the purpose of having the lice transferred?

A. I don't know whether I did or not; I don't remember.

Q. You think it is probable or not that you did?

A. I don't remember anything of the kind. I just thought——
Q. Do you know that during those years you were carrying on business there or any other Mississippian that carried on business in that disputed territory in the way of keeping shops or stores?
A. No, sir; only that one I spoke of awhile ago.
Q. Master?
A. Yes, sir.

969 Cross-examination.

By Mr. McCLURG:

Q. Where did you say you were born?
A. I was born in Baton Rouge, La.
Q. How long did you live there?
A. Well I came away from there when I was a small child. I suppose a year and a half old.
Q. Where did you go?
A. I came to New Orleans.
Q. How long did you live there?
A. I must have lived here, I don't know how long—no, I went to Plaquemine. I lived in Plaquemines parish a while also.
Q. How long did you live there?
A. I couldn't say; I was too young for me to remember anything of that kind.
Q. Where did you go from Plaquemine?
A. I moved here to New Orleans.
Q. How long did you live in New Orleans?
A. I must have stayed here about three or four years.
Q. Where did you go then?
A. I went to Biloxi.
Q. How long did you live in Biloxi?
A. I should think about 15 years. Thirteen or fourteen years, something like that.
Q. You were in and out a good deal of the time you were living in Biloxi?
A. Yes, sir; I was out in the West two years and out in New York a couple of years, just like that and came back here and stayed a couple of years. I was not living there long. That has been my home; my people have been there all the time.
Q. Where do you live now?
A. I live in Biloxi.
Q. What is your occupation now?
A. I am just a common laborer; I have no occupation.
Q. How long did you live in Biloxi during this last stay?
A. The last time I went back there was in February.
Q. February last?
A. Yes sir.
Q. Where is Mr. Wentsell?

A. He couldn't get over. He stuck a nail in his foot and said he had blood poison it it.
Q. Where is he?
A. He is at home.
Q. Where is his home?
A. He lives right across the street from me.
Q. In Biloxi?
A. Yes sir.

Mr. DYMOND: The State of Louisiana has summoned Mr. Ed. Wentzell, and the commissioner has received the following document:

"Biloxi Sanitarium.

"BILOXI, MISS., August 23rd, 1904.

"This certifies that I now have under treatment Mr. Ed. Wentzell who is suffering from a wound on the left foot made by an old
970 nail deeply penetrating the ball of the foot and causing much pain and swelling. In my opinion it might prove injurious to him to have to do any considerable amount of moving around on it.

Respectfully,
(Signed) H. M. FOLKES, M. D."

And also the following document:—

"BILOXI, MISS.

DEAR SIR: I am sorry but will be unable to attend court on said Friday August 26th.

Yours truly,
(Signed) EDDY WENTZELL,
Biloxi, Miss."

both documents having been received by the commissioner, which said original documents are now offered in connection with the testimony marked Documents 97 and 98, copies of the documents being waived by counsel for the State of Mississippi.

By Mr. MCCLURG:

Q. You don't remember this license of 1901 issued by the United States Government to you?
A. Well since the man has showed me the envelope I came to the conclusion it must have been taken out in 1901 and used in both years. That is the way I figure it now.
Q. They are only issued annually, as I understand it? Did you take out another one since 1901?
A. No, sir; I had one out before that, but I didn't have anything to do with the license. Another fellow got that out.
Q. When was it you said you remember about it, year before last?
A. Well, it was the winter before last.

Q. And you don't remember having any United States license during that time?

A. During what time?

Q. Year before last?

A. Well these licenses must have been taken out in 1901 and used in 1902. That is the way it must have been. I had a license for seven or eight months, October until May.

Q. As I understand you, during your career you have, at different times, unsuccessfully run a bum boat a saloon in the marshes and some sort of horses, is that correct?

A. I don't know about running any unsuccessfully. I run them both ways.

Q. You didn't stick at it long at a time.

A. Yes, sir; the season only lasts six months. I stuck at it as long as the season lasted.

Q. In what?

A. In the liquor and grocery business.

Q. How does it run in the bum boat business?

A. It runs all right in the bum boat business.

Q. How does it run in the horse race business?

A. That has nothing to do with the Louisiana marshes. I
971 just told you what I was doing when I was over here.

Q. I am inquiring about you, not the Louisiana marshes.

A. It runs all right in the horse business I guess.

Q. Did you have a revenue license for your bum boat or whiskey business from either the State of Mississippi or the State of Louisiana?

A. No I didn't have either one. I understood I didn't have to have any.

Q. Were you ever arrested for violating the laws of either State in that business?

A. No, sir; I never saw any one that looked like they wanted any license.

Q. You sold mostly to them that wanted some of your vendables?

A. Most of them wanted groceries and provisions.

Q. And they wanted a little of elixir of life, did they not?

A. They wanted a little of that.

Q. Is it not true that in this mad race of life you have been in and out of business of variable characters?

A. Well, I don't know whether it is of variable character or not, but I have been into it.

Q. Is it not also true that most generally you have been an uncertain quantity floating upon the circumambient air of indifferent circumstances, dependent largely upon the shifting changes of fleeting conditions?

A. That is too poetic for me. You must not talk in that kind of language to me.

Q. Counsel asks that the question be read to him and demands an answer.

A. I don't quite understand the question.
Q. Have you not been a kind of rover in life?
A. Rover?
Q. Yes.
A. Why no sir.
Q. I thought you said you had been to New York?
A. I have done business on the square all the time.
Q. I didn't ask you that. Have you not roved about a good deal for a man that is not over twenty-five years old?
A. I have roved about a little bit.
Q. How much capital did you have invested in the firm of Ahern & Wentzell at Three Mile La.
A. I couldn't say how much there was invested in it. It must have been about six or seven hundred dollars.
Q. The firm, or yourself?
A. The firm. We were both partners in it.
Q. Now tell me, that was a kind of shack out there to feed and accommodate the fishermen?
A. That is all it was.
Q. Your building was nothing of a permanent nature.
A. Oh now: it was an old camp; we call it a camp.
Q. And you went there to make what you honestly could out of that class of people in that section?
A. That is the very thing.
Q. You were there for the money that was in it?
A. Yes, sir; when the money went away, I went away.
Q. You didn't care whether you were in Louisiana or in Mississippi.
A. No, sir.
Q. You did not really know?
A. That is the truth about it; I didn't know.
Q. And you didn't ask any questions about it?
972 A. All I did inquire was when I went out here, whether I would have to have any Louisiana State license or not.
Q. Who did you enquire of, if you remember?
A. I don't remember now exactly who it was. It was a fellow, I thought knew more than I did, and the fellow told me no I would not have to have any. The only revenue license, the only people that would bother me was the revenue cutter taking my things off the boat; they could see me putting them on.
Q. And the United States revenue license protected you from interference from the cutter?
A. Yes, that is what I thought about it.
Q. And so far as knowing anything about the boundary between Louisiana and Mississippi you can't say?
A. No sir, I can't say.
Q. You don't undertake to say?
A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. Amongst the various people with whom you came in contact, what was the general idea as to what State you were in or as to what State Three Mile was in? What was the general understanding among the fishermen and others who were out there?

A. I tell you I heard some of them say they thought it was in Louisiana, and some of them thought it was in Mississippi. I never paid any attention to that kind of talk. What made me get these licenses out in Louisiana the fellow you know that went out with me got the licenses out himself and he got them in Louisiana. So I thought I would keep the old license that is the reason. I had to have it located somewhere; I couldn't call it Three Mile.

Q. Was it the Internal Revenue Office?

A. Yes sir.

Q. And didn't you arrange for the license from Biloxi, Miss.?

A. Yes sir.

Q. And this revenue cutter that you referred to, is that the United States revenue cutter that operates in Mississippi sound and Lake Borgne?

A. Yes sir.

By Mr. MCCLURG:

Q. One more question, please. During the time that you were at Three Mile, did you hear anything of a threatened armed conflict or a crisis between the officers of Louisiana and the officers of Mississippi about the boundary?

A. No sir; there was no talk of boundary when I was out there. That is the reason I had to close up business on account of that. They wouldn't allow any more Biloxi people to go out there.

Q. When this controversy was raised, it put you out of business?

A. Well, there was not money enough out there for me. The Biloxi people were the people I made money out of. I couldn't make any money out of the Louisiana people. They were all dagoes.

973 OBJECTION.—Mr. MCCLURG: The same exception is reserved to the testimony of the witness Ahern as heretofore noted to the testimony of like character at this hearing.

EDWARD M. WALLACE, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live at present?

A. Lafayette, La.

Q. What is your occupation?

A. Chief dispatcher of the Morgan's Louisiana Texas Railroa Steamship Co.

Q. How long have you been located there?

A. Two years last March.

Q. Prior to that where did you live?

A. I resided in New Orleans.

Q. Did you ever reside in Mississippi, Mr. Wallace?

A. No, sir.

Q. What was your occupation and with what concern were connected when you resided in New Orleans?

A. Well, I was located in New Orleans from 1871 to 1881 w the New Orleans, Mobile & Chattanooga railroad, afterwards Louisville & Nashville railroad, from 1871 to 1881.

Q. Does that road traverse the sea marsh in passing from Orleans eastwardly towards Mobile?

A. Yes, sir.

Q. Are you familiar with the country traversed by that road?

A. Yes, sir.

Q. Did you have occasion during the period of time you w tion, from 1871 to 1881 to frequently traverse that road?

A. Well, almost daily you might say; at least once or twi week any way.

Q. What was your official connection with the road at that ti

A. I entered the service as train dispatcher and afterwards appointed to trainmaster, and held the position of trainmaster d to the time I left the company in 1881.

Q. Did you have occasion to look after or to keep posted as to road bed through the marshes, eastward of New Orleans.

A. I had nothing whatever to do with the roadbed. I had cha of the handling of trains and trainmen.

Q. Was that handling trains in any way affected by the condi of the roadbed.

A. Very much so.

Q. Then did you or did you not keep posted, or did you k the condition of the roadbed from time to time?

A. I had nothing to do with the roadbed department whate I would get memoranda at times from the roadmaster or supe tendent to reduce train speed between certain points for a cert length of time, something like that.

974 Q. Well, was there any interruption to traffic betw those years, 1871 and 1881 on this territory known as marshes east of New Orleans as far over as Bay St. Louis?

A. Many of them.

Q. What was the cause of the interruption?

A. The cause was usually from storms from the Gulf, blow water over marshes and washing the roadbed away.

Q. How frequently did they occur?

A. Well, we have had it occur twice in one year. Then so

times it would miss a season. I couldn't exactly remember the exact date.

Q. Did it occur with any great frequency?

A. It was almost—well it was on an average every year. Sometimes we would have one or two storms in one year; and other times we would miss a year. It was just as sure, a bad storm in the Gulf, we would always feel the effect on the track by the washing of the roadbed which caused us to discontinue our trains and transfer passengers, trains, etc.

Q. I show you map, Mr. Wallace, known as map No. 59 and ask you what railroad it is that runs from the western or left hand side of said map along the coast north-eastwardly.

A. Well, it was the New Orleans, Mobile & Chattanooga railroad when I entered the service.

Q. Is that the railroad concerning which you have just been testifying?

A. Yes, sir; that is the line.

Q. Marked on this map with this line?

A. Yes, sir.

Q. Now called the Louisville & Nashville railroad?

A. Yes, sir, one and the same.

Q. Look at this map, from which corner did the storm come that produced the results concerning which you have just testified?

A. Well, it was always from the north-east as a rule. We had them sometimes from the south. I couldn't give the correct data on that though.

Q. Well which would be the wind, Mr. Wallace, looking at this map and looking at this compass here, north, south, east and west, which was the wind that would pile up the water?

A. I tell you it didn't seem to make much difference. Whenever there was a storm in the Gulf it affected us. I think though, as near as I can remember, it was a north-east wind.

Q. Of what character were the damages which were sustained by the railroad as a result of these storms.

A. Well it blew the water over the track, completely submerging the track and washing the track from the roadbed.

Q. Any damage done the bridges?

A. At times the bridges were damaged, more or less. The damage to bridges was mostly—was most usually caused by vessels being blown against them.

Q. Are you at all familiar, Mr. Wallace, with the marshes south of Bay St. Louis. Have you ever visited them?

A. Where do you mean? Around the line of that railroad?

Q. No, sir, across Mississippi sound.

A. No, sir; I have not been there.

Q. Therefore, you don't know what effect was produced by the storms on the marshes south of Bay St. Louis?

A. I do not.

975 Cross-examination.

By Mr. McCLURG:

Q. That is the same railroad that is now called the Louisville & Nashville railroad, of which Mr. Charles Marshall is superintendent?

A. The same line.

Q. Has there been any material changes made in the configuration of the Mississippi shore or of these marshes to the south of Mississippi sound, you have no personal knowledge and can't testify as to that?

A. No sir.

Q. And you do not undertake to testify scientifically as to the effect of storms coming from different directions upon these marshes or other Mississippi shore line, do you, Mr. Wallace. As I understand it you are testifying from your personal knowledge?

A. I couldn't say so. I know whenever we had a severe storm it affected our line.

Q. The railroad?

A. Yes, sir; we never escaped.

Q. As to whether those storms had the effect of depositing accretions in the marshes or along the Mississippi shore, you are not prepared to say?

A. No, sir; I couldn't say a word about that.

Q. And you have no personal knowledge or information as to whether those marshes are subsiding or building, have you?

A. No, sir.

Q. Mr. Marshall testified in this case that he was of the opinion that along the line of the Louisville & Nashville railroad that the marshes were increasing somewhat in height because of the deposits of vegetable matter and such substances as water usually leaves. Have you any knowledge as to that?

A. No, sir; I don't know that I have but I think it is quite plausible. I think Mr. Marshall's theory is very plausible.

Q. He stated as a reason for his opinion that he had observed there that below, where the road now runs on the ground, that there is a bridge and trestling and that notwithstanding the dumping of dirt by the railroad company to build up its track that nevertheless it bore evidences to him of accretion in the building up of the soil. Did you notice anything like that during your connection with that road?

A. No, sir; I couldn't say positively in that connection. All my time was taken up with the trains and the trainmen. I did not give the roadbed any concern whatever, because I had nothing to do with it. If the roadbed was reported unsafe or in a weakened condition, or anything of that sort, I reported it to the superintendent or the roadmaster and they directed the necessary repairs. And whenever the line was weakened by storms or other causes,

they would notify me how to handle trains or what speed to make over that portion of the line.

Redirect examination.

By Mr. DYMOND:

Q. How did the railroad regard this condition of the storms?

976 OBJECTION.—Mr. MCCLURG: That is especially excepted to as being incompetent.

A. How did they regard the——
Q. Generally, yes?
A. In what way.
Q. Was it a source of annoyance?
A. Oh, yes. It was considered a great drawback. It certainly was a very great expense to the railroad company. It caused a large force of extra men to be put on after every storm to repair the line. It caused a loss and delay to traffic; traffic would sometimes be diverted.

OBJECTION.—Mr. MCCLURG: Counsel for the State of Mississippi states that the same objection is reserved, because this testimony should have been given in chief and is not properly testimony in rebuttal.

JAMES K. HENLEY, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?
A. I reside at Biloxi.
Q. In the State of Mississippi?
A. Yes sir.
Q. What is your present occupation?
A. I am the cashier for the Louisville & Nashville road, of the station.
Q. How long have you been connected with the Louisville & Nashville railroad or its predecessor the New Orleans, Mobile & Chattanooga railroad?
A. From 1870.
Q. In what capacities have you been employed?
A. As agent.
Q. At different points on the route of the road?
A. Yes sir.
Q. Between New Orleans and what point?
A. Between New Orleans and Scranton.

Q. Are you familiar with the nature of the country traversed by this railroad between New Orleans and Scranton?

A. Yes sir.

Q. Have you had occasion yourself to traverse the road frequently?

A. Yes sir. I have been over the road very frequently.

Q. Within the last thirty years?

A. Yes sir.

Q. Did your duties ever bring you in connection with the operation of the road or the failure of the road to operate?

A. Yes sir; I was telegraph operator too. You know we run the trains by telegraph.

Q. Were there during the thirty years, any times during which the railroad failed to operate?

A. Yes, sir.

Q. Did they occur seldom or with any frequency?

A. It was not very frequent, no. It was when we would have a good big south-east storm—wind storm.

977 Q. Did they occur every year or very seldom?

A. It occurred very seldom. I think about four or five times within the time I have been connected with it that we had trouble with the track.

Q. What was the trouble you refer to?

A. Well, there was one time that the bridges all washed away; that was in 1893. And the other different times was when this marsh down here had washed away.

Q. Do you refer to the marsh east of New Orleans en route to Bay St. Louis?

A. Between New Orleans and Pearl river; over through there?

Q. Will you please look at this map marked No. 59 and your attention being called to the upper left hand corner of it, to the Rigolets, Pearl river, etc., is or is not that the section concerning which you are testifying?

A. Where is Bay St. Louis?

Q. Here in the upper center of the map.

A. Yes sir; between New Orleans and Bay St. Louis.

Q. What effect did the storms produce in that locality?

A. It washed the track away; washed the dirt away, the roadbed, of course they couldn't run until they carried dirt there and filled it up again. But this last storm washed the bridges away in 1893.

Q. Were there any storms in the early '70's in that locality that you remember that interfered with the operation of the road?

A. I couldn't say now just what time that was. But when the road was new and we had a great deal of trouble with it.

Q. From this same cause?

A. Yes, sir.

Cross-examination.

By Mr. McCLURG:

Q. The proper or improper construction of the roadbed of the ouisville & Nashville railroad in that neighborhood would have a reat deal to do with the effect that those storms have upon it ouldn't it?

A. Yes sir.

Q. And tell me why?

A. You see in a south-east wind it draws the water up here in ake Pontchartrain and don't wash the tracks so bad. It is when he wind goes down the tide falls, and the water goes out over the ack; that is the time it does the most damage.

Q. It is the receding of the water?

A. That is my understanding. I have never been in the marsh a storm, but I always understood it was the receding water that ashed the track away.

Q. You mean that part of the marsh over which your road runs?

A. Yes sir.

Q. Now, in addition to that, with reference to the bridges, your perintendent, Mr. Marshall, testified about some bridges being ultily built, in that the caps protruded and when the water got up y the track that the timbers would come in there and pounding gainst those ends and under it would damage the bridge. Now it ould have the effect with reference to the bad construction of the ridges as well as the improper construction of the roadbed?

A. Yes; but I think in 1893 it washed all of them away,—
78 all the bridges. Later he saved them from washing away by having the bridge high enough. I think our bridge there at iloxi was floored and when the water got up to that, it just pulled he whole thing off.

Q. So the fault was not wholly with the high water or storm, is iat what you mean?

A. I don't know that you would call those bridges improperly onstructed.

By Mr. DYMOND:

Q. You are not a road builder?

A. No sir.

Q. Would you venture to say, considering the conditions as they xist in the marshes, east of New Orleans, that the road of the Louisille & Nashville railroad was improperly constructed?

A. No, I would not.

By Mr. McCLURG:

Q. You wouldn't undertake to say that it was scientifically built?

A. I am not a road builder. I wouldn't like to criticise Mr. Marhall's work.

OBJECTION.—Mr. McCLURG: Same objection as to the testimony f the other witnesses heard to day.

JOHN CONNER, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live on Pearl River bridge on the Louisiana side.
Q. That is, you are on the Louisiana side of the centre of the channel of Pearl river.
A. Yes sir.
Q. What is your occupation?
A. Bridge tender.
Q. Is that on the Louisville & Nashville railroad?
A. Yes sir.
Q. How old a man are you?
A. I am fifty three years old.
Q. How long have you occupied the position of bridge tender at that point?
A. Twenty-nine years the 10th of last April.
Q. Have you had occasion, during those 29 years, to notice the various storms which have occurred in that locality?
A. Yes sir; I was in all of them.
Q. Will you please look at this map, marked No. 59, and state whether your bridge is on the Pearl River side, east branch, as shown on the map where the Louisville & Nashville railroad crosses?
979 A. Yes sir; it is on Pearl river, on the East branch.
Q. Now Mr. Conner, has the condition of storms been a matter of frequency or infrequency so far as early records show during the 29 years that you have been connected with the railroad?
A. You mean how high they have been?
Q. No; do they occur pretty much every year?
A. Generally every four or five years; there was one bad storm in 1881?
Q. Let us begin at the beginning, as well as you can recall, what was the first storm after 1870 that you remember?
A. 1881.
Q. Were there no storms between 1875 and 1881 that you recall?
A. No, sir; not that I saw any.
Q. What do you call a storm?
A. I call a regular gale from the outside a storm. When the wind blows the water from the outside.
Q. Were there any smaller storms or any disturbances at all during the ten years between 1870 and 1880?
A. As a general thing around about the equinox there are little storms, but they don't amount to anything. The tide may rise at an average of two feet and a half or three feet over ordinary tide.
Q. How frequently did they occur?

A. That would be about twice a year.

Q. Now then, these storms I understand you to say, began in 1880? How much did the tide rise on that occasion?

A. It rose about five feet and a half. That was about, I couldn't say exactly, but somewheres about five and a half feet.

Q. What is the ordinary rise of the tide at Pearl river?

A. A foot and a half or two feet and a half. It all depends on the wind. If the wind blows strong from the south-east it rises nearly two feet and a half; in an ordinary wind it would rise a foot and a half.

Q. What would be the average tide?

A. About two feet.

Q. What is the highest you ever saw the tide rise in that locality?

A. Outside of those storms?

Q. With the storms?

A. Well, five and a half feet.

Q. After 1880, when was the next severe storm that you remember?

A. This last storm of 1893, that was the next one.

Q. How high did the tide rise on that occasion?

A. I think the 1880 storm was about six inches higher than the other; that was the severest while it lasted. It did all the damage in about six hours.

Q. What effect, if any, did those disturbances of the elements have on the operation of the Louisville & Nashville railroad?

A. Well, at our bridge there it raised the iron bridge off its beams. It was an iron bridge and the iron part was standing on a girder that was on top of the beam, and the storm raised this iron girder right up and let the piles swing out from under the girder and the bridge was about eight feet out of line up stream.

Q. Was that due to the influence of the storm from the southeast?

A. Yes sir.

980 Q. On what occasion was that, in what year?

A. That was in 1893?

Q. Was any damage done to that bridge in the storm of 1880?

A. No sir; none at all?

Q. Was there any damage done to any other part of the road so far as you know in 1880 or 1893 or any other time?

A. In 1880 the roadbed all washed away between Pearl river and Lookout and put the track right into the canal; washed the track off its bed and threw it off into the canal on the other side of the track. Or, in other words, it threw it off about six feet off the bed.

Q. Was there any other bridge damaged during these 29 years, so far as you know?

A. There was some damage done at Scranton. There was a washout at Scranton; but I would not be certain. I am not certain what damage was done because it was so far away.

Q. Any damage done to the roadbed between Bay St. Louis and

New Orleans where it passes through the marshes at any other time?

A. To a little place between Lake Borgne and a place called Ansley that washed out; at Bayou Caddy.

Q. You spoke of the roadbed washing out between Lookout and Pearl river?

A. Yes sir; and it also washed out between Lookout and the Rigolets.

A. What distance is it from Pearl river to the Rigolets?

A. Seven miles.

Q. So that the whole track washed out during——

A. Not all; some, there were some high places that didn't wash out.

Q. About what proportion of that was washed out?

A. Over half.

Q. So that was over three and a half miles of track washed away?

A. Yes, sir.

Q. Now in regard to these equinoctial storms, did they or not cause any inconvenience to the railroad in its operation?

A. Yes, sir. That storm in 1880, they had to transfer by the steamer Heroine from Pearl river to Milneburg and I think, if I do not mistake, that they transferred ten days before they got the track back so that they could run trains over it.

Q. Do you know anything about the territory south of Bay St. Louis known as the marshes as shown on this map No. 59?

A. No, sir; I don't know of anything outside of Pearl river.

Q. Pearl river is the boundary between Louisiana and Mississippi?

A. I think; that is what they say.

Cross-examination.

Mr. McCLURG:

Q. Have you ever had anything to do with any other railroad except the Louisville & Nashville?

A. Yes; but not South. I was on the Hannibal & St. Joe; I worked on the Wabash & Great Western.

Q. Don't all railroads suffer more or less from unusual freshets and high water, whether they be in the marshes or somewhere else?

A. Yes, sir; I never knew one that did not.

Q. And is it not true that faulty construction of the roadbed or in the bridges contribute to the damage done by the water.

981 A. Yes, sir; I never knew any road that had not been washed out by freshets and overflows.

Q. And is it not also true that the receding waters do more damage to the roadbed than the coming on of the storm water?

A. Well, is some cases.

Q. Are they not more destructive?

A. In this case it is the coming in water that does the most damage as far as I ever saw.

Q. The reason I ask you this is, I think, several witnesses have testified not only with reference to the roadbed, but with reference to the action of the storm waters upon the shore line, that the receding waters are the most destructive; and I wanted to get your ideas about it?

A. I think I answered that; did I not?

Redirect examination.

By Mr. DYMOND:

Q. As compared with other railroads, Mr. Conner, is the Louisville & Nashville between New Orleans and Pearl river more or less exposed than other railroads to damages by the elements?

A. Well, yes; I think it is.

Q. Why?

A. For the reason that it runs right along the lake shore.

Q. You think it is what?

A. I think it is more liable to damage from high water than any other road.

OBJECTION.—Mr. MCCLURG: Same exception is reserved to the testimony of this witness, as not being properly in rebuttal.

PATRICK J. MCDONNELL, a witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you reside?

A. I reside in New Orleans.

Q. What is your occupation?

A. Locomotive engineer on the Louisville & Nashville railroad.

Q. How old a man are you?

A. I am fifty-three years old.

Q. How long have you been connected with the Louisville & Nashville railroad?

A. Since the year 1872.

Q. Over what part of the Louisville & Nashville railroad have you operated?

A. Between New Orleans and Mobile.

Q. You have, therefore, had occasion to frequently traverse the country, especially between New Orleans & Bay St. Louis?

A. Yes sir.

982 Q. What is the nature of that country until you get a little bit beyond Pearl river?

A. Well, it is mostly marsh.

Q. About how high is the railroad compared to the ordinary sea level?

A. Well, I should think not more than 12 inches any way, and hardly that.

Q. In high tide is that covered?

A. Yes sir. In high tide it is generally covered; about covered.

Q. Now, during these thirty years have you been continuously in the employ of the railroad operating engines over that section?

A. Yes sir.

Q. Have you had occasion to notice the condition of the roadbed in operating between New Orleans and Bay St. Louis?

A. Yes sir.

Q. Does your duty as a- engineer require that you should notice that as you go along?

A. Yes sir.

Q. Has there ever at any time been anything the matter with the roadbed between those points?

A. At different times when there were storms the roadbed has washed away.

Q. Has that occurred with any frequency during the last thirty years?

A. Well, I should judge, as near as I can remember, it has occurred about six times during the last thirty years.

Q. When you say six times, do you mean to say to a considerable extent or——

A. I mean to a considerable extent.

Q. Has it occurred at any other times not to a very great extent?

A. Yes sir.

Q. Has that been with any frequency where it would be damaging to a less extent?

A. Only when we had those high storms you know.

Q. What was the effect that storms produced on the roadbed?

A. Well, the water would tend to wash the roadbed and we would frequently get orders to run slow. They would have to prop the track up with crossties at certain points.

Q. Your orders to run slow, did you get them more frequently than six times in thirty years?

A. Yes sir.

Q. How frequently have you gotten those orders to run slow do you think?

A. I should judge once a year, probably; sometimes oftener.

Q. Would that be caused by the effect of the water on the roadbed.

A. Yes, sir.

Q. Now, in these six instances that you refer to, when were they. Can you recall?

A. Well, I can't tell you the year now; 1893 was the big storm

and I think—I couldn't without going and getting the records, I couldn't tell you exactly the year.

Q. Was there a storm in 1880 or 1881?

A. I couldn't say positively about that.

Q. Were there any storms during your early connection with the railroad?

983 A. Yes, sir, in 1874—about 1876—I think about 1874 they had a very severe storm.

Q. Can you describe, in a brief way, some of the results produced by any one of those storms?

A. Well, just simply the water covered the marsh and, in fact, got over the track in certain places and the section men would have to drive stakes to keep the track in place.

Q. Have you had occasion to go through one of these storms while out on the road?

A. Yes, sir.

Q. What storm was that?

A. Well, I was in the storm of 1893, and in the other storms; I can't tell you exactly the years now.

Q. Where was your territory?

A. In 1893 I was at Ocean Springs.

Q. Where were you on a previous occasion?

A. I came down as far as the bridge and found it all washed away and had to turn back to Ocean Springs.

Q. Do you recall where you were on any previous instance when you went through a storm?

A. On another occasion I was at Pearl river when the bridge washed away and it was a severe storm.

Q. You don't remember when that was?

A. I can't recollect without going back——

Q. What sort of a bridge did Pearl river have at that time?

A. What they call a Howe truss bridge.

Q. Was it made of wood or iron?

A. It was made of wood and iron bolts with guys, guy rods.

Q. Wasn't it substituted with an iron bridge later?

A. Yes, sir.

Q. Did the iron bridge ever wash away?

A. No, sir.

Q. Do you know anything about the country or marsh south of Bay St. Louis down around Isle à Pitre. Have you been down there?

A. No, sir.

Cross-examination.

Mr. McCLURG:

Q. You have been familiar then, with this railroad about thirty years, as I understand it?

A. Yes, sir.

Q. Is not a great deal of that road through the marsh territory now running on ground that was formerly on trestling work, trestling or bridging?

A. When the road was first built there was some trestling, yes, sir.

Q. Can you say about how much of trestling has been displaced by earth work say from across the marshes?

A. I suppose it would be a quarter of a mile.

Q. No more than that altogether?

A. It might be a half a mile. The Lake Catherine trestling was filled up; there was trestling right through the waters and afterwards filled in.

Q. Can you say whether or not these storm actions have brought any sediment, decayed vegetation or deposit of any kind and had a tendency to raise the marshes in the neighborhood of your
984 road across there?

A. There has been a great deal of wood and stuff washed up by those storms, but I can't say, of course—it might tend to raise it some, the timber is along there yet that was washed up by those storms.

Q. There has been more or less deposit by the storms and wave actions along your line in the marshes?

A. I suppose there has been some deposit, yes sir.

Q. The construction of the road, especially with reference to an improper construction of the roadbed over trestling, may have something to do with the effect of the waters brought in by the storms upon it, may it not?

A. I couldn't say that. A road improperly constructed in its bed or in its bridges would suffer more from storm action than one properly constructed in bed and bridges. The company has been continuously raising the roadbed; in fact they are until this day doing so, since I have been connected with the road.

Q. That don't quite answer my question, please?

A. When I was first connected with the road I considered it was not as well constructed then as it is at the present day.

Q. It is being continually improved upon both in bed and bridges?

A. Yes, sir.

Q. Now, Mr. Marshall and one or two of the employees of that road have testified that the weight of the road and the running of the engines and heavy trains over it, has had a tendency to make it settle and sink down. Have you noticed anything of that character.

A. Well, it must be so because they would not have occasion to raise the roadbed unless the weight of the trains going over it had a tendency to sink it.

Q. That soil is of a mucky nature?

A. Yes, sir; that is between here and Chef Menteur and in fact between here and Pearl river.

Q. And one or two places are there not beyond Pearl river?

A. Yes sir.

Q. And it is not as good for solid roadbed as clay soil?
A. No, sir; I should judge not.

Mr. McCLURG: Counsel for the State of Mississippi cannot discover any difference between the line of testimony now being taken on the part of Louisiana than than originally taken to sustain her side of this suit, and counsel for the State of Mississippi now excepts, generally, to all testimony taken up to this time as being irrelevant and incompetent, as not in rebuttal but properly taken in chief.

Adjournment of Proceedings.

At this stage of the proceedings (12:30 p. m.) the hearing was adjourned until 1:15 p. m. by the commissioner.

985 Resumption of Proceedings.

Pursuant to adjournment the hearing was resumed at the hour of 1:15 p. m., all parties being present.

FREDERICK M. WEED, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Mr. Weed, where do you live?
A. I live at Ocean Springs, Miss.
Q. How long have you lived there?
A. I went to Ocean Springs the 15th day of October, 1877.
Q. And you have been living there ever since?
A. Yes, sir.
Q. Were you ever connected with what is known as the Louisville & Nashville railroad?
A. Yes, sir.
Q. When were you in their employ?
A. I was employed; well I was employed sometime—I was employed on the then New Orleans & Mobile & Chattanooga railroad when I came to Ocean Springs; although I was really engaged about six months prior to that by D. B. Robinson, who was then general superintendent of the road. I came to what is known—it was then the New Orleans, Mobile & Chattanooga in October, 1877.
Q. Then for how long were you connected with the railroad after that?
A. I have been in continuous service with the railroad.
Q. Up to date?
A. Yes, sir.
Q. You are not in the employ of the railroad now?
A. Yes, sir.

Q. What is your present employment?
A. I am railroad agent at Ocean Springs.
Q. Have you had occasion, during the period since 1877, to t
erse the railroad frequently between, New Orleans and O
Springs?
A. Well, I have been over it a good many times.
Q. Are you familiar with the nature of the country crossed by
railroad between New Orleans and Bay St. Louis?
A. Yes, sir.
Q. What is the character of that country?
A. Between Bay St. Louis and Ocean Springs?
Q. No; between Bay St. Louis and New Orleans.
A. It is rather low, marshy.
Q. Have you ever been out in the marshes south of Missis
sound?
A. I never have been there. I have been trying to get over t
for fifteen years but never could get any further than Cat islan
Q. Were you close enough to see the character of the marsh
across South pass?
A. Well, no sir; I have been to Cat island only.
Q. Therefore you don't know anything about the nature of
soil or marsh southwest of Cat island?
A. No, sir; not a thing in the world.
Q. Have you in the years that you have been connected with
railroad, had occasion to notice that any storms have occu
986 in that general locality?
A. Yes, sir; we have had two or three very severe st
since I have been there.
Q. Have you had others of less severity?
A. Yes, sir.
Q. About what time of the year did those storms occur?
A. My memory is that one occurred in October; I don't remem
what year. Not October, but August, we had quite a storm in
gust once. I get confused on the dates and months.
Q. Is there any general time when you have disturbances h
A. We generally have them in the fall.
Q. Did you ever hear of that period called the time of the e
nox?
A. Yes, sir.
Q. Would you recognize those as equinoctial storms, those st
that you are testifying about?
A. I don't know really whether they were or not; some pe
called them equinoctial storms.
Q. What effect did those storms have on the operation of
Louisville & Nashville railroad or its predecessor?
A. We have had some storms which stopped operations, put
traffic to a standstill for a period.
Q. Why and how was that brought about?

A. Well, they just, the storm washed out the roadbed in places and washed away some of the bridges.

Q. How frequently has that occurred to your knowledge?

A. I think about, if I am not mistaken, about three or four times since I have been here; in that period possibly the traffic was interrupted four times. But seriously it was about three times; very seriously it was.

Q. Was there ever any danger to the bridge at Ocean Springs?

A. Yes sir; it has been damaged very seriously twice. But once particularly; I think that was in 1893.

Q. What sort of bridge is that at Ocean Springs?

A. They have a trestling bridge there, the bay is trestlings you know. It is a steel bridge or iron bridge, over the channel.

Q. Was the bridge over the channel affected in any way by the storm?

A. No, sir; not that I know of. I think not.

Q. The damages were more in the trestle work?

A. It was all in the trestle work.

Q. Leading up to the bridge?

A. Yes, sir.

Q. Was that broken away?

A. Part of it partially and part of the bridge was taken away entirely.

Q. Was that from a south-east or what was the direction of the wind?

A. My recollection was that the wind was from the south-east that did the damage with us. What we call a cyclone.

Q. Did you go through that storm?

A. Yes, sir.

Q. Was it much of a storm?

A. We thought it was pretty severe; I was down on the bridge when part of it was taken away.

Q. How high did the waves come rolling in there?

A. It is hard to tell. I think waves there sometimes went as high as twenty feet, may be more.

Q. Would that same storm affect the territory south-east
987 within a distance of fifty miles or thirty or forty miles?

A. I think it would affect the whole territory; everything in this vicinity, everything contiguous I should judge it would. I think it was a south-east; that is my recollection.

Cross-examination.

By Mr. McCLURG:

Q. How much of this history of the damage done the Louisville & Nashville railroad can you say came under your personal observation. I take it that you have testified generally as to most of the damage done?

A. I did not see any of it personally, south. I think I went down

as far as pretty near Mississippi City. I didn't go down into the marshes at that time down this way and only know what I heard about that.

Q. You don't know what effect it had in the marsh territory?

A. I know what effect it had on the road in the marsh, but at the same time I couldn't swear to it from my own personal observation.

Q. I mean in that part of the marsh which is south of Cat island, south of Mississippi sound.

A. I couldn't say anything about that, of course not; I was not down there.

Q. You don't know whether it widened the water courses through it or the bays or the lakes?

A. No, sir.

Q. You don't know whether or not it washed away any of the islands or built them up?

A. No, I couldn't say as to that.

Q. Do you know what territory is in dispute in this litigation?

A. I can't say that I do really.

Q. You are not prepared to say whether any of the territory in dispute between Louisiana and Mississippi was materially affected one way or the other by any of those storms?

A. No, sir; I couldn't testify in regard to that.

Mr. McClurg: Same exception to this testimony as to the foregoing testimony.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner until to-morrow at 11 o'clock.

988 Resumption of Proceedings.

New Orleans, August 27th, 1904.

Pursuant to adjournment the hearing was this day resumed at the hour of eleven o'clock at the same place.

Present: Hon. Frank H. Mortimer, U. S. commissioner.
Hon. Walter Guion, attorney general for the State of Louisiana.
Messrs. John Dymond, Jr., and F. C. Zacharie, associate counsel for the State of Louisiana.
Hon. William Williams, attorney general for the State of Mississippi.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Note.—The taking of rebuttal testimony on behalf of the State of Louisiana, will be resumed September 5th, 1904, at eleven o'clock, a. m., at the office of the United States district court, in New Or-

leans, Louisiana, at which time the Honorable W. D. Bullard will be requested to preside, unless there be some agreement to the contrary, at which time the testimony in rebuttal, of Louisiana, will be resumed; and if in the meantime, in the opinion, or by agreement of counsel, anything should prevent the meeting on that day, another day will be fixed, by agreement; both counsel waive the ten days' notice required by agreement; at which time the counsel for the State of Mississippi will be permitted to introduce in evidence any and all documentary evidence which may be at that time in their possession which they desire to introduce; thereupon, the hearing was adjourned.

Resumption of Proceedings.

NEW ORLEANS, LA., September 5, 1904.

Pursuant to adjournment, the commission met at the office of the clerk of the United States district court in New Orleans, Louisiana, this Monday, September 5th, 1904, at eleven o'clock, a. m., for the purpose of taking further testimony and filing further evidence on the part of the State of Louisiana in rebuttal. The Honorable Frank H. Mortimer, commissioner for the State of Louisiana, being absent, by agreement of counsel the testimony shall be taken and the evidence noted, by the Honorable W. D. Bullard, com-
989 missioner for the State of Mississippi, and the proceedings continued temporarily before him.

Present: W. D. Bullard Esq. commissioner.
John Dymond Jr., Esq., F. C. Zacharie Esq., associate counsel for Louisiana.
Monroe McClurg, associate counsel for Mississippi.

JOHN M. PARKER, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Mr. Parker, you live in this city?
A. Yes sir.
Q. How old a man are you?
A. 41.
Q. What is your occupation?
A. Cotton factor.
Q. Have you ever been president of the New Orleans Cotton Exchange?
A. Yes sir.
Q. Have you ever occupied any other prominent positions in this community?
A. Yes sir.
Q. Will you please mention them?
A. President of the board of trade.

Q. Are you familiar at all with what is commonly known as the Mississippi coast, or across the lake?

A. I think so.

Q. The southern portion of the State of Mississippi?

A. Yes sir.

Q. What part of your life have you spent there?

A. Most of it, during the summer for probably 30 years.

Q. Have you owned property over there?

A. Yes sir.

Q. Is your family accustomed to staying over there during the summer?

A. Yes sir.

Q. Are they over there now?

A. Yes sir.

Q. Are you at all familiar in any way with that territory south of Bay St. Louis, commonly called the Louisiana marshes?

A. I am.

Q. Have you ever visited that territory?

A. Many times.

Q. That territory is in dispute in this case between the State of Louisiana and the State of Mississippi; can you tell us, so far as its name is concerned, to what State it has generally been recognized as belonging?

A. Louisiana.

Q. What is that territory generally called?

A. Louisiana marsh.

Q. Have you had occasion to circulate amongst the people over there who would have occasion to visit that locality?

A. Quite a number of them.

990 Q. Have you ever heard them call the territory any other name than the Louisiana marsh?

A. No sir.

Q. Does that territory include the extent of coast from Isle à Pitre on the east to Malheureux point on the west, as shown by map No. 59? Here is Isle à Pitre to the east, and here is Malheureux point to the west, and here is Bay St. Louis immediately to the north?

A. Yes sir, I regard that entirely as the Louisiana marsh.

Q. Have you ever heard anybody contend that that belonged to the State of Mississippi?

A. No sir.

Q. Were you brought in contact with Mississippians who frequented that locality and lived along the Gulf coast, which was called by us "Over the Lake"?

A. Yes sir.

Q. As belonging to what State did they generally recognize that territory?

A. For the last four or five years we have had a schooner in commission, which has regularly had a Mississippian aboard as captain,

and they always referred to it as the Louisiana marsh; they are professional oystermen during the winter.

Q. Do you know where the deep channel line is in Mississippi sound, extending from East Pearl river to the pass between Cat island and Isle à Pitre?

A. Yes sir, it is Cat Island pass, and is marked by black buoys lying there north of Merrill's shell bank. We regard that as the dividing line.

Q. What dividing line?

A. As the line between Louisiana and Mississippi; that is the line I have always known.

Q. Is that so generally regarded?

A. I think so.

Cross-examination by Mr. McCLURG:

Q. I would like for you to be a little more definite, if you can, Mr. Parker, than in saying that has been generally regarded as the dividing line between the two States, in this, generally regarded by whom?

A. Well, I should say generally regarded by oystermen, and the men who cruise out there constantly, fish there. They would refer to going over to the Louisiana shore when we got beyond that channel; that is the term that we regarded it on the coast where we were fishing constantly.

Q. I believe you stated that is of recent years?

A. Yes sir; I do not go back a very great distance; probably 20 years in fishing. Of course I have no positive knowledge in regard to the boundary line, it was only what I heard, that this is the Louisiana marsh, and that it is the channel that is generally regarded as the line.

Q. I wish you would please tell us, if you can, exactly, and if you cannot exactly, approximately, as best you may, the distance from the junction of the eastern mouth of Pearl river with Lake Borgne, around the coast to the Sabine river.

A. To the Sabine river?

Q. Yes.

A. I do not know, I have no idea.

Q. Can you tell us about what the distance is from the
991 mouth of Pearl river to Malheureux point?

A. No sir; most of my distances go straight across the lake.

Q. Yes, I understand that it is important for me to get the others if I can. Can you say whether the deep water sailing line, or the deep water channel, which it is some times termed, is nearer the marshes than it is — the Mississippi shore?

A. It varies there; I should not think that going through Cat Island pass, it is probably more than three quarters of a mile at the outside between the southern end of Goose point and the north end of Isle àPitre, and this channel passes right in between Cat Island pass.

Q. Did you ever notice how near that channel passes St. Joe?
A. St. Joe is wiped off the map.
Q. Where it used to be there was a light-house on St. Joe?
A. Yes sir.
Q. The light-house is north of the channel, the St. Joe light-house.
A. Yes sir.
Q. Do you know an island that is called Half Moon, now, I believe; before that, I believe it was called Grand island?
A. You mean Half Moon island?
Q. Yes?
A. Yes, I know Half Moon island.
Q. Which side of that channel is it on?
A. I would have to look at that map; it is on the south side, of course, of that island.

By Mr. DYMOND:

Q. This is the shore line. Here is your St. Joe beacon. Here is your channel here?
A. Yes sir.

Cross-examination.

By Mr. CLURG:

Q. Did you ever hear what you call the Louisiana marsh called Grand marsh by anybody?
A. No sir, I have not. They wash away there and change so much by every storm, it is hard to refer right away to a point.
Q. You have never heard any discussion prior to the institution of this suit, or within a year before the bringing of this suit, on the 27th day of October, 1902, as to where the line was between these two States in the waters down there?
A. Yes sir, I think I have.
Q. A discussion of the kind?
A. Yes sir.
Q. By whom?
A. By a number of these men handling oysters; I know quite a number of them, and I think the question first arose in regard to dredging; they used some dredges for a while in shallow water, and that was knocked out by Mississippi, and they claimed they could dredge in Louisiana waters, and they came over in Louisiana waters and dredged there.
Q. Do you know whether the Mississippians undertook to prevent dredging south of that channel?
A. Not to my knowledge; this is only hearsay, as I say, from these oystermen, whom I know, quite a number of them.
992 Q. You would not undertake to deny that the Mississippi Oyster Commission have patrolled Creole gap, Grand pass, Sundown island, in that county?
A. No sir, I have no idea about that. I have seen the boats out

here, and been sailing there with them, up with them, but did not know what they were doing.

Q. These buoys indicate——

A. Indicate the channel, and it is southeast of Pass Marianne light.

Q. Buoyed by the Federal Government?

A. I think so.

Q. For navigation, and commercial purposes, rather than any effort to indicate the line?

A. I suppose for navigation; I do not know.

Redirect examination by Mr. DYMOND:

Q. Will you please look at this map, No. 59, and as — was stated by General McClurg that Half Moon island was sometimes called Grand island, you will please look on the map and state whether you can find Grand island on that map?

A. There is Grand island, here.

Q. You have found it?

A. Yes sir.

Q. On which side, north or south of the deep water channel is that island?

A. Grand island?

Q. Yes.

A. As to the deep water channel?

Q. Yes.

A. It is north of it.

Q. Do you see the deep water channel on the map?

A. Yes sir, right here.

Q. Well, which direction do you consider to be north?

A. Why, from this side, right direct; the channel is north of Grand island.

Q. And the island is south of it?

A. You asked me which side of that channel it was; the channel is north of the island, and the island is south of the channel. You asked me a while ago——

Q. You were asked a while ago and you denied having any knowledge of any patrol or control of the waters of Grand pass or Isle à Pitre by Mississippians; do you know whether the Mississippians did have a patrol boat in the control or patrol of their oyster industry?

A. I do not.

Recross-examination.

By Mr. MCCLURG:

Q. Do you know whether they had an oyster inspector or not?

A. I do not know. I only heard those points were all in dispute between the two States.

993 ALEXANDER BREWSTER, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?
A. I am 72.
Q. Where do you reside?
A. I reside at 1415 Esplanade street, New Orleans.
Q. Are you familiar with the territory lying between Isle à Pitre and Malheureux point?
A. I cannot say that I am familiar with the interior; I have not been there more than three or four times in my life. I have been in Chandeleur sound and Cat Island pass. I am familiar with them.
Q. You say you have never been in the interior——
A. What I mean to say is I never went in through the marshes in those bayous and bays, but I have always confined myself to the Chandeleur sound and Cat Island pass.
Q. Are you familiar with the coast line between Isle à Pitre and Malheureux point?
A. Yes sir.
Q. How long have you been familiar with that?
A. About 1855 or 1853.
Q. Since 1853?
A. Yes sir.
Q. You have been commodore of the Southern Yacht Club for some time?
A. Past commodore.
Q. You have yachted and sailed in those waters?
A. Yes sir.
Q. Do you know what that territory lying between Isle à Pitre and Malheureux point is commonly called by Louisianians and Mississippians, so far as you know?
A. The Louisiana marsh.
Q. Have you ever heard it called by any other name?
A. Not until the—after the oysters got scarce in Mississippi.
Q. When did they first commence to call it——
A. I heard them say that the Mississippi government had some claim on it about ten or twelve years ago.
Q. Are you familiar with the deep water channel running from the mouth of East Pearl river and down between Cat island and Isle à Pitre?
A. I went through that channel pretty often.
Q. Have you ever heard the boundary line between Louisiana and Mississippi discussed in relation to the bearing of that channel?
A. Not after you left East Pearl river; everybody that I ever heard it discussed by said that all belonged to Louisiana.
Q. All what? All south of that channel?

A. Yes sir.

Q. You have had conversations with Louisianians and Mississippians on the subject?

A. Many times, speaking of the deep water channel.

Q. You mean the channel that goes out from East Pearl river and runs down to the southeast between Cat island and Isle à Pitre?

A. Yes sir.

Cross-examination.

By Mr. McCLURG:

Q. When did you first hear that discussed, Captain?

A. About 8 or 10 years ago, I think.

Q. Do you remember any of the participants in the discussion; the names of any of the gentlemen you heard discuss it?

A. No sir, I do not; they were all oystermen, though.

Q. Do you remember what provoked the discussion?

A. By some people in Louisiana stating that they came over to take the oysters, the Louisiana oysters; that is all.

Q. How long has that been since you were in that country?

A. Since I was in it?

Q. Yes.

A. I guess over ten or 12 years ago.

Q. You heard no controversy as to the State boundary?

A. No sir.

Q. You spoke of when the oysters began to get scarce in Mississippi?

A. Yes sir.

Q. Is that about 10 or 12 years ago?

A. That is the time I heard this discussion. I do not know whether the oysters got scarce or not; I am not interested in oysters.

Q. Do you know what portion of Mississippi they began to get scarce?

A. I know there was none on the Pass Christian reef. I understood that East Pascagoula had none; I understood that they got them all from Grand pass.

Q. Not having been there for 10 or 12 years, you would not be able to contradict the statement that they are more plentiful there now than they were then?

A. Possibly they are, only through transplanting, because the schooners, the last time I was down there, there were schooners getting plants south of Point Chico.

Q. What schooners, Mississippi schooners?

A. Yes sir.

Q. They fished in the neighborhood of Point Chico on up to Isle Pitre, did they not, then?

A. Yes sir, even south of Point Chico, Mitchell's point, and along that way.

Q. Especially about Grand pass and Sundown island?
A. I do not think there were many at Grand pass; I do not thin
they left many there.
Q. Do you know where Karako bay is?
A. I cannot say.
Q. You are not familiar with the inland of the marshes?
A. I have only been in there three or four times; then it was o
business during the war.
Q. To what points did you go then?
A. I went through Nine Mile bayou.
Q. Did you go through Nine Mile bayou?
995 A. Yes sir.
Q. To what place?
A. Through Nine Mile bayou to old man Teel's place on Lak
Borgne.
Q. You went from the northern mouth of Nine Mile bayou?
A. Well, I went from Biloxi; I started from Biloxi.
Q. Your next trip in there?
A. The next trip, I went to some other portions inside; that is,
went in Three Mile bayou, and I came out at Point Chico, and the
went inside Point Mitchell—they used to call it that, I think, the
came into the River Aux Chien, back of Pointe à la Hache.
Q. What did you use for transportation through there?
A. A sailboat.
Q. What draft was it?
A. About two and a half feet.

Redirect examination.

By Mr. DYMOND:

Q. You spoke of Point Chico. Do you know how far south Poin
Chico is from the main land or shore of Mississippi in mile
roughly?
A. Well, roughly it is considered nine miles to Cat island, is i
not? from the main land?
Q. Yes.
A. Then 15 miles is what I always considered Point Chico.
Q. Then was, or was not Point Chico more than 18 miles fro
the Mississippi coast?
A. I wouldn't like to walk it for 18 miles on a warm day.
Q. You think it is more than 18 miles?
A. Yes sir.
Q. Then it was not in the territory in dispute in this case if th
contention is confined to 18 miles from the Mississippi coast?
A. No sir.
Q. And you say Mississippians fished there some years ago?
A. Yes sir.
Q. When you speak of getting plants south of Point Chico, d

you or not refer to a better grade of oyster which cannot be gotten from Mississippi sound?

A. Well, I suppose they picked out the best they could get.

Q. Was I correct in understanding you to use the words plants?

A. Yes sir.

Q. Is that a better grade of oyster?

A. I know very little about the oyster business.

Q. How did you happen to use the word plants?

A. Because they told me they were for plants, they told me they plant oysters. They went there and got them in the summer time and they were to plant oysters for the winter, that was the time they were getting them in the summer time, I met some of them then.

Q. Where were they to be planted?

A. I think the men said it was to plant them outside Deer island.

Q. In Mississippi?

A. Yes sir, south of Biloxi.

996 Recross-examination.

By Mr. McClurg:

Q. How far is Point Chico east of the high tide mark on the Louisiana main land?

A. Well, now, when you come to talk about high tides, you have got me.

Q. Do you know where the high tide mark is on the Louisiana main land?

A. I don't know that anybody else knows, there is only a raise and fall of about 18 inches.

Q. Most of that marsh territory down there is inundated by the high tide?

A. Yes sir and by the eastern gales of wind.

Q. What I wanted to ask you was this, if you knew where the high tide mark was on the Louisiana main land, about?

A. You will have to start—you see that is a very long marsh and I told you I was not familiar with the marsh in particular. Now I am less familiar with the main shore because I don't know where it commences?

Q. You have never been along the main shore line?

A. I suppose that is a continuous marsh, some places it is cut up into bayous, bays and lagoons.

Q. I want to find the point where the bayous and bays and lakes and lagoons of the marsh stop and the solid unbroken land of Louisiana begins?

A. I can't inform you.

EMILE J. O'BRIEN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. What is your name?
A. Emile J. O'Brien.
Q. Where do you reside?
A. I live in New Orleans.
Q. How long have you been residing here.
A. 61 years and 11 months.
Q. That is your present age?
A. Yes sir.
Q. What is your occupation or business?
A. Just now, nothing.
Q. What were you formerly engaged in?
A. In the cotton press business.
Q. You have been an officer of some yacht association?
A. Yes sir, I was commodore of the Southern Yacht Club for eight years.

Q. What is the Southern Yacht Club?
997 A. The Southern Yacht Club, it is an association for yacht racing and cruising etc.
Q. Composed of what members, from where?
A. All over the city and elsewhere. We have members from all round Memphis and everywhere else, we have 800 members.
Q. Have you any members from Mississippi?
A. Yes sir.
Q. How many do you think?
A. I don't know; I couldn't tell you that, but I know we have some. Dr. Robinson at the pass is one, because I had him elected a year ago and Mr. Parker is a member.
Q. Is that the principal yacht club in the South?
A. Yes sir.
Q. Are you familiar with the territory running from Isle à Pitre to Malheureux point?
A. Yes sir, all that territory, I have cruised around there I don't know how many times, ever since I was a little boy.
Q. About what age did you commence?
A. About 10 or 12 years I used to go cruising around.
Q. And you have continued how long?
A. Well, up until the last two years. I have not been out much in the last two years. I have been going to all these regattas instead of cruising.
Q. What is the name by which that territory has been known by Mississippians and Louisianians?
A. You know, of course, I am almost as much a Mississippian as I am a Louisianian, because we have lived at Bay St. Louis in the

house my brother lives in now, it is the old homestead my father built 60 years ago and we still reside there, but I can't remember very well that far back, but I guess I can remember about 45 or 50 years back.

Q. What has this territory which I have just spoken of and which you have just testified about been known as amongst Mississippians and Louisianians?

A. It has been known by everybody as either the Louisiana shore or the Louisiana marsh.

Q. Did you ever hear it called by any other name?

A. No sir.

Q. You say, did I understand you correctly, you say you pass every summer at Bay St. Louis?

A. I missed nine summers there, five years nearly when I was at college and from college I went to the war, so I was absent about nine years.

Q. With that exception you have been a summer resident there?

A. Yes sir; every summer.

Q. Did you ever hear this territory called by any other name by anybody?

A. No sir.

Q. Have you had frequent intercourse with Mississippians, oystermen, fishermen etc.?

A. Yes sir; I know a great many of them there.

Q. Have you heard them call this territory by any other name than the Louisiana marshes?

A. No sir; until recently.

Q. What do you mean by recently?

A. Within the last five or six years, until this commission that Mississippi got up, the oyster commission.

Q. Do you know the deep water channel that runs out of the mouth of East Pearl river down first eastwardly and then southeastwardly between Cat island and Isle à Pitre?

998 A. Yes sir, I have been through there hundreds of times. There are two channels, what we call the deep water channel and a shallower channel. If you follow the Louisiana shore out the Isle à Pitre channel about four miles and go right along the whole coast you will see it is buoyed out; the deep water channel comes up more to the eastward and then goes out Cat Island pass.

Q. Have you ever heard that channel spoken of as being the boundary between the State of Louisiana and the State of Mississippi?

A. We have discussed it; we did not know anything about it, but we always considered, after leaving East Pearl river and following along St. Joe channel, the islands to our port or left, Grassy island; and Half Moon island, and the territory south, we always considered in Louisiana. I don't think there was any question about that, I never heard that questioned and we have discussed it hundreds of times.

Q. With whom have you discussed it, with Louisianians, sippians or who?

A. Louisianians, and Mississippians both. Every time we cruising we had a different crowd on the boat; unfortunately all of them are dead. I feel a little lonesome now——

Q. Could you mention who were the Mississippians with you have discussed this boundary line?

A. Well, really I couldn't tell whether they were Mississip or not. I have discussed it with so many of them that I could remember exactly who they all were; they were mostly Lou ians of course.

Q. And you say you never heard any question raised about boundary line until the last four or five years?

A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. If I understand you correctly, in sailing along there you would just say this is Louisiana on this side and that is Mississippi that side?

A. Yes sir, that is the dividing channel. Leaving East Pe river there is a channel that goes right out; in fact, it is buoyed by the Government, the deep water channel and the shallow ch nel as I told you that goes right along by Grand pass and goes Isle à Pitre until you strike Cat Island pass.

Q. Those cursory discussions about this side being Louisiana a that [illegible] being Mississippi and this being the deep water channe that [illegible] reference at all to what the Constitution or acts of Co gress or the acts of these two States designated as the boundary b twee[illegible] the two States did it?

A. No sir; it was just general, we knew that East Pearl river wa the dividing line between Louisiana and Mississippi and naturall concluded that the deep water channel would make the balance o the line.

Q. That was just a natural conclusion and not a legal deduction?

A. Yes sir, we were not studying up the subject at all.

1909 Q. And you knew, I suppose, that if the law fixed it somewhere else, this general idea was not worth much?

A. Well, we were not naturally law breakers so of course we would have respected the law.

Q. How many islands are between Malheureux point and the northeastern end of Isle à Pitre?

A. You mean those shell banks?

Q. I mean where the land protrudes above the water?

A. I don't know.

Q. There are a great many?

A. Yes sir. There are a line of islands—I would not call them islands though, they are shell banks.

Q. Well, there are a string of those shell banks or whatever you might call them, that do protrude above the water?
A. Yes sir, they are all along that coast, north of Isle à Pitre, except where those channels are, it is all shell banks.
Q. Grassy island is north of Isle à Pitre?
A. Well, not exactly north, it is kind of north.
Q. You have referred to those islands——
A. I mean those shell banks; there are no islands there because they are just little shell banks.
Q. Between Isle à Pitre and Malheureux point?
A. In there are all shell banks, there are really no islands, they are all shell banks, outside of them is where you get the oysters, on the edges of them.
Q. You know where Nine Mile bayou is?
A. Yes sir.
Q. Have you ever gone down through that from the——
A. No sir; I have fished at the mouth.
Q. Never have been through it?
A. No sir.
Q. You have never been through Three Mile bayou?
A. No sir; I have fished along the mouth.
Q. Ever been through Johnson's bayou?
A. I have been down there fishing.
Q. You have not been through it?
A. No sir, only a half a mile.
Q. Ever been through Turkey bayou?
A. I don't know all the names of those bayous.
Q. You know where Grand pass is?
A. Yes sir.
Q. Ever been through that?
A. Only once.
Q. When?
A. 10 or 12 years ago.
Q. How did you go through it?
A. I went right through.
Q. In what?
A. In our boat, in a sloop.
Q. How much water did she draw?
A. Two feet and a half.
Q. Did you ever go through Creole gap?
A. I believe I have, I don't remember.
Q. You know where it is?
A. Yes sir.
Q. Do you know where Sundown island is?
A. No sir.
Q. You spoke a while ago about having conversations with fishermen from these two States. Is it not true that up to within the last few years, when Louisiana and Mississippi created their oyster commissions and began to give this territory some special attention

1000 that before that time Louisianians, Mississippians and Alabamians and everybody else fished anywhere they wanted to through all that country?

A. Yes, sir; however, there was never any discussions until they organized all those canneries in Biloxi and when the oysters got scarce in there, then they came up along the keys up there where Isle à Pitre is, over along there, then they commenced to dispute and there was some talk whether that was Louisiana or Mississippi.

Q. When was that?

A. That was before the commissions were even organized.

Q. How long?

A. When the oyster canneries were organized. When were they organized.

Q. I think about 1882 probably?

A. It was about 1882. They dredged all the oysters out and it was only when they got those dredge boats and cleaned out everything on the other side then they commenced to dredge in there.

Q. You are speaking from information?

A. From what I saw.

Q. Do you mean to say that you saw they had fished all the oysters out of there?

A. Nearly all, they got so scarce they were not worth fishing for any more over there.

Q. Don't you know, as a matter of fact, that they have increased in there ever since they have been fishing and dredging?

A. I don't know that.

Q. That year after year there are more oysters, the oysters have been increasing instead of decreasing?

A. I don't know that to be a fact.

Q. And there are more oysters there now than before the canneries were put there?

A. I don't know. I have not had any experience in it.

Q. The reason I ask you that question is I wanted to be sure whether you were speaking from your own personal knowledge as to the destruction of the oysters. I am sure you were not because I believe it is a mistake?

A. There is no doubt they have worked the banks pretty hard but they have formed other banks. The oystermen from Bay St. Louis come in there and sell oysters to the cannery; there is no doubt where they have killed oysters as they came along they have created new banks and those banks have been found out and been cleaned out and commenced over again. There was never any oysters at St. Joe island until a few years ago; those oyster banks have formed there, there were large banks along there but those were all cleaned out because it was so handy, but they don't go there any more, I suppose they are all gone. That I know from seeing it.

Q. They were all drowned out by a crevasse in the Mississippi River levees a few years ago?

A. That affected them some, but I don't think that was what broke those banks up.

Q. Are you prepared to say that those fishermen, Mississippians, or Louisianians or Alabamians or whoever they might have been went farther out because the oysters were scarce, rather than because their trade was increasing and they undertook to cover a broader territory?

A. I heard the Biloxi fishermen at the canneries say that was the reason they went out there, because there were more oysters out there and easier caught and tonged, that was before they got
1001 their dredges; I have heard them say so right in Biloxi.

Q. What cannery did you hear say so?

A. I don't know which one; I know there are several of them there now.

Q. There are not many there?

A. Gordon, Dunbars and all of them told me. I know nearly all of them.

Q. Do you undertake to say they went out there because of the scarcity of the oysters in the alleged territory rather than because of the increase of trade and the building up of new canneries, putting in more boats and employing more people.

A. No doubt of the scarcity of the oysters there; they certainly wouldn't make a haul of 20 miles when they could make a haul of five miles; that is business.

Q. If they had a bigger trade that demanded more oysters——

A. If they could get all they wanted at five miles they certainly wouldn't go 20 miles to get them.

Q. They might get all they wanted for a small trade but wanted more for a bigger trade.

Q. They could get them just as well for a larger trade if the oysters were there at five miles.

Q. The best oysters for the raw trade are in the marshes?

A. Yes sir.

Q. How long has Louisiana been taking oysters down there?

A. Always as far as I can remember.

Q. On both sides of the channel north and south?

A. Yes sir.

Q. And on out east of Cat island?

A. Up to several years ago there were no restrictions on anybody, as I told you, there was no dispute, they went where they pleased, they came from Alabama, Mississippi, or anywhere.

Q. So the Louisianians had some hand in depleting the supply?

A. I don't know about that.

Q. If they got any at all they did; up in that country where you say the Mississippians went south and east?

A. No doubt about that.

Q. The Louisianians went south and east?

A. No sir; I don't think they went any further than they could

get the shortest haul, as I tell you they went to the nearest pla they could find them and that was along the Louisiana shore.

Q. Do you know where the high tide mark strikes the main lan of Louisiana south of Malheureux point?

A. No sir, I couldn't tell you that.

Q. Most of these islands that we have been speaking of are inun dated by the high tide?

A. More or less.

Q. What I want you to give me if you can, is a mark where th high tide stops on the Louisiana soil?

A. I don't think I could do that. The tide is not much any how; it rises only about a foot and a half or two feet at the most.

Q. There is a tide?

A. Yes sir.

Q. And there is a place where it stops and goes back?

A. Yes sir.

Q. Very well, that is the mark I want you to tell me if you can?

A. You know right along Isle à Pitre and right straight along Grassy island and Half Moon island you will find banks
1002 along there with weeds on them and the sea in ordinary tide never goes over them, they are made of black clay mud. But of course, in extraordinary weather the sea goes over the whole place.

Q. Does Malheureux point go under at mean tide?

A. I couldn't tell you; I never noticed it particularly. But as usual, not in places but all over it you can see where it is marked.

Q. Is it not true, according to your best knowledge of that country that that high tide does not flow far westward of Nine Mile bayou?

A. I have never been back in there.

THOMAS T. BARR, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. How old are you?

A. I am 30 years old.

Q. Where do you reside?

A. I reside in New Orleans.

Q. What business are you engaged in?

A. Manufacturers' agent.

Q. How long have you resided in New Orleans?

A. Well, approximately, I think about five years, prior to which time I was a voter in Mississippi.

Q. At what place?

A. In Waveland.

Q. How long did you live in Waveland?

A. I guess about 12 or 15 years—that was about six months during the summer; the balance of the time I would spend in New Orleans.

Q. Mr. Barr, where is Waveland?

A. Immediately adjoining Bay St. Louis.

Q. That is, in the State of Mississippi?

A. Yes sir.

Q. What county is that in?

A. It is in Hancock county.

Q. Do you know that territory running from Isle à Pitre to Malheureux point?

A. Well, I have been to Isle à Pitre but I have never been to Malheureux point.

Q. Do you know what that territory has been commonly called by the people living along the Mississippi shore?

A. Well, it has been called the Louisiana marsh.

Q. Did you ever hear it called during your twelve years' residence in Mississippi—I think you said you lived there twelve years?

A. Yes sir.

Q. Called by any other name?

A. No sir.

Q. You have mixed with fishermen and all classes of population in Mississippi.

A. Yes sir.

Q. Do you know where the deep water channel is, leading out of the East Pearl river?

A. No sir, I never have made any particular observation of that.

Q. Have you ever heard the matter of the boundary line
1003 between Louisiana and Mississippi discussed?

A. No, I have not, except as a general understanding that Pearl river was the boundary between Louisiana and Mississippi.

Q. Did you ever hear the deep water channel out of Pearl river running down between Cat Island and Isle à Pitre——

A. Yes sir, I always understood, just in a general way, that was the boundary.

Q. You say you have so understood it; have you ever heard people speak of it in that way?

A. Yes sir, as a general thing along that course it was a sort of understood thing that that was the boundary.

Cross-examination by Mr. McCLURG:

Q. That sort of understood thing you speak of along the coast over there had no reference as to where the law fixed the line?

A. No sir, it was a matter of common consent, as I understood the thing.

Q. As you understood it?

A. Yes sir, it was a generally accepted thing.

Q. Well, a good many people of Harrison, Jackson, and Hancock counties; sheriffs, mayors, and other officers and men who have lived there, say it has been generally accepted as being Mississippi down there, eighteen miles from shore, because the law fixes it that way?

A. I do not know.

Q. You do not mean to say that it is a universal thing over there——

A. Going a little more into particularizing, last July a year ago, I made a little cruise along the Mississippi coast; took in Grand island, Round island and Grant pass. We were on a little schooner known as the "Ramsey Brothers," and while on the boat the men handling the boat, three boys from Biloxi, one of them named Albert George, one named Gaines—I cannot remember his first name—and the other named Albert; I think that was about the latter part of July——

Q. 1903?

A. Yes, sir, and we talked about that; and whenever we talked about the marsh and the fishing they would always state that was a Louisiana marsh, that shore immediately south of Cat island.

Q. And that is the source of your information on that subject?

A. No, as a general thing whenever we got any mosquitoes the Louisiana marshes would get the credit for it. Now these men that I refer to were oyster fishermen; one of them owned the boat; this fellow named Albert,—I have forgotten his last name—and the other two, fished all during the winter, and were making preparations to fish during the coming summer.

Q. Do you know whether the oyster commission of the two States had drawn an amicable line, a neutral line, before that time which they proposed to stand as the dividing line until this suit had been settled?

A. I believe I had heard something of that sort, but just where I do not remember.

Q. This conversation you had with those boys had it any reference to that line they had agreed to?

A. No sir, just the term applied in discussing some particular spot.

Q. You never heard anything said about six leagues or three leagues from either shore? No leagues were discussed?

A. No sir; those men that were on that boat would hardly understand the definition of leagues; they would not use that in their language.

1004 Q. So leagues were not discussed there—were not discussed at all?

A. No sir; that was beyond their comprehension; it was not in their vocabulary.

ERNEST J. BELLOCQ, witness, recalled on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Will you please look at this map entitled "Hardee's geographical, historical and statistical official map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas from recent surveys and investigations and officially compiled under authority from the State legislature by T. S. Hardee, State engineer; approved under an act of the legislature, signed Benjamin G. Humphreys, governor, A. D. 1868" and state whether you were given that map by the counsel for the State of Louisiana with the request that you photograph it. The map is stamped "Library of Congress, maps and charts."

A. Yes sir.

Q. Are you able, Mr. Bellocq, to cause the whole of said map to be photographed?

A. No sir, I could not have the whole of it photographed—only a portion of it.

Q. For what reason were you prevented from photographing the whole of it? Was it lack of facilities?

A. Yes sir, lack of facilities.

Q. Will you please look at this photograph, which for purposes of identification will be called map No. 64, and state whether you caused it to be made of that portion of this map of Hardee's designated to you by counsel for the State of Louisiana, as being the area in dispute in this case?

A. Yes sir.

Q. Is it a true and correct photograph eliminating the differences in color of the Hardee map, as to the section photographed?

A. Yes, sir, it is the same thing, except the colors do not show.

Q. Now, Mr. Bellocq, why was it that you could not make a photograph of the whole map?

A. Well, I am not the one that makes photographs; I am the one that does the printing. They have to have the negative first and I do the printing. Now the one that takes the negative told me he did not have the distance in order to photograph the map. They have to get a certain distance to get it all in.

Q. What was there peculiar about that map that made that difficult. Was it too large or too small?

A. No, you could not get far enough away to get it all in.

Q. Did the size of the map have anything to do with that?

A. Yes sir.

Q. What feature of the size of the map?

A. It was too high in order to get the whole thing in.

1005 Cross-examination by Mr. McCLURG:

Q. You know nothing at all about the history of the legisl under which this map was made?

A. No sir, I do not know anything about the histories o maps.

Q. You know nothing about this map except what appears face?

A. That is all. A negative was made; I took the print off the negative.

Adjournment of Proceedings.

At this stage of the proceedings, the hearing was adjourne the commissioner, to be resumed at 11 o'clock September 6, 19 the same place.

Resumption of Proceedings.

NEW ORLEANS, LA., September 6, 19

Pursuant to adjournment the hearing was this day resum 11 o'clock at the same place.

Present: Hon. W. D. Bullard, commissioner.
Hon. Walter Guion, attorney general, State of L ana.
Messrs. John Dymond, Jr., and F. C. Zacharie, ass counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the St Mississippi.

Col. CHAS. EDWARD HOOKER, witness, sworn and examin behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. Where do you reside?

A. Jackson, Miss.

Q. What is your age?

A. Well, I am getting so old that I have absolutely forgotte old I am, but I think I can acknowledge up to 70, 72, or 73.

Q. Have you held any official position in the State of Missis

A. Yes, I was elected attorney general when Governor Hump was elected governor of Mississippi. I held one term and h one term——

Q. Can you mention the date you were elected? Was it 1 1866?

A. I think it was 1865.

Q. Then?

A. Governor Humphreys was re-elected governor, and I v elected attorney general at the expiration of our first terms.

Q. When was that, what year about, your second election?

A. That was two years after our first election; the elections then were bi-annually.

Q. What other offices have you held, if any?

A. Well, I have been Representative of the congressional district in which I lived, being first elected in November, 1875, and
1006 constantly re-elected with the exception of four years when Major Barksdale was Representative, and with the exception of six years when I was out of Congress, and up to the 57th Congress, which was the last Congress I served in.

Q. Cannot you give the date so as to show the number of years——

A. In all I was about twenty years in Congress; just twenty years in Congress.

Q. Have you held any other official position?

A. In my army days, a long time ago, I was district attorney of my district in Mississippi, stretching from the Tennessee line down to Vicksburg, and going out to include Hinds county and the capital.

Q. Did you know Col. T. S. Hardee?

A. Very well.

Q. When did you first know him?

A. I knew Col. Hardee before the war, some years. I do not remember how many, probably eight or ten. I knew him during the war, and I knew him since the war.

Q. What position did he occupy, and in what army?

A. He was, when I knew him, in the army; he was the aid of his uncle, Col. Jeff Hardee.

Q. Was he an aid or an engineer officer?

A. I think he was an engineer officer.

Q. Did you know him after the war?

A. Yes sir.

Q. Where did he reside when you knew him after the war?

A. New Orleans.

Q. Where did he reside before the war when you knew him?

A. I t ink he resided part of the time in Mississippi before the war; after his marriage he resided in this city for some time. I was at his house on several occasions while he lived here.

Q. You mean, that is, since the civil war?

A. Yes sir.

Q. Do you know his character and reputation as an engineer?

A. Yes sir.

Q. How was it?

A. Well, I wish to say that I knew him before the war; I knew him during the war, and no man in Mississippi or Louisiana bore a higher character, socially and professionally, than Col. Sid. Hardee.

Q. Do you think from what you know of his character that he would be a man capable of entering into a corrupt job to procure money from the treasury of the State of Mississippi?

A. I should say emphatically not.

Q. Do you know what his general reputation in that regard would be?

A. One who is honorable and generally well esteemed so in
sissippi and Louisiana.

Mr. McCLURG: Mississippi is not assailing the character or
tation of Col. Hardee, and insists that this testimony is in
petent.

Q. Did you know Governor Alcorn, of Mississippi?
A. Very well, both before he was elected governor, before
after the war.

1007 Q. Was Governor Alcorn's reputation or character as
governor of Mississippi that he would approve or take
in a corrupt raid on the treasury of Mississippi?
A. I should say not.

OBJECTION.—By Mr. McCLURG: The same objection is now m
because the record will not disclose a single attack upon the
sonal character of Governor Alcorn.

Q. Do you now have any recollection of the preparation of
map of Mississippi gotten up by Col. Hardee in 1866, 1867,
1868?

A. I have not.

Q. Did you, at any time, have any connection with any litigati
in regard to that map?

A. I was employed by Governor Hardee to institute a suit again
the auditor of public accounts for Col. Hardee somewhere as eng
neer for a certain given time, probably a month, and that suit w
revived in the name of the auditor of public accounts' successor th
now lives in Jackson, both Republican auditors during the Repub
lican regime in Mississippi. I brought the suit for him to compe
the auditor to issue him a warrant for his salary.

By Mr. McCLURG: Was that the mandamus case, Colonel?
A. Yes sir.

By Mr. ZACHARIE: What was the result of that suit?
A. I would not be able to tell you from memory. I think may
be I was called away from Mississippi before it was finally de-
cided.

By Mr. McCLURG: That is the case that is reported in Missis-
sippi's official reports?
A. Yes sir, I think it was finally dismissed. I do not remember.

By Mr. ZACHARIE: That suit has no direct connection with the
map?

A. Not at all; it was simply this salary as engineer.

Q. Did you ever hear any complaint or objection made to the
map prepared by Col. Hardee of the State of Mississippi in regard
to incorrectness, fault or error, prior to the institution of this suit?
A. I never did.

Q. How was that map generally regarded in the State of Missis-
sippi?

A. I do not know; I cannot say how that map was generally re-

garded; but I can only say that the high character of Col. Hardee as an engineer was such that any map he would make would receive the approval of the people of Mississippi generally.

Q. Was Governor Humphreys a man of such a character that he would approve any map of the kind without a critical examination of it?

A. No sir, he was not.

1008 Cross-examination by Mr. McCLURG:

Q. I understand, Colonel, that the purport of this testimony which you have given expresses your opinion as to Col. Hardee and his map?

A. It refers to the opinion which I think was entertained generally in Mississippi by the people of Mississippi as to the Colonel in his professional capacity, and as to his work in that profession.

Q. It is your individual opinion as to what the general opinion of the people of Mississippi was?

A. Yes sir.

Q. You do not undertake to say that you have ever examined either one of Col. Hardee's maps?

A. I have not.

Q. He made one in 1868, or it was published in 1868, and there is one made in 1871?

A. Yes sir.

Q. You have not examined any one of them?

A. Only casually; I never had occasion to examine them.

Q. Now those maps pretended to be not only a map of the State of Mississippi, but including parts of Louisiana and of Tennessee, I believe, and Alabama, is it your opinion, since we are in the line of opinions, that Col. Hardee made these surveys, or did he take it up from other maps and historical data?

A. I think not; I think he made it himself.

Q. You think he made the actual surveys himself?

A. Yes sir.

Q. Do you undertake to say Colonel, that it is your opinion that Colonel Hardee took his compass and made these surveys?

A. He might have had others associated with him to assist him, for all I know.

Q. Can you tell us whether or not Col. Hardee undertook to locate the boundary between Louisiana and Mississippi on his map?

A. I understood from a casual survey of the map that he did undertake to do it.

Q. Where did he fix it?

A. I do not know; I cannot tell you.

Q. Have you examined the act of Congress admitting Louisiana into the Union, and the act of Congress admitting Mississippi into the Union?

A. Many years ago, but not recently.

Q. I asked you that question to get your opinion upon the p
sition whether a geographer could map either State out of its
tory, or whether a cartographer could paint either State out
territory, or whether the storms could wash either State out
territory, or whether the musk-rats could eat either State out
territory, or whether the winds could blow either State out
territory, or whether the mosquitoes could drive either State
its territory; or whether any State could be deprived of any p
its territory, except by the acts of the legislators of those States,
the consent of Congress. Is not that the only way a State coul
deprived of its territory?

A. I do not think that either the State of Mississippi or the
of Louisiana could legislate any of its territory assigned to it by
acts of admission in 1817 admitting Mississippi, and 181
1099 mitting Louisiana,—I do not think that either State coul
deprived of its boundary according to the acts of Cong
and according to the surveys made under those acts.

Q. Then *is* it does not matter how high the personal chara
and integrity, and how great his official capacity was, Col. Har
could not map Mississippi out of her territory, given her by
Federal Congress?

A. No sir; I do not think that he would ever have attempted
do it.

Q. He was not a lawyer?

A. No sir, he was a surveyor. He was originally connected w
the surveying of this road to Jackson.

Q. I have no doubt he was an accurate surveyor and a corr
man, generally?

A. He made a preliminary survey of that route when a committ
came from Jackson to New Orleans to suggest to the bankers a
business men of Louisiana to build a road from New Orleans
Jackson. The business men here said, particularly Mr. Cason, wh
lived above here, "What are you going to do with the trembli
prairie? You may drive a pile down eighty feet and you will b
no nearer the bottom than when you started;" and the enginee
came along there, cribbed the timber like you were building a hous
and built the road all right; and now that is the best part of th
road, and Col. Hardee was one of the engineers of that road. I d
not think that he would ever have attempted to change the boundary
of either State.

Q. You have been in public life for forty years or more, and i
national politics nearly that long, especially since the war?

A. Yes sir.

Q. And Mississippi is very proud of you, too?

A. Thank you for saying so.

Q. And none more so than I am.

A. Thank you.

Q. Now listen; speaking from your general knowledge of national
politics, and I know you must be familiar with the history of this

country, and especially the South, and more of Mississippi, and incidentally of Louisiana—Mississippi, in her answer and cross bill, submits to the Supreme Court of the United States this proposition, that in framing these States out of the original territory, you understand that the purpose of Congress was to give each State a sea frontage, and substantially, when she had created Louisiana from the mouth of the Pearl river around the mouth of the Mississippi to the Sabine, about 500 miles, with a 3-league reach to her front, giving her all the islands within that limit, which I understand to mean by saying "including islands" not words of limitation, but to be sure she would get the land as well as the water; the water in that connection being general league measures, and lands in townships and ranges, that Congress must have had an eye to the balance of the Mississippi territory to the eastward, and never intended to have given to Louisiana this 500 mile reach around her front, and then let her run around to the east, and to deprive the Mississippi territory, then clamoring for admission into the Union, of her water frontage. What do you think of that proposition?

A. I do not think that the Government of the United States gave Louisiana more sea front by the three leagues than she would probably be entitled to as a State admitted into the Union, and I understand that the league front on the Mississippi shore, is larger than that. Am I right about that?

Q. Six leagues.

A. I think the idea was to give Mississippi six leagues in front of her territory, and Louisiana three leagues in front of hers, and the State boundary between them would not be governed by the fact that there were less leagues granted to Louisiana than to Mississippi. In other words they would take the territory of Mississippi, and the territory of Louisiana on the main land and run it out into the sea, and whatever fell to Louisiana the three leagues would be hers and whatever fell to Mississippi, the six leagues would be hers.

Q. As I stated to you, Louisiana has a sea frontage of about 500 miles from the mouth of Pearl river, around the passes at the mouths of the Mississippi, to the Sabine river. She claims about 1200 miles of land frontage, including the bays and the like of that. Mississippi has about seventy miles of frontage. Now then, do not lose my connection. In addition to this 500 miles, approximately, that Louisiana has, her contention now is that when you go out of the mouth of Pearl river you follow a deep water channel—it is marked on the Government map as a sailing channel, buoyed by the Federal Government—for vessels of heavy draft. Louisiana claims that this line is the line. If we were to follow that line out of the mouth of Pearl river it swings around near the Mississippi front for nearly forty miles. In some places it is within a mile of our shore, and of that seventy or seventy-five miles of frontage that we have, this deep water channel cuts off again to Louisiana about ⅔ of it or more. Now then, coming back to my original question, and to get at the correct construction of the act of Congress in admitting Louisiana,

isn't it reasonable to suppose that she had an eye on the Mississi territory in 1812, soon to become a State, and that it was the purpo and intent of Congress to save that sea front to the Mississippi ter tory and to the State when it should arrive at statehood? What you think of that proposition?

A. I think the idea of Congress was to take the line between th two States and run it into the ocean in a straight line. That is m idea about it.

Q. Mississippi's contention is that in forming Louisiana in 181 with this long sea frontage that Congress looked eastward to th front, and meant to give her that territory of three leagues reservin the frontage of the Mississippi territory for future action; and tha so far as her eastern boundary was concerned, that Louisiana wa limited to the common law rule of the high tide mark on her eas and that Mississippi in going out of the mouth of Pearl river due south wormed along the high tide mark on the main land of Lou isiana to the limit of her eighteen miles, or six leagues' point, and then swung to the Alabama line eastward, taking eighteen miles, or six leagues, from every point of her shore from Pearl river and the Alabama boundary. What do you think of that proposi-tion?

Mr. DYMOND: On the part of Louisiana, counsel for Louisiana objects to all of this matter brought out by the recent questions from the counsel of Mississippi as irrelevant, as calling for simple legal opinions on subjects which must be decided by the Supreme Court of the United States, and not by any witness on the stand as to the construction of the two acts admitting Mississippi, and admitting Louisiana into the Union.

1011 A. Well, I still recur to my former answer, that in extending the line, the ascertained line on the land between the two States, I should say that it was the purpose and the object of Congress in admitting Louisiana in 1812, to give her three leagues of frontage, and when Mississippi was admitted in 1817 to extend that six leagues on the same line into the sea. That is my idea about it.

Q. In order that you may more readily grasp the contentions of the two States, Col. Hooker, I show you map No. 7, introduced as evidence in this case by the State of Louisiana. This is a composite map, made by the Coast and Geodetic Survey of the United States Government. I point you first to the mouth of Pearl river, and I mean by the sweep from that point around to the mouth of the Sabine river to follow southward the high tide mark on the main land of Louisiana around the passes at the mouth of the Mississippi, west to the Sabine river dividing Louisiana from Texas, our contention being that in that great sweep Louisiana gets more in water in her three leagues' limit, or nine mile stretch, than most any other State in the Union with a six or nine league limit in water reach. I show you now, beginning at the mouth of Pearl river again, eastward, a stretch of about 75 miles to the Pascagoula river,

the boundary between Alabama and Mississippi, being ten miles east of the Pascagoula river, and the reason as shown by act of Congress admitting Mississippi, when the act directed the surveyors when they got to the northwest of Old Washington county, and Alcorn county, to go due south to the gulf of Mexico, provided that if it became necessary to deflect eastward so as to prevent encroachment upon Wayne and Jackson counties, to do so; and when they came down the due south line would have reached the gulf of Mexico a great deal west of the Pascagoula river; but the act authorized the surveyors to preserve to Mississippi Wayne and Jackson counties. They deflected eastward and it put the line about ten miles east of the Pascagoula river; so that with this general description we have here three lines proposed by Louisiana, marked in blue, marked in nautical, or geographical, or statute miles. As you will notice from this map, Colonel, measuring from the high tide mark upon the mainland of Louisiana, the first proposition which suggests by this map is that nine miles from this high tide mark on her main land she would reach out almost to Grant pass, hit the Mississippi shore some distance east of Pearl river, and east of Point Clear; then if she should move up to Grant pass and take her three league limit she would go around and strike Point Clear you see, here, but move out to the end of Isle à Pitre and take her three league limit it would bring her up near the point of Ship island and right near the artificial channel that the Gulf and Ship Island railroad has cut from Gulfport across to Ship island, you understand? Now then, what would be the effect upon the commerce and navigation, and the general interests of Mississippi if Louisiana should establish her sovereignty and jurisdiction within either of those limits that are so far east of the mouth of Pearl river?

A. I should suppose it would be taking so much territory which belongs to Mississippi, and of course, as far as there is any commerce that commerce would be affected by it in that way.

Q. Have you any knowledge as to the commerce up the Pearl river into Mississippi, and on the Gulf and Ship Island railroad?

1012 A. Nothing except very generally. I know it is enormous on the railroad, and it was very enormous on the river before the railroad was built. I do not know much about the maps and the sea frontage, etc. Those three counties over here, Harrison, Hancock and Jackson counties, were at one time in my congressional district, and I was a good deal on the coast, and what I know was general knowledge as to the condition of affairs; not any specific knowledge as to the lines, either between Louisiana or Mississippi.

Q. I believe that you were attorney general at the time Governor Humphreys was ejected from the governor's office?

A. Yes sir, and I was ejected, too.

Q. Then you were marched out with him?

A. Yes sir.

Q. I would be glad if you would tell the commissioner something



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CARD 11

about the political conditions in Mississippi from that time up to 1875.

A. They were in a very desperate condition. The carpetbaggers and the negroes had control of everything. I never went inside of the senate or house while the negroes and carpetbaggers had control of them. We were elected in 1875 by a special law of Congress, and a special law of the legislature fixing the election in Mississippi in November, 1875, for congressional districts, which usually occurred on even years; but John R. Lynch was then in the Congress of the United States and he had a special act passed making the election in 1875 in Mississippi for Congressman and in 1875 for governor, and Humphreys and I were candidates. I was first elected in 1875 and I remained in Congress about 18 years, and I was out six years, and then I was in the 57th Congress, which would make it twenty years in all that I was in Congress.

Q. What sort of a legislature did Mississippi have during the time that Ames and Alcorn were governors?

A. Extremely ignorant.

Q. Dominated in a large majority by negroes?

A. Yes sir, negroes and Republican allies—carpetbag allies.

Mr. ZACHARIE: Of course I renew here on the part of Louisiana the same objection in regard to opinion evidence by the witness on law points.

Redirect examination by Mr. ZACHARIE:

Q. Colonel, you consider the Mississippi sound as an arm of the gulf of Mexico, do you not?

A. I think so, yes sir.

Q. It is a part of the gulf of Mexico, is it not?

A. Yes sir.

Q. Now part of this sound runs up near this disputed territory. Under the act admitting Louisiana into the Union it is specified that her boundaries shall include all islands within three leagues of her coast. That was in 1812. Now the act admitting Mississippi into the Union in 1817, specifies that it should include all islands within six leagues of the shore. The act admitting Louisiana uses the term three leagues from the coast. Now when we get into this disputed area that part of the Mississippi sound is only about ten miles
1013 across, that is, leaving the east of Pearl river and going over to the land which lies south of it, and there is a space of water there which is about nine or ten miles wide. Now, construing these two acts, would not the boundary of Louisiana extend three leagues north from her coast?

A. I could not say about that.

Q. You could not?

A. No sir.

Q. You recognize the fact that a prior grant would, of course, outrank a junior grant?

A. Yes sir, of course.

Q. Now you recognize, of course, if this territory, these islands and territory, were granted to Louisiana in 1812, and there was a conflict afterwards as to the boundary of Mississippi, the prior grant to Louisiana would rule?

A. I should think the prior grant would rule.

Q. You recognize that under the Constitution of the United States that no territory could be taken from any one State without the consent——

A. Yes sir.

Q. You have been interrogated in regard to the interference there would be with the commerce of the Mississippi coast in case the contention of Louisiana was sustained. Is it not a fact that in so far as navigable waters are concerned, whether included entirely within a State, or between two States, applying as well to rivers, ocean, arms of the sea, etc., that the navigation of those waters is under the control of Congress?

A. I so understand.

Q. Therefore, that being the case, how could the maintenance of the contention of Louisiana, if it be maintained, interfere in any way with the commerce of the ports on the Mississippi shore?

A. I should say that it would not interfere with the commerce on the rivers, where the rivers were the line; or on the sea, where the main channel was the line; it would not interfere at all, because it is open to both parties.

Q. Well, would it interfere with the navigation of any navigable waters leading to these Mississippi ports?

A. I take it, it would not.

Q. The only interference would be in preventing Mississippians from taking oysters from the Louisiana territory, if Louisiana's contentions were maintained?

A. Well, I do not know about that; that is a question I never made any study of.

Q. Then the conclusion is that if the contention of Louisiana was maintained, the United States having control over the navigation of all navigable waters, that Louisiana could not in any wise interfere with commerce directed to ports in Mississippi, whether export or import?

A. I should say not.

Recross-examination by Mr. McCLURG:

Q. With reference to the interference with navigation and sovereignty of Mississippi, about which Col. Zacharie asked you, in case the sovereignty and jurisdiction of Louisiana should be extended out to the artificial line between Gulfport and Ship island, and
1014 strike the Mississippi shore east of Bay St. Louis, or if the secondary line, which is three leagues southwestward towards Louisiana, or the other line, shown on map No. 7, offered by

the State of Louisiana, and to which I called your attention a few moments ago, do not you think that if the sovereignty and jurisdiction of Louisiana were extended that far along the Mississippi front, that besides the mere navigation of interstate commerce that it would conflict very seriously with the commercial interests of Mississippi with reference to the enactment of laws such as Louisiana now has requiring all oysters taken within her jurisdiction to be brought in their raw state to Louisiana, and prohibiting the raw oysters from being taken out of the water into any other State in their raw condition. Would not such a condition of affairs seriously interfere with the commercial interests of Mississippi?

A. I should think so, yes sir.

JAMES J. CONWAY, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. ZACHARIE:

Q. How old are you?
A. Well, I am 76, and if I live until October, next, I will be 77.
Q. Where do you reside?
A. In the city of New Orleans.
Q. How long have you resided in New Orleans?
A. 12 years.
Q. Where did you reside before you came to New Orleans?
A. Chatawa, Miss.
Q. How long did you reside in Mississippi?
A. Well, since the end of the war, steadily.
Q. Since the end of the civil war?
A. Yes sir; that was since 1865. I was in Mississippi, however, from 1853 to 1858. I built that old Jackson railroad, the New Orleans, Jackson and Great Northern railroad.
Q. Then after the war, from what date to what date?
A. From 1865, let me see, 12 years; that would be 1892.
Q. What is your profession?
A. Civil engineer.
Q. During what time have you practiced your profession?
A. Up until about 1892; I was connected with the Illinois Central railroad.
Q. When did you commence to practice your profession?
A. In 1853.
Q. Did you know Col. T. S. Hardee, now deceased?
A. Intimately.
Q. When did you first know him?
A. In 1853. We were young engineers together on the road.
Q. On which road?
A. On the New Orleans, Jackson and Great Northern.
Q. Did your intimacy and acquaintance with him continue up to his death?

A. Not so intimately as before that, because I was in camp with him, and I was associated in constructing that road with him, and afterwards I knew him in 1866, in Chatawa, when he was making a map of the State of Mississippi; he moved into Louisiana after that.

1015 Q. Do you know what pains and what steps he took towards making this map of Mississippi?

A. I know that he was very particular to get the best information he could of the boundaries of counties, public roads and towns, and every thing like that, but I was not with him at the time he was making the map. I would see him occasionally; but I know he was very particular about making that map.

Q. Did you ever know of the fact that he was receiving reports and maps from county officers in Mississippi?

A. I know he corresponded with them, and received letters from them about describing or answering the questions he would propound to them.

Q. What was his reputation in his profession?

A. First class; he was a very bright man.

Q. You knew nothing of his army history?

A. No sir; I knew he was with his uncle, General Hardee. I learned that afterwards.

Q. Do you know what his personal character was?

OBJECTION.—Mr. McCLURG: That is objected to because his personal character has not been assailed by Mississippi.

A. First class.

Q. Do you know whether he was a man who, from his general character, and from your knowledge of him, would enter into any corrupt bargain with the legislatures of Mississippi for the purpose of getting himself selected to produce this map?

A. It is not possible that he would do it; he was too honest and too honorable a man.

OBJECTION.—Mr. McCLURG: Objected to.

Q. You say you knew him before the war?

A. Yes sir.

Q. Since 1853?

A. Yes sir.

Q. Did you know him when he was residing in Mississippi before the war?

A. We were together from that time when on service in the construction of the road from New Orleans to Jackson, Miss. I had charge of the division south of Jackson, from Jackson and Crystal Springs; the track was laid in 1858, and he was between Osyka and Crystal Springs, with the other engineers, and it was a long distance, and we got the tracks together in April, 1858, at Crystal Springs.

Q. Do you know where he was when the civil war broke out?

A. I think, and I am satisfied, he was up planting on Deer creek.
Q. Do you know who was in partnership with him?
A. I understood General Wirt Adams.
Q. During your residence in the State of Mississippi did you ever hear any objection or complaint being made about his map or any of the details contained on his map?
A. No sir.
Q. Have you seen his map referred to often or at different houses?
1016 A. Well, I had it in my house when I lived at Chatawa.
Q. Have you seen it in any public places?
A. Yes sir.
Q. Did you ever hear any question made as to the correctness of any of its details?
A. No sir.
Q. Do you know what public positions Colonel Hardee occupied?
A. Well, I don't know, since he left the war you know——
Q. Do you remember if he occupied any positions in Louisiana as State engineer or city engineer in the city of New Orleans?
A. Yes sir. He was city engineer and I think, I don't remember, I think he was State engineer, I know he was city engineer.

By Mr. McCLURG:

Q. When?
A. Well, I don't think I could tell you the dates, the year.
Q. Before or after the war?
A. After the war, long after the war.

By Mr. ZACHARIE:

Q. Do you know what his politics were during the time you have known him?
A. His was mine, we were Democrats together always.

Cross-examination.

By Mr. McCLURG:

Q. Mr. Conway, I understood you to say that Colonel Hardee was a very particular man in the line of his profession?
A. I think he was a very competent man, yes sir.
Q. And from your general knowledge of him you testify you think he must have been particular in making this map; you did not see him make it?
A. That was the impression made on me, I have occasionally gone there and seen him draw off a township and put it down, but I did not see the whole map being finished, I was not with him at the time, I was employed then with the I. C. railroad and not where he was living.
Q. Where did you live at the time he made this map in 1868 and 1871?

A. I was living in Magnolia, Mississippi, I think, after 1867.

Q. Where did he live in 1868 and 1871?

A. I know he was down at Chatawa in 1866 and 1867 and probably 1868. He built a very fine house and lived there when he was making that map.

Q. Where did he live when he was in partnership with General Wirt Adams?

A. He was living up in Deer Creek. That was before the war.

Q. You say you know he corresponded with county officers?

A. Yes sir.

1017 Q. You think that he took as a basis for his map from the correspondence of that kind?

A. That I can't say that he took that altogether.

Q. Can you say of your personal knowledge whether Colonel Hardee ever ran a line himself in making that map?

A. That I can't say.

Q. Is it not your deliberate opinion that he made that map from that he gathered up by correspondence and historical matter and other maps and things of that kind, rather than having made the surveys himself?

A. I can't say that it was all from information he got from county officers, because he may have done so without my knowing that he made the surveys.

Q. When we reduce the proposition to the last extremity and ask you for your personal knowledge as to how he made this map, what have you to say. Eliminating your knowledge of the man, and the extraneous matter, altogether, give us your personal knowledge of how he made this map. What are you willing to swear to of your own knowledge?

A. I could not swear that he did not run some lines, I could not do that because——

Q. You only have general information of the man and his methods?

A. Yes sir.

Q. You don't know whether the map is a correct one or not?

A. Well, I have no reason to doubt but it is correct.

Q. I didn't ask you that. Have you ever examined it technically?

A. No sir; portions of it I did, as I did a good deal of surveying in Pike county myself, that was where we lived then, and very often I had to refer to his map about the townships and sections.

Q. Did that map have any section corners or starting points or bearings on it that aided you in any way, did it have anything but the general topography——

A. The general topography; I could find the corners myself; I had no trouble in finding the corners.

Q. The map aided you in a general rather than in a special way?

A. I had no trouble in finding the corners and the lines were per-

fectly plain, at that time, it was pine woods, all blazed lines, es
lished corners.

Q. You have lived in New Orleans during the last 12 years?
A. Yes sir.

Judge FRANK A. MONROE, witness sworn and examined on bel
of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Judge Monroe, are you Justice Monroe of the supreme cou
of the State of Louisiana?
A. Yes sir.
Q. How old are you, Judge?
A. I am 60 years old. Just past 60.
Q. Were you previous to that, the judge of the civil district cour
of the parish of Orleans?
A. Yes sir.
1018 Q. Have you ever held any other official positions outside
of judgeship of these two courts?
A. Well, I was judge of the third district court before the civil
district court was organized.
Q. When was that?
A. That was between 1876 and 1880. I was elected judge of the
third district court first in 1872.
Q. Did your family at any time live on what is known as across
the lake on the Mississippi coast?
A. Well, my own immediate family, no, that is to say my wife
and children, except to spend the summer there; but other mem-
bers of my family, before I was married, my aunts and grandfather
and grandmother lived at Pass Christian and died there.
Q. Did you ever have occasion to frequent the neighborhood of
Pass Christian?
A. Yes sir; when the war closed, in the fall of 1865, I went to
Pass Christian for the first time, and circumstances, bad physical
condition, want of money, kept me there for about a year and I
have been more or less connected with Pass Christian from that time
to this, have gone there very frequently, sometimes spent the sum-
mer, after I was married. But my aunts have lived there perma-
nently and my grandfather and grandmother lived there until they
died, so I have kept up my connection pretty close with Pass Chris-
tian.
Q. Were you ever familiar with the country in that locality and
more particularly in the marshes south of Bay St. Louis?
A. Well, I cannot say that I had any great familiarity. I have
cruised around there in small boats. I have been to those islands,
Cat island and Ship island, I have been over to this Isle à Pitre and

have cruised around there more or less, not a great deal but several times.

Q. Will you please look at this map No. 59, and state whether you recognize the territory south of Bay St. Louis as being the territory concerning which you have just testified?

A. I cannot say that I have ever been farther west, down here, now what is that island?

Q. Grand island?

A. I cannot say I have ever been farther west than Isle à Pitre. My cruising has generally been down through Cat Island channel, down here to the Chandeleur islands, and then sometimes around up on the other side of Cat island and Ship island and over in the direction of Mobile. I have never been down here in this marsh, no.

Q. To what State, so far as you were able to ascertain from being thrown in contact with the people in that locality, is this marsh recognized as belonging?

A. I have always heard it referred to as the Louisiana marshes.

Q. Did you ever hear it claimed by any one to be part of the State of Mississippi?

A. Never.

Q. To what State was Isle à Pitre recognized as belonging?

A. I always understood it belonged to the State of Louisiana. The island itself belonged to my former law partner, he bought it while we were practising law together.

Q. What was his name?

A. Henry J. Leovy.

Q. Do you recall whom he bought it from or how he acquired it?

A. No sir. He had rather a speculative turn of mind; he bought lands here and there. I know that he bought this island
1019 and held it for a number of years and while he owned it I went there on an occasion.

Q. Did anyone ever dispute his ownership, on the part of Mississippi, so far as you know?

A. No sir. I think he sold it to probably Mr. Gilmore or somebody else.

Q. Did Mr. Leovy live in Pass Christian or have a home there?

A. He had a residence there, his domicile was in New Orleans but he had a residence in Pass Christian up to a very few years ago, from 1865, in fact from before the war, he owned a house there when the war closed and he bought another one.

Q. Did you ever while you were in that locality within the last 20 years, have any discussion with any one as to the boundary between Louisiana and Mississippi?

A. No sir, I never heard the question discussed at all.

Q. Did you know Col. T. S. Hardee, civil engineer and surveyor?

A. Quite well, yes sir.

Q. Did you know him to have made an official map of the State of Mississippi?

A. I was aware of that fact, I saw the map.

Q. What was Col. Hardee's general reputation as a civil en and surveyor?

A. He stood very high in this community, he was city en at one time I think, probably might have been from 1876 to or somewhere along there, I don't remember the exact years, a was quite a near neighbor of mine, lived across the street from and I knew him quite well, knew his family.

Cross-examination.

By Mr. McCLURG:

Q. Prior to the institution of this suit, had you ever heard discussion as to the location of the boundary between these two s in the waters down there?

A. I don't think I ever heard any discussion. I think tha cently before the institution of this suit I saw the matter referr in the papers in connection with the possibility of a suit or arbitration of it or something of that kind, that was about the intimation I had there was any difference between the two Stat to their boundary.

Q. I understand you to say that it was your understanding, I not sure but what you stated it was the general understanding a as your information extended that this marsh territory down t belonged to the State of Louisiana. I want to ask you if that of your testimony was based on a kind of general understand rather than any discussion of the boundary from a legal poin view?

A. It was based upon what I believed to be the general understa ing. I have always heard this district that is represented here sort of an archipelago on map No. 59, referred to as the Louisi marshes and at Pass Christian not infrequently they are afflic with musquitoes and when the wind would come from the southw the musquitoes would come in great quantities and they were alwa spoken of as coming from the Louisiana marshes down there, a those marshes that lay to the southwest of this Isle à Pitre.

1020 Q. You know that you have in your State what are call the Florida parishes?

A. Yes sir.

Q. And because they bear that appellation the people do not r gard them as in any way belonging to the State of Florida?

A. I am aware of that fact. The term goes back to the history those parishes, the history of their acquisition.

Q. You are not prepared to say that the Louisiana marsh ma not be historically connected the same way with Louisiana befo the organization of the State?

A. Of course I do not know why they were called the Louisian marshes except that I suppose that other people, like myself, sup posed they were a part of the State of Louisiana. I may add tha

that impression has been more or less strengthened in my mind by reason of the fact that so far as I know all the maps that I have seen, represent these marshes as being part of what may be called the peninsula of Louisiana.

Q. I think you will agree with me on the proposition that if the territory in fact belongs to Mississippi by a proper construction of the acts of Congress admitting these two States into the Union that Mississippi cannot be deprived of it by the general understanding as to their being Louisiana marshes and therefore a part of Louisiana, or mapped out of it?

A. Of course I would not have any hesitation in expressing my own opinion on that subject; but I imagine that is a question that the Supreme Court will have to determine after they have heard all the evidence and examined all the authorities.

Q. But strong testimony like yours will go a long ways in aiding the court in the construction of those statutes?

A. I do not think any map maker or anybody else can individually deprive a State of its territory that belongs to it by law.

Redirect examination.

By Mr. ZACHARIE:

Q. As counsel for Mississippi has asked a legal opinion from you I will ask of you another legal opinion. While cartography or map making will not always determine territorial rights in disputed boundaries, is it not a principle of law as announced by the Supreme Court of the United States that maps will be taken into consideration as evidence of the long acquisition and acknowledgment of certain boundaries which will not be disturbed after long usage of that kind?

A. I should imagine so, where there is any disputed question the courts usually endeavor to get information where they can and ancient maps and ancient titles are usually offered and are taken into consideration.

1021 EDWARD WENTZELL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. DYMOND:

Q. Where do you live?
A. I live in Biloxi in the State of Mississippi.
Q. How long have you lived there?
A. Going on 24 years.
Q. How old are you?
A. 24; I have lived there all my life.
Q. So you were born and raised there?
A. Yes sir.

Q. Your family lived there before you?
A. Yes sir.
Q. Are you the Mr. Wentzell that was a partner of Mr. Ahern a grocery and bar-room business at Three Mile bayou?
A. Yes sir.
Q. Who attended to the obtaining of the license——
A. Mr. Ahern attended to that.
Q. From the United States?
A. Mr. Ahern attended to all that.
Q. Will you please look at this envelope which is marked Document 96, from the Treasury Department, dated October 30, 1901 addressed to Ahern and Wentzel, Biloxi, Miss., and state whether you recognize that as the envelope containing the license which was originally sent to Biloxi?
A. I could not say for sure, but I think it is exactly like the one we received.
Q. Will you now look at these several documents, marked numbers 90, 91, 92, 93, 94, and 95, and state whether you recognize them to be bill-heads of your firm as conducting business in Three Mile bayou?
A. Yes sir, they are exactly like it.
Q. Are they some of your bill-heads?
A. Yes sir, they look exactly like the ones we had
Q. Who caused those bill-heads to be printed?
A. I had them printed.
Q. You will notice that those bill-heads read Three Mile, Louisiana. How was it you happened to put the word "Louisiana" after the words "Three Mile"?
A. I supposed that Three Mile was in Louisiana.
Q. This Three Mile bayou, where you were located, was that the Three Mile that you referred to on your bill-heads as being the locality where you were doing business?
A. Yes sir.
Q. Will you look at this map, No. 59, map of Louisiana, and upon being shown Isle à Pitre to the east and Mallory point to the west and Bay St. Louis immediately north, is this the Three Mile bayou right along the shore between Isle à Pitre and Malheureux point, at which you conducted your establishment?
A. Yes sir.
Q. Is that the Three Mile bayou to which you had reference when you printed your bill-head as Three Mile, Louisiana?
A. Yes sir, the same place; our place was located right there, right inside of the mouth.
1022 Q. And you thought then you were in Louisiana when you had those bill-heads printed?
A. Yes sir, I did.

Cross-examination by Mr. McCLURG:

Q. Do you know whether the State of Louisiana required a State revenue license to conduct a retail liquor business?

A. I never had anything to do with the license, I just gave my partner the privilege of signing my name to the internal revenue application we made.

Q. I know about the United States revenue, but I ask you about the State revenue?

A. No sir.

Q. You did not know of it?

A. No sir.

Q. You knew that Mississippi did require——

A. No sir, I did not.

Q. And for a retail liquor business a revenue license?

A. No sir.

Q. You did not have either a State revenue license from either Mississippi or Louisiana?

A. No sir.

Q. Was there a post office at Three Mile?

A. No sir.

Q. Did you and Mr. Ahern run a bum boat in connection with this fancy grocery, wine and liquor business?

A. No sir; he had another partner, a man by the name of Sillinger; that was the year before.

Q. He was the man that ran the bum boat?

A. Yes sir.

Q. Mr. Ahern testified in this case that that was a temporary shop down there you built up.

A. Yes sir, that is to say it was—I have not been out there since.

Q. You just dealt with the fishermen in that vicinity?

A. Yes sir.

Q. You did not know what State you were in and did not care?

A. No, I thought we were in Louisiana, but I did not know exactly.

Q. You never heard any discussion about boundary?

A. No sir.

Q. Mr. Ahern stated he thought you put Louisiana on the billheads because the man from whom you bought the store had them on his. Do you remember about that.

A. No sir.

Q. When was it you quit business down there?

A. 1902 I think it was.

Q. About the first of October, 1902?

A. No sir, it was April.

Q. 1902?

A. I think it was in 1902.

Q. Would you say whether it could not have been in 1903?

A. No sir, it was in 1902.

Q. The reason I ask you this question is because Ahern testified, I think, that after the commissions made this dividing line and shut the Mississippians out it was not very profitable to all of you,
1023 and you went and quit the business. Did he stay there any while after you did?

A. No sir, we both left together.

Q. So notwithstanding you had your bill-head marked Three Mile, Louisiana, you did not know where the line was, did not much care, and heard no discussion of that subject?

A. No sir.

Q. You were down there for revenue only?

A. Yes sir.

Q. Standing squarely on the Democratic platform?

A. That is it.

Captain STEVE MELOCHE, witness, sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination by Mr. DYMOND:

Q. Where do you live?

A. I am living in Biloxi.

Q. You say you live in Biloxi, Mississippi?

A. Yes sir.

Q. How long have you lived there?

A. About two years.

Q. Where did you live prior to that?

A. Right here in the city of New Orleans.

Q. How old a man are you?

A. I am 57.

Q. Were you born in New Orleans?

A. No sir, I was born in Bay St. Louis.

Q. Well, how long did you live in Bay St. Louis after you were born, before you moved?

A. I suppose I lived there until I got about 14 years old.

Q. Then where did you move to?

A. I moved to New Orleans.

Q. Then did you live in New Orleans continuously from the time you were 14 years old until when?

A. Until here about two years ago.

Q. And then you went to Biloxi?

A. Yes sir.

Q. What has been your business for the last 25 or 30 years?

A. Running schooners, steamboats.

Q. Whereabouts, through what section of the country?

A. From here to Mobile and all around the lake shores, you know, around Mississippi sound, Lake Maurepas, all through that area as far as Pensacola.

Q. Are you familiar with the area all along the southern coast in ississippi sound?

A. Yes sir.

Q. How long have you been familiar with that section of the ountry?

A. You can say ever since I was born, since I was big enough to now anything I was around that country; been following it up l my life.

Q. Have you, as a matter of fact, been following it up, the water ade, so to speak, in that general locality since you were a small oy?

A. Yes sir, ever since I started to running on schooners I have been running out that way.

924 Q. Will you look at this map, No. 59, offered by the State of Louisiana, and state whether the water area therein shown om the east mouth of Pearl river through Mississippi sound to Cat land, and south and east is part of the area concerning which you ave had your experience?

A. I have had my experience all over through here.

Q. You are well acquainted with the territory shown on this map, o. 59, of Louisiana?

A. Yes sir, I know all about it; I have been carrying shells and erything out here.

Q. Have you ever been down there, through the Louisiana arshes?

A. I have been all through it.

Q. Frequently?

A. Yes sir, I own a piece of land right here.

Q. When you say "here," what part of the map is that?

A. This is Bayou Boudreaux.

Q. Is that near Oyster bayou?

A. No sir, I do not know where Oyster bayou is.

Q. You will notice towards the centre of this map Oyster bayou, ere is Three Mile bayou just a little to the westward?

A. Here is my place here.

Q. When you say here, do you mean just east of Three Mile ayou?

A. Yes sir, the first bayou to the east of Three Mile bayou.

Q. What name is on *the* that map, can you see?

A. It is called Bayou Boudreaux, but some of them call it Bayou hnson.

Q. This is called Bayou Johnson on the map, is that the bayou ou refer to?

A. Yes sir, because I know how it was made.

925 Q. Were you thrown into contact with Mississippians and other people, working, travelling, and fishing through that eneral locality, as shown by map 59, during the past 25 or 30 ears?

A. Of course.

Q. You will please notice the territory beginning on the east at Isle à Pitre and extending west to Malheureux point, to what State has that territory been recognized as belonging in the opinion of people with whom you have been thrown in contact, within the last 25 or 30 years?

A. Louisiana.

Q. Did you ever hear any one say that that belonged to Mississippi?

A. No sir, I never did.

Q. What was it called? What was the name given to that particular territory?

A. The Louisiana marshes; it has always been called that since I could recollect; the Louisiana marshes.

Q. Did you ever hear any discussion as to what was the boundary between the States of Louisiana and Mississippi in the waters of Mississippi sound?

A. Yes sir; I heard them talking about that many times.

Q. What is the boundary?

A. The channel.

Q. What channel?

A. Cat Island channel, we call it Cat Island channel.

Q. Is that the channel that runs through Mississippi sound north of Half Moon island, and thence up Pearl river?

A. Yes sir.

Q. Was, or was not that channel recognized as the boundary between the two States by people with whom you were thrown in contact whenever the question came up for discussion?

A. Yes sir.

OBJECTION.—Mr. MCCLURG: That question is objected to as extremely leading and extremely suggestive of the answer.

Q. Where were you living at the time you bought that land?

A. Right here in the city.

Q. Who attended to that for you?

A. An old surveyor by the name of Duke.

Q. Where did he live, do you know?

A. No sir; I don't know exactly; he lived here in the city, but what place I do not know.

Q. Was application made to Mississippi to buy that land?

A. No sir.

Q. Who did you buy it from?

A. The State.

Q. What State?

A. Louisiana.

1026 Q. Was any application made to the land office of Mississippi to see whether they made any claim to land in that locality or held any land for sale?

A. Well, Casimir Harvey wanted to enter this place called Creole gap——

Q. Is that on Isle à Pitre?

A. It is right close to Isle à Pitre, same side as Isle à Pitre, it is between Isle à Pitre and Grand pass, and they wrote to Jackson and they didn't have any records of it there and they came back to the custom house and found out where it was and they got this same old man Duke to write to Baton Rouge and get a patent.

Q. When you speak of Jackson, do you mean Jackson, Mississippi?

A. Yes sir.

Q. Is that the State capital of Mississippi?

A. Yes sir.

Q. And Baton Rouge is the State capitol of Louisiana?

A. Yes sir.

Cross-examination

By Mr. McCLURG:

Q. Who wrote that letter to Mississippi?

A. Casimir Harvey.

Q. You didn't write it yourself?

A. No sir.

Q. He told you he wrote it?

A. Yes sir.

1027 Q. You know nothing about it except what he told you?

A. No sir.

Q. You never saw the letter?

A. No sir.

Q. You never saw the answer to that letter?

A. No sir.

OBJECTION.—Mr. McCLURG: The testimony of this witness with reference to this correspondence, is objected to because it is secondary and hearsay merely.

Redirect examination.

By Mr. DYMOND:

Q. Is Casimir Harvey living?

A. Yes sir.

Q. Where is he located?

A. At Back bay, Biloxi.

Q. Is this surveyor Duke living or dead?

A. He is dead.

Q. Is there any one else connected with this particular transaction concerning which you have testified, other than yourself and Mr. Casimir Harvey that are still living?

A. Joe Gilmore. He owned some land down there too.

Q. Did Mr. Joe Gilmore have any connection with this application which you speak of?

A. He did with old man Duke; you know they were all mix up in it when they made the application.

Q. Old man Duke made the survey?

A. Yes sir.

Q. Are you at all familiar with the interior of the Louisia marsh?

A. The interior?

Q. Yes? What I mean is south of the shore line extending fr Malheureux point to Isle à Pitre, all down in this section?

A. All down through here clean to the mouth of the river and the other side of the river.

Q. When you speak of the river, you mean the Mississippi riv

A. Yes sir.

Q. Now, Captain what is the general tendency in this section the Louisiana marsh just south of the shore line from Isle à Pitre Malheureux point in regard to any influence from the deposits the Mississippi river; what is the general tendency, is it to increa or disintegrate and break up?

A. It breaks up and washes away.

Q. Have you noticed any difference between the first time y saw it understandingly and the last time you saw that country u derstandingly, has there been any difference in its general appe ance on the interior?

A. Yes sir. These keys out here have washed away, this co key is submerged altogether; you can sail all over it on a schoon we used to load shells off of it.

Q. Are there any other instances where there has been noticeal change so far as you are able to state within your memor

1028 A. There was a little island right in Grand pass th washed away, that was a little bit of an island there, it ca up in a point, that is gone now, there is only one island there wh there used to be two.

Q. How about down in the interior?

A. Some places you will find four feet of water and next time y go down there and you won't find but two.

Q. Well, look at that map of this country south of this shore li between Malheureux point and Isle à Pitre and picturing the thi to yourself as it is to day and as it was when you first saw it 20 30 years ago, is there any greater proportion of water there n than there was 20 or 30 years ago, as compared to the land?

A. No, I don't think there is.

Q. You think it is about the same thing?

A. Yes sir.

Q. The level of the prairie is about what, tide level or what?

A. Yes sir, high tide just comes up even.

Q. It has just staid about that level for the past 20 or 30 year

A. Yes sir.

Q. That is all covered with vegetation?

A. Covered with marsh grass.

Recross-examination.

By Mr. McCLURG:

Q. The proportion of land and water has about maintained itself since you have known it, in that marsh country?

A. Yes sir,

Q. You stated that you had regarded this marsh territory as belonging to Louisiana for how long?

A. Well, I will say for 35 years.

Q. I believe you also stated that it was generally so regarded by those with whom you talked, did you?

A. Yes sir.

Q. Well, if it was generally so regarded, why was it that you applied to Mississippi for the purchase of that island?

A. I didn't apply there.

Q. Well, then, some of those with whom you talked to applied there, didn't they?

A. Yes sir.

Q. Then they had some doubt about it?

A. They must have had or else they wouldn't have done it.

Q. Then you were not exactly correct when you said they all agreed that it belonged to Louisiana, were you?

A. No sir; that's right.

Q. It is a matter of fact there has been some doubt about which State that marsh belonged to, among some of the people?

A. With Harvey it must have been or else he wouldn't have wrote that.

Q. Is it not true, until within the last few years when Louisiana and Mississippi organized their oyster commissions that all of this disputed territory in the marshes and in Mississippi sound was fished upon promiscuously by people from Mississippi, Louisiana and Alabama?

A. Why of course they all fished there together.

1029 Q. Mississippians and Louisianians would fish side by side?

A. Everybody fished there together.

Q. And wherever they wanted to?

A. Yes sir.

Q. Any questions asked about the State boundary?

A. I never heard any.

Q. They didn't care?

A. No sir.

Q. They were after the luscious bi-valves?

A. Yes sir.

Q. You never heard of anything like a threatened armed conflict between the sheriff and officers of St. Bernard and the sheriff and officers of Harrison county Mississippi over that territory?

A. No sir.

Q. It has all been quiet along the Potomac?

A. Yes sir.

Q. Did you ever hear anybody from Mississippi or anywhere else, refer to that marsh land or any part of it as the Grand marsh?

A. No sir.

Q. You live in Biloxi?

A. Yes sir, for two years, that is all.

Q. How long ago?

A. Two years last July, since I moved over to Biloxi.

Q. You are living there now?

A. Yes sir.

Q. Are you in the oyster business now?

A. No sir.

Q. What business are you in?

A. I have schooners running here in the basin with sand and shells.

Q. You have schooners running here?

A. Running to New Orleans with sand and shells.

Q. Where do you get your sand and shells?

A. I get my shells at what is called Doer point, that is a place that belongs to me.

Q. How much land do you own there by Bayou Johnson?

A. I think about 200 acres.

Q. You bought it from the Lake Borgne Basin Levee board?

A. No sir, I entered it in the State.

Q. When?

A. About 12 years ago.

Q. You bought it from the State of Louisiana?

A. Yes sir.

Q. How much of it is land and how much water?

A. Well, I don't exactly know, but I think about half of it. It takes the bayou right straight down on each side of the bayou.

Q. For what purpose did you buy that land?

A. I bought it for the shells, there was a shell bank there at one time and I bought it for that.

Q. You never have lived there?

A. No sir.

Q. There is no industrial life of any kind there, farms or gardens or habitations, except fishermen camps?

A. That is all.

Q. And never has been?

A. Never has been.

Q. Did you get a patent or deed or anything of that kind to that land?

A. Yes sir.

Q. Where is it?

1030 A. At my brother's house here in town. I got two patents, I have got two places down here, one at Doer point and one on this bayou.

Q. When did you get the other one?

A. At the same time.
Q. Do you remember what you paid for that?
A. 12—12 cents per acre.
Q. Your title was not warranted?
A. It was a regular patent and signed by the governor.
Q. That is true, but what I wanted to know is, whether they undertook to give you a warranty deed to it or merely a release from a claim by the State to it?
A. No sir.
Q. Do you remember whether you applied for it as a part of swamp or overflowed lands?
A. Overflow lands.
Q. Does your patent recite, if you remember, when that land was approved to the State of Louisiana?
A. I don't know whether it does or not.
Q. You don't remember that?
A. No sir.

Redirect examination.

By Mr. DYMOND:

Q. Were you summoned as a witness for the State of Mississippi in this case, in Biloxi?
A. No sir.
Q. Do you know Mr. Heidenheim of Biloxi Mississippi?
A. Yes sir.
Q. Did he have charge of getting up the evidence for the State of Mississippi, or rather, not for the State of Mississippi but for the people in that city interested in pressing the claims of Mississippi?
A. I don't know whether he did or not.
Q. Were you interviewed by anybody in regard to testifying in this case?
A. No sir.
Q. What was the date, Captain, that this man Casimir Harvey applied to the State land office of Mississippi or of Louisiana for the land you have referred to, about how long ago?
A. I guess it is about 12 years ago, somewheres along there.
Q. Did he get a patent?
A. Yes sir, he has got a patent.
Q. From the State of Louisiana?
A. Yes sir.

1031 Judge LAWRENCE O'DONNELL, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?
A. I reside in the city of New Orleans.
Q. How long have you been residing here?
A. In the city of New Orleans for 40 years.
Q. How old are you?
A. I am 62.
Q. What is your occupation?
A. I am an attorney at law.
Q. Have you ever held any official position in the State of Louisiana?
A. Yes sir, I was parish judge for the parish of Plaquemines and I was district attorney here for about 12 years, I also served as State senator.
Q. Are you familiar with that territory lying to the south of the Mississippi shore running from Isle à Pitre to Malheureux point?
A. I am not familiar with it, I know of its location.
Q. Have you ever coasted along there in yachts?
A. Yes sir.
Q. Do you know what the name of that territory goes by amongst Mississippians, Louisianians and the people generally?
A. I have generally heard it alluded to as the Louisiana marsh.
Q. Have you ever heard it alluded to by any other name?
A. No sir, I did not until the claim was set up in this controversy growing out of the oyster industry of which this is a part.
Q. You never heard it called Grand marsh or any other name prior to that time?
A. No sir.
Q. You have been a yachtsman?
A. Yes sir, for many years.
Q. Are you a member of any yacht club, if so what?
A. I am a member of the Southern Yacht Club and at the present time fleet captain, and have served in pretty near every capacity in that club from commodore down and my present position there is fleet captain.
Q. Do you know or have you ever heard from general information where the boundary between Louisiana and Mississippi was considered prior to the institution of this suit?
A. Yes sir, from the mouth of the Pearl river, the East Pearl river, the channel that runs through and leaves St. Joe to the right, called Pass Marianne, and down along there between Isle à Pitre and Cat island.
Q. Does that channel run north of Grand island, Grassy island, Round island and the other of the Malheureux islands there?

A. Yes sir, it does, but there are so many grassy islands, it seems that every little island in the lake——

Q. I am speaking of an island known, up there, Grassy island and Grand island sometimes known as Half Moon island, that channel runs along that——

A. Yes sir.

Q. Can you state from your knowledge whether that deep water channel was generally considered, prior to the institution of
1032 this suit, by both Mississippians and Louisianians as being the boundary between the two States?

A. I never heard it disputed, Colonel, by anybody.

Q. You mean by that, it was generally admitted?

A. It was generally admitted. I never heard the question brought into controversy until the oyster industry attained such prominence as it has and each State is trying to define its right and control of it.

Q. How often in your life have you visited that territory?

A. I couldn't tell, it has been so often I couldn't say.

Q. About how many times?

A. Do you mean visited the territory?

Q. Passing along there?

A. How often?

Q. Yes, as near as you can remember?

A. Certainly a couple of hundred times.

Q. Have you, or have you not, had intercourse with the fishermen there both from Louisiana and Mississippi?

A. Yes sir, I know a great many of them.

Q. Have you ever talked with them about the points which you have testified about?

A. No, I have not.

Cross-examination.

By Mr. McCLURG:

Q. Not having talked with them about it, Judge, your statement with reference to its being universally or generally admitted that the boundary lay in Cat island channel is based upon the statement of Louisiana people?

A. Well, Louisiana, and Mississippi people conceded it, I never had a general conversation, there was never any necessity for it, it was a thing generally understood.

Q. You said you never heard it disputed?

A. Yes sir.

Q. But yet you say that it is generally admitted to be——

A. To be generally understood, everybody always alluded to it as the Louisiana marsh.

Q. You do not undertake to testify, Judge, as I understand it, that the people along the Mississippi coast, and Mississippians generally, admit or understand, that this is the boundary between the States?

A. Not as to boundary but they always alluded to that lan
Q. I am talking about the channel, the boundary line?
A. About the channel, no, only alluded to that land as the L
ana marsh.
Q. You do not undertake to testify that it is regarded by
the people of Mississippi?
A. No sir.
Q. But it has been admitted, as you understand it, by the p
of Mississippi?
A. Yes sir.
Q. But never has been questioned as far as you know?
A. It never has been questioned. As I stated in part of m
amination—I want to get clear on this thing—as I stat
1033 Col. Zacharie, I never heard it disputed at all until this
troversy arose, until the oyster industry assumed [the
portions it has within recent time.
Q. So if there had been no controversy, how could there
been an admission, how can you admit a thing that has never
brought in controversy?
A. I will tell you how. In sailing and cruising from plac
place along the coast I was brought in contact with other yachts
and whenever they talked about taking an excursion or going
cruise, they always alluded to that part of the place as the Lo
ana marsh.
Q. Without any reference at all to the legal status?
A. Without any at all.
Q. Have you ever had occasion to examine the acts of Cong
admitting these two States into the Union?
A. I did but it is so long ago, really——
Q. You never made any critical examination——
A. No sir.
Q. You never attempted to run out the lines under the constr
tion of those two acts?
A. I had a case some years ago in which I defended some m
that were arrested;—they were in court down at Plaquemines
fishing, and I cleared my men on the ground that they were fishing
the waters of Mississippi, and then I made that the subject of the co
troversy that they were beyond the other side of this pass betwe
Isle à Pitre and Cat island, I believe they were fishing on the re
inside of Cat island.
Q. There have been several similar cases in Mississippi?
A. Yes sir.
Q. And your defense was they were within the 18 mile limit
the Mississippi shore?
A. Yes sir, they were fishing inside of Cat island.

Redirect examination.

By Mr. ZACHARIE:

Q. To the eastward you mean of Cat island?
A. Between Pass Christian shoaal and Cat island.

By Mr. McCLURE:

Q. When was that?
A. That has been a long time ago.
Q. What law were they violating?
A. They claimed—I don't remember now, it is so long ago I really can't think of the controversy, but I know some men were arrested—they formed some association, some protective oystermen association or something, do you remember about it, Colonel?
Mr. ZACHARIE: No, I have a poor recollection.
Q. You don't remember the year?
A. No sir.
Q. You don't remember the offense with which they were charged?
A. They were charged by those men with fishing. I don't believe there was any offense under the law, that is how I got them off and I showed they were not fishing in the State of Louisiana that
1034 they were on the Mississippi side.
Q. What were they charged with?
A. They were charged by the protective association with fishing in the waters of Louisiana.
Q. Without a license?
A. No sir, there was no license law then that I know of.
Q. I am anxious to find out the law they violated.
A. I don't think it was any law that was violated, it was over a regulation of those fishermen. Now, I tell you what I think, there were some months in which fishing was prohibited.
Q. By State law or by an agreement among the fishermen?
A. I am inclined to believe it was by agreement among the fishermen. It is so long ago and I never thought of the matter since.
Q. How long has it been since you lived in Plaquemines parish?
A. It has been quite a number of years.
Q. About how many to your best knowledge?
A. 15 years.
Q. Plaquemines parish is south of the parish of St. Bernard?
A. Yes sir.
Q. It is not in this disputed territory at all?
A. No sir.
Q. You understand that?
A. Yes sir. I have a summer residence at Waveland, Mississippi.
Q. In visiting your summer residence and in coasting, and your visits generally out in that territory, until these laws were inaugurated, of recent date, that territory was regarded as common ground

for Louisiana and Mississippi and Alabama and all comers generally, was it not?

A. I can't say that, but I can say this, that before this, the fishermen from all along there didn't question who owned that, they just went and fished wherever they could find their product and brought some of it to the old basin for consumption in New Orleans and then afterwards when the factories grew up they fished and brought oysters to the factories on the Mississippi coast.

Q. You never heard anything of an armed conflict threatened between the officers of the two States, over that boundary, I mean prior to the bringing of this suit?

A. I did hear at one time, I can't state from my own knowledge, but I did at one time hear that a man named Captain Young held some sort of a commission or authority and warned fishermen off from——

Q. Of what State was Captain Young?

A. I was told at the time that he represented the State of Mississippi.

Q. Captain Young in the State of Mississippi?

A. Yes sir. He used to own the yacht Nepenthe, he was a yachtsman. He had some sort of a public office, but I am only stating this as hearsay.

Q. About when was that?

A. I suppose that was eight or nine years ago; I don't state that as a fact.

By Mr. ZACHARIE:

Q. In this case in which you defended those Mississippi fishermen——

A. No, it was Louisiana fishermen, Austrians.

Q. Louisiana fishermen, your—as I understand it your defense was first, there was no law against people fishing there; it was simply an agreement between the fishermen?

1035 A. Yes sir.

Q. And secondly, that the point at which the fishing was charged was that it was southeast of Cat island and that it was not within the waters of Louisiana?

A. Yes sir.

Q. The question of 18 miles or six leagues from the Mississippi shore only figured in the case in order to show that Cat island and the waters southeast of it were not within the boundaries of the State of Louisiana?

A. Yes sir.

Adjournment of Proceedings.

At this stage of the proceedings, the hearing was adjourned by the commissioner to be resumed at 2.30 p. m.

Resumption of Proceedings.

2.30 P. M.

Pursuant to adjournment the hearing was resumed at this hour at the same place.

OSWALD OGDEN, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. Where do you reside?

A. At present I am living at Waveland, summering there.

Q. How long have you been going to Waveland during the summer?

A. I have been going there almost my entire life, about 33 years.

Q. What is your occupation?

A. At present I am superintendent of the garbage in the department of public works.

Q. Do you know the territory lying between Isle à Pitre and Malheureux point and the territory south of the shore of Mississippi?

A. I do, in a way, I have been along there quite a number of times when I was a youngster, but I have not been there for a good many years.

Q. Well, during your summer residence, at Waveland you say?

A. Yes sir.

Q. What has this territory been known as, what name has it gone by amongst the people along that Mississippi coast?

A. I have always known it and always heard it spoken of as the Louisiana marshes and as part of the Louisiana holdings, as belonging to Louisiana.

Q. Did you ever hear it called by any other name?

A. No sir.

1036 Q. Do you know anything about what is reputed to be the boundary between Louisiana and Mississippi in those waters?

A. I don't know that I do. I always heard the deep water out there was as a general thing supposed to be the dividing line.

Q. What do you mean by the deep water; do you mean the deep water channel?

A. Yes sir.

Q. Do you mean the channel that comes out of East Pearl river and then goes down between Cat island and Isle à Pitre?

A. Yes sir.

Mr. MCCLURG: I believe I would like to have the counsel let the witness state what he thinks.

A. That is what I meant to say.

Cross-examination.

By Mr. McCLURG:

Q. How old are you?

A. I am thirty three.

Q. You speak of it being always considered, the line, as the deep water channel. What do you mean by saying that that has always been considered the boundary between these two States?

A. I don't know whether I said that or not. I said that I was always under that impression.

Q. How long have you been under that impression?

A. Ever since I was able to reason.

Q. Where did you get that impression?

A. I don't know that I can answer that. I don't know that anybody has ever told me particularly,——

Q. In other words, as a matter of fact, by pinning you down to what you are willing to swear on your oath, you can't say where the boundary between the two States is?

A. No sir.

Q. You said you always heard that the Louisiana marshes were in Louisiana. Where did you get that impression or that information?

A. Well, by just referring to the marshes down there by various people living along that coast.

Q. Along the Mississippi coast or the Louisiana coast?

A. Along there by Waveland.

Q. You know most of those people, officers, and those who have had to deal with political matters, have testified they considered as belonging to Mississippi 18 miles out from the Mississippi shore?

A. I don't know anything about what, what they have testified, I have not followed this case, I have not read any particulars of it.

Q. I do not mean to be captious with you at all, but you are making your statement pretty broad and I want to get it down as near the facts as I can; that is the reason I call your attention to the fact that my people stated they claimed——

A. I don't know anything about that.

Q. As far as your information goes you have passed the
1037 opinion that the Louisiana marshes belonged to Louisiana and the deep water channel is the boundary line?

A. Yes, sir, that is my impression.

Q. Now, then, you know, I must find out the best I can upon what that opinion is based?

A. To come close down to it, the only person that I can recall having spoken to on the subject is my father; he has lived over there for 50 years and he is entirely familiar with that section and I always heard him speak of it as that.

Q. As the Louisiana marshes?

A. Yes sir.

Q. There was no question ever brought up so far as your father

nforming you, as to any controversy or dispute as to the boundary ne?

A. No sir.

Q. You know there are some parishes in Louisiana called the 'lorida parishes?

A. Yes sir.

Q. They do not belong to Florida because they are called Florida arishes?

A. No sir.

Q. And you don't imagine for the same reason that the Louisiana arshes belong to Louisiana?

A. They might not, I can't swear they do.

Q. So far as the legal features of this case are concerned, and hat I mean by that is, the acts of Congress admitting the two tates, you never have examined them?

A. No sir, I know nothing about it.

Dr. JOSEPH T. SCOTT, witness sworn and examined on behalf of ie State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. What is your age?

A. I am 35.

Q. Where do you reside?

A. I live in New Orleans.

Q. What is your occupation?

A. I am a physician.

Q. Do you hold, or have you held any official position?

A. Yes sir, I am an officer in the Marine Hospital Service.

Q. Of the United States?

A. Yes sir, acting assistant surgeon.

Q. Have you been in the habit of visiting during the summer ason at any time, if so, when, the Mississippi sea coast?

A. Well, about, off and on, for the past 25 or 30 years, ever since was a child.

Q. Do you know that territory which lies between Isle à Pitre and alheureux point south of the Mississippi coast?

A. Well, I know it from having hunted and fished down there some years ago, I don't know anything definitely about the
038 topography of the country, I just know about where it is, I know how to get there.

Q. Do you know what that territory is generally called by the eople along the Mississippi coast?

A. Yes sir, it is called the Louisiana marsh.

Q. Have you ever heard it called by any other name?

A. No sir.

Q. Do you know whether it has been considered, or not, as a part of Louisiana?

A. I have always been under the impression it belonged to Louisiana.

Q. Do you know what has been the general impression up to the institution of this suit amongst the people along that coast?

A. The general impression was it was the Louisiana marsh, Louisiana territory.

Q. Do you know anything about the boundary line between Louisiana and Mississippi?

A. Except that Pearl river is the boundary between the two.

Q. I mean after leaving Pearl river, do you know anything about any particular channel?

A. No sir, I couldn't say positively. I was under the impression that all west of Pearl river was Louisiana.

Cross-examination.

By Mr. McClurg:

Q. You do not think it is possible for Mississippi to be delim*i*nated out of her territory just because the people may call it something else do you?

A. No sir.

Q. Now, then, these impressions you speak of, they are formed upon a sort of general talk and without any sort of reference to any definite legal line?

A. I couldn't say, I don't know, I couldn't answer.

Q. I mean, you said you had an impression?

A. I always heard it called that.

Q. What do you mean by always?

A. Any time the subject was brought up in talking about going hunting or fishing.

Q. Generally by Louisiana people?

A. No sir, they were Cadians over there. I always heard it called the Louisiana marsh.

Q. I mean of——

A. Mississippi.

Q. You mean that you have always heard the Mississippians call it the Louisiana marsh?

A. The people over there, Mississippians and anybody.

Q. You never struck up with any one that called it Grand marsh?

A. No sir.

Q. What has been your association with the Mississippi people over there?

A. I have associated with all of them over there——

Q. Mississippians or Louisianians——

A. All along that coast.

Q. Who are interested in this suit.

A. With the people who are natives over there.

1039 Q. You mean along the coast?

A. I mean along Waveland, Bay St. Louis and Nicholson avenue. I guess I could name all I know over there, Mississippi summer residents and people that live off the visitors.

Redirect examination.

By Mr. ZACHARIE:

Q. You own property over there?

A. No sir.

Q. Not now?

A. No sir, never have owned property. My father always leased a place.

Recross-examination.

By Mr. MCCLURG:

Q. You have no idea where the legal boundary is between these two States in those waters?

A. No sir, I couldn't swear to any legal boundary.

By Mr. DYMOND:

Q. Did you ever hear any Mississippian at any time in your experience make any claim that that territory south of Bay St. Louis known as the Louisiana marshes, belonged to Mississippi, prior to this suit?

A. I couldn't cite any particular case, I couldn't name any one man who had so declared.

Q. Did you ever hear anybody without naming any one. Did you ever near any one claim that this territory belonged to the State of Mississippi?

A. No, sir, I never did.

By Mr. MCCLURG:

Q. You never heard anybody specifically name it belonging to the State of Louisiana?

A. No, sir, I did not. I thought it was generally understood that it was Louisiana territory.

Q. You just thought that?

A. I always heard that. They always claimed that if there were any flies in the shape of musquitoes they came from the Louisiana marshes, they laid it all on Louisiana.

Q. You do not propose for the musquitoes to settle the boundary between two sovereign States?

A. I don't think he is going to do it either.

Q. He may communicate yellow fever and other diseases, but I don't think he will settle the State line?

A. No, sir, he will not.

1040 LOUIS H. FAIRCHILD, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Where do you live?

A. My home at present I consider in New Orleans. I have been sort of shifting. I have lived in Bay St. Louis, Mississippi, I have resided and voted there since 1871 up until the last election for Congressmen, I think at the time Bowers was first elected I think about a year or more ago. Since then I concluded to make my domicile here in Louisiana, but I have been a citizen of Mississippi for about 30 years.

Q. How old are you?

A. I am fifty-five.

Q. During these 30 odd years, at what point in Mississippi did you live?

A. Bay St. Louis and Waveland which is a part of Bay St. Louis.

Q. During your residency there, were you thrown in contact much by acquaintance or otherwise with the natives of that locality?

A. Yes sir.

Q. Are you fond of fishing and hunting, etc.?

A. Yes sir.

Q. Ever make excursions and have you made excursions on fishing and hunting trips?

A. Numerous times, yes sir.

Q. Ever had occasion to go into the marshes south of the Mississippi shore, south of Bay St. Louis?

A. Yes sir.

Q. From the acquaintance you had with the people with whom you went over there, what was the name that that territory generally received?

A. Louisiana marshes, that is, if I understand right the territory you refer to.

Q. The territory south of Waveland?

A. Yes sir, south of Waveland.

Q. Creole gap and all those places?

A. Yes sir.

Q. Between Malheureux point and Isle à Pitre. Here is Isle à Pitre to the right and Malheureux point to the left with Bay St. Louis immediately north? (referring to map No. 59.)

A. Yes sir.

Q. To what State was the ownership of this territory attributed, the territory concerning which you have just been testifying?

A. To Louisiana. I never heard it spoken of as anything but Louisiana.

Q. Did you ever hear, in your experience of 30 years as a voter

in Mississippi any claim made that this territory belonged to Mississippi?

A. No sir, I never heard it discussed. I never heard any claim made either.

By Mr. ZACHARIE:

Q. Did you ever hear it called by the name of the Grand marsh?

A. No sir, I have always known it as the Louisiana marshes,
1041 that is all.

Q. Is that the name——

A. I know as a Mississippian we always cussed Louisiana for the musquitoes we got from that marsh.

By Mr. MCCLURG:

Q. Didn't you cuss the marsh also?

A. We always cussed it in the name of Louisiana, we always said when the wind was from the southwest we will have musquitoes.

By Mr. DYMOND:

Q. Do you know what was regarded as the boundary between the two States in that general locality?

A. No sir; I never heard the boundary discussed between the mouth of Pearl river.

Q. You understood Pearl river to be the boundary at that point?

A. Yes sir.

Cross-examination.

By Mr. MCCLURG:

Q. So far as the water boundary was concerned, after leaving Pearl *Pearl* river, you never heard that discussed?

A. No sir.

Q. And you have no idea where it is?

A. No sir.

Q. All you know is, when the southwest winds brought musquitoes you cussed the Louisiana marshes?

A. That's right. That is all I know. As I stated I have always heard this territory spoken of and referred to as the Louisiana marsh and never as the Mississippi marsh.

Q. But you never heard any controversy as to which State it really belonged to?

A. No sir.

Q. And because you have heard it called the Louisiana marsh you expected that marsh land as belonging to the State of Louisiana?

A. Yes sir.

Q. And that is the sum total of what you do know about it?

A. That is all.

Q. You never heard anything of any threatened armed conflict between Louisiana and Mississippi over the boundary out there?
A. No sir.

EDGAR H. FARRAR, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. You live in the city of New Orleans?
1042 A. Yes sir.
Q. You are a member of the firm of Farrar, Jonas & Kruttschnitt, the senior partner, I believe?
A. Yes sir.
Q. The firm of Farrar, Jonas & Kruttschnitt is one of the principal law firms of the city of New Orleans?
A. It is so regarded.
Q. How old a man are you?
A. I was 55 years on the 20th day of last January.
Q. Have you, in your life, ever had occasion to live or spend any time on the south coast of Mississippi which is commonly called by us "across the lake"?
A. From 1879 to 1901 I spent the majority of my summers, nearly every summer, either at Pass Christian or at Mississippi City, generally at Pass Christian. During that period my family remained over there for two whole winters.
Q. On these visits and trips you made, did you ever have occasion to make any fishing excursions, or anything of that sort, to the country and islands south of the Mississippi coast?
A. Very many.
Q. Did you ever visit the locality around Isle à Pitre which is shown on this map No. 59, of Louisiana, as being a little southeast of Hendersons point?
A. I have been on fishing trips to all of the keys which lie south of this channel, this channel south of Cat island, and these marshes, and I have fished all along this marsh and on two occasions I went with a party from New Orleans, fishing, into what some one of them called Grand bayou here——
Q. Grand pass?
A. Through Grand pass out to the Chandeleur islands and back.
Q. Were you thrown in contact, on any of those trips, with any fishermen or natives of the Mississippi coast?
A. Yes sir; schooner captains and sailors. I have been on a great many fishing trips out there. We would arrange with a schooner captain to meet us at either Pass Christian or Bay St. Louis or at Mississippi City or at Biloxi and we would take the train from here and go over there and take the schooner and go out and fish for two or three days, a week sometimes and sometimes ten days. Then, in

addition to that, when I would spend the summer over the lake, why, there were a lot of people there who had schooners and fishing boats and I would hire a boat and go out on these fishing trips. And then on other occasions I have gone with men like John Parker and Sam Heaslip and Mr. Bob Ogden and other gentlemen who owned their own fishing boats and were accustomed to go to these places fishing.

Q. These captains and crews of the boats you have referred to, were they generally native Mississippians or people living over there?

A. Always. They were people who owned schooners and vessels that were used in this trade around there, either for fishing or other purposes.

Q. Were they familiar with the locality to be visited by you?

A. They appeared to be. We would tell them to take us to such a key or Isle au Pied and they always seemed to know where to go.

Q. Now, Mr. Farrar, amongst those people by what name was this territory known, that is, the territory beginning at Isle à Pitre and extending westward and southward?

A. Well, all of the keys and these marshes which lie south of this channel through here, were known as the Louisiana marshes, Louisiana coast.

1043 Q. Were they so known by the people living along the coast of Mississippi, so far as you were able to ascertain from your intercourse with them?

A. Yes sir. That was the common name of all of this territory over here. Louisiana marshes was its popular name, that everybody spoke of it by.

Q. Did you ever hear anyone ever claim that that was a part of the State of Mississippi because it was within 18 miles of the Mississippi shore and was islands?

A. Never. I never heard there was any such claim until the State of Louisiana began to enforce her oyster law two or three years ago and the packers and canning people began to grumble and set up the claim that that was in Mississippi.

Q. Did you ever hear discussed as to what was the boundary in the waters of Mississippi sound, between the two States, prior to the institution of this suit?

A. It was always understood that the boundary between the State of Mississippi and the State of Louisiana, was the line of the main channel south of Cat island and in front of Pass Marianne light; for instance, Merrill's shoal bank, as it was called, was supposed to be a Louisiana key, and these keys out here, Dog key, and Pelican key, which lie south of that channel towards Isle au Pied, were called the Louisiana keys.

Cross-examination.

By Mr. McCLURG:

Q. If I do not misunderstand you, Mr. Farrar, when you say, it has always been understood that these islands and keys which you have just mentioned have been considered as Louisiana territory or belonging to the possessions of this State, that that understanding has grown out of a kind of a general understanding without any sort of reference to the legal features of the case?

A. I am simply telling you what the popular notion was, and time the popular view of the matter was. Of course I had never looked into the question and I do not suppose that anybody else had looked into the question critically, but that was the general and public impression and view, that this territory over here was Louisiana territory.

Q. The general public view and impression of the people of Louisiana or Mississippi?

A. Of the people all along that coast who live there permanently, Mississippians or Louisianians?

A. Mississippians, and among Louisianians and everybody; there was never any dissent, as I understood it, from that opinion.

Q. I want to say to you that we have taken the testimony of a great many people in Jackson, Harrison and Hancock counties, and it has been universally testified to by judges and district attorneys, mayors and marshals and constables, steamboat captains, owners, pilots, and humble citizens, who have no political distinction at all, that they have regarded and the State of Mississippi has exercised sovereignty and jurisdiction 18 miles from shore south of it. I mention that to show to you there must be some mistake in everybody being of that opinion?

1044 Mr. DYMOND: To which statement of counsel for the State of Mississippi, counsel for Louisiana enter an objection, because the record will show that the counsel is mistaken in his interpretation of the evidence of the witnesses for the State of Mississippi, and that those who have testified in regard to Harrison and Jackson counties referred to the islands within 18 miles distant from the shore of Mississippi where there is no controversy.

A. It was always conceded, as I understood the matter, that is, the public understanding, that all of the islands such as Cat island, Ship island, Round island, Grand island, and all those islands adjacent to the Mississippi shore, were parts of Mississippi; but that the marshes and the keys which lie south of Cat island, form part of the Louisiana territory, and if those people ever had any such notion they kept it to themselves so far as I was concerned, because within my knowledge, no such opinion ever prevailed among the people that I came in contact with along that coast at any time in 30 years.

Q. Well——

A. I have been going out there since 1873. My first fishing visit to that locality was made in the summer of 1873.

Q. Well, is it not true that you came in contact mostly with people who were there during the summer time for recreation and pleasure and not with the sturdy solid working people along the coast and those who were interested in the permanency——

A. I came in contact with all sorts of people; with fishermen and schooner men and the permanent residents there, and of course a great many people from the city of New Orleans.

Q. And did those people with whom you came in contact with agree with you that that sailing line buoyed by the Federal Government for vessels of heavy draft, the Cat Island channel, around to the mouth of Pearl river was the boundary between these two States. You do not undertake to say that, do you?

A. I mean to say that the public impression which I gathered from contact with the people over there, and from going out there fishing, and from talking about going fishing, and from negotiating with fishermen and schooner people, was, that that territory over there was Louisiana territory.

Q. You mean the territory south of——

A. The territory south of that channel including these keys, including the keys and what is called Isle au Pied, I call it that, some people call it Isle à Pitre and some people call it Isle au Pied. It was supposed—or, as I always understood, that the island had originally the form of a human foot and it was called Isle au Pied which was corrupted into Isle à Pitre.

Q. Some of the old fishermen have testified it got its name from Isle au Pied, Isle of Tracks, they said they were coon tracks.

A. *Pied* in French, means foot in English. Whether it got it from *pied* or the foot of a coon or whether it got it from the shape of the island, I don't know, but I always understood that it was called Isle au Pied or Foot island and that it had that name because it had the shape originally of a human foot or a foot.

Q. The bill of complaint in this suit copies from the act of Congress admitting the State of Louisiana into the Union in
1045 1812. Omitting other parts describing the boundaries of the State of Louisiana, the act, as I read it, from the original bill, in connection with the boundary under discussion, now reads this way "thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast." I read that to you, Mr. Farrar, because I know you are a good lawyer and I think you want the right thing done in this case no matter how it falls. I call your attention to the fact that Lake Borgne is not mentioned in that description, "from Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast." I would like you to state to the commis-

sioner, even though you be an adverse witness, and a stout one, wh
the words "including all islands within three leagues of the coast
not used within the contemplation of the act to show that not
the three leagues which usually means water measure, as I u
stand it, in connection with that, but any islands which are us
described by land descriptions, townships, ranges, sections; it
not meant to give Louisiana jurisdiction and sovereignty
leagues from her main shore in water territory, subject of cour
the common right of navigation, and that saying including
islands, to be absolutely certain that she not only got the wate
tom and sovereignty of the water surface subject to the com
right of navigation, but also she got the islands within that re

A. If I should be called upon, as a lawyer, to interpret tha
of Congress, I should have to go back and find out what the bo
aries of the Louisiana territory as acquired from the French
ernment were, and to determine whether or not it was the o
and purpose of Congress to include in the territory of Louisian
same territory as that acquired under the treaty from France
appears to me that after you have determined which of this
tory and the islands came to Louisiana from France, and what
boundaries of that territory were as acquired from France,
then, it was the intention of Congress to include that same terr
in the territory of Louisiana and I would reject any interpret
of the act of Congress which would draw a line leaving out o
State of Louisiana any portion of the territory acquired from Fr
which had originally formed a part of this grant from France
appears to me that that would be the light that would guide m
cision in interpreting that act of Congress. Now, I do not k
what those exact boundaries were; I do not know whether
islands, or whether this territory here was included in the g
from France to the United States. If it was, I should say th
reasonable interpretation of that act is that it was the intentio
Congress to transfer all of that property to Louisiana. If that pro
was not within the territory acquired from France, why, that w
have to be settled by comparison with other acts of Congress,
ting the two together, to see what the intention of Congress was
this territory was included in the Louisiana territory then, as I
it was evident that Congress intended to include it in the Sta
Louisiana. If it was not included in the Louisiana terri
1046 but belonged to the United States by some title acqu
prior thereto, why, I should say it would be very dou
whether it was the intention of Congress to put this territory
Louisiana.

Q. Now, look at the map No. 7, of Louisiana, now before you
want to call your attention to some perfectly patent matters an
ask you please to favor us with your views upon that subject bec
we are trying to get, as I understand it, the construction of the
acts admitting Louisiana and Mississippi into the Union. I say
acts, but really there were three, Louisiana having two. You

notice here the mouth of Pearl river on this map No. 7 introduced by Louisiana in evidence in this case; that, following her contention, from the mouth of Pearl river there, around to the mouth of the Sabine river dividing Louisiana from Texas, that there is something like 500 miles sea frontage of the Louisiana coast, and from the mouth of Pearl river to ten miles east of the Pascagoula river, or 70 or 75 miles is the sea frontage of the Mississippi coast. It is alleged in Mississippi's answer and cross-bill to the complaint of Louisiana, that the Congress, in forming these two States out of the territory which it had previously acquired, intended to give each State a sea frontage, and if we are correct in that construction, our contention is that in giving Louisiana her sea frontage here, Mississippi still being a Territory, that it was not the purpose or intention of Congress to so form the State of Louisiana as to cut off from the State of Mississippi, evidently then soon to become a State, as to shut her off of almost half when measuring from the northeast point of Isle à Pitre with her three league limit which passes northeast of the boundary, to a point directly between Gulfport and Ship island, and leaves Mississippi no sea frontage at all from Ship island to the mouth of Pearl river only from the western end of Ship island to the western part of Petit Bois island immediately south of the Alabama line. I have tried to state it to you as succinctly and plainly as I can, and ask you to say what you may desire to, upon that proposition. I mean to say by the proposition, in general, the idea of Congress in giving to each State or Territory a sea frontage to the south, and that according to Louisiana's contention she not only gets a southern frontage but an eastern frontage and a northern frontage.

A. It is impossible for me to say whether Congress, in the absence of positive evidence on the subject, had any theoretical view about the division of the sea front of these States. I very much doubt whether the Congress, individually or collectively, even the drafters of this act, had, at that time, any definite geographical knowledge of this locality, and that the act was drawn with their usual carelessness which characterizes the drafting of all important legislation in American legislative bodies, and that these acts were not referred to the topographical authorities of the United States for examination, and that they went, as most of our legislation, by happy go lucky guess work. That is the history, in my judgment, of the conflict between these two States. Because of the ignorance of the men who drew those acts.

Q. That is precisely what I expected your answer would be, for the reason that the Congress never undertook to define the line from the mouth of Pearl river, and if there is any line for either
1047 State out of the mouth of Pearl river it must be supplemented by judicial construction, and according to one of the theories of counsel for Mississippi, for there is nothing mentioned in the act of Congress except to the gulf of Mexico——

A. The general rule under those circumstances would be, that the

line should follow the main line of the main channel, the central thread of the main channel from that point to the gulf of Mexico.

Q. No. That is the general rule so far as the channels are concerned; I mean river channels or streams usually carrying what is commonly termed channels, between two States. But in the high seas that have ebbs and flows of the tide, they have many channels.

Q. You cannot call any of this territory between the islands and the coast, the high sea, for the reason that it is an extremely shallow, flat, country which is navigable only along certain lines. It is nothing but sand flats covered with shallow water, with a channel running through them here and there. It could not be called the high seas at all, from my point of view.

Q. That is true; we all know that now; but Mississippi sound and Lake Borgne and Pascagoula bay and things like that? They have been named almost 50 years after the act of Congress. The question is whether or not Congress considered the first touch of these great waters to the south as the waters of the gulf of Mexico. Mississippi sound, as we have found in the examination of these maps and historical matters, so far as my present recollection serves me, was not known on any map until about 1866; Lake Borgne is mentioned in the act admitting Mississippi to which I will now call your attention by reading from the original bill of complaint in this case which says—referring to the line now under discussion—"thence due south to the gulf of Mexico; (meaning the line between Mississippi and Alabama) thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne; thence up said river to the 31st degree of north latitude." There is some ground for the belief that prior to 1817 that even Lake Borgne itself was considered by Congress, and in its reckless spirit at that time, and you remember they were war times, and that all of these waters along the south shore of the Mississippi Territory and the first touch of them, were considered the gulf of Mexico, and I think you will remember, in reading the history of this country prior to that time they have been called the south sea and the sea and the high sea and things like that. Now, then, the proposition is whether Congress had in mind Lake Borgne and the Mississippi sound as separate and distinct bodies of water from the gulf of Mexico?

A. I do not believe that Congress had any opinion on the subject because I do not believe they had any accurate knowledge on which to go. That is my personal opinion, from my experience with legislators.

Q. Then, in saying, in the act of Congress describing the boundaries of both States, to the gulf of Mexico, they probably meant to the first touch of those great waters Lake Borgne and the Mississippi sound they being then considered as a part of the Gulf?

A. I think Lake Borgne was named long prior to that time, I think you will find in the contemporaneous histories of the battle
1048 of New Orleans that Lake Borgne is spoken of, that the English went into Lake Borgne. I am not certain but I think in

a book written by an English officer, which I have, who was present on that campaign describing it in detail I think possibly that he mentions Lake Borgne as a place that the English went into in 1814.

Q. I do not mean to cut your answer short. I am quite sure that Lake Borgne had a name before that; but I have referred to the view that Congress took of it.

Q. If it had the name historically, prior to that time, it is possible that Congress was acquainted with that historical name. It appears to me that you must determine what Congress meant by organizing the Territory of Louisiana and the State of Louisiana, and fixing its limits, because after those limits were fixed, Congress could not by any subsequent act organizing the Mississippi Territory, take off any part of the Louisiana Territory or the State of Louisiana, not without the consent of the legislature of the State of Louisiana. Now, you must first determine what the original Territory of Louisiana was in accordance with——

Q. You mean in the contemplation——

A. Of the act of Congress which organized Louisiana, and then you must take the act of Congress organizing the State of Mississippi and wherever the act of Congress organizing the State of Mississippi comes into conflict with the act of Congress organizing the State of Louisiana, you must give precedence to the act of Congress creating the State of Louisiana because it was a prior act and Congress could not change it after it had organized the State and fixed the boundaries.

Q. I am quite sure, Judge Farrar, that you have knowledge of the common law theory, as to the high tide mark being the usual boundary of a State in measuring her common law three mile limit, you know, and I want to ask you if you have any personal knowledge as to where the high tide mark on the main land of Louisiana, is, immediately due south of the mouth of Pearl river through that marsh country?

A. The whole of southern Louisiana, the whole of the environments of the city of New Orleans are at or about mean tide level except certain ridges of land which run through them. All this portion between the Matarie ridge and Broad street is below mean tide level. All of that portion beyond the Metarie ridge and from there to the lake is below mean tide level, and at ordinary high tide on the Louisiana coast, a large portion of her main land goes under water. So, if you were to apply the common law rule to the Territory of Louisiana it would practically take millions of acres of land and put them into the high sea, which are subject to private ownership to day, which are cultivated and protected by levees and drains and are sugar plantations and rice plantations.

Q. I want to ask you——

A. That rule cannot be applied to a flat country like Louisiana which has to be protected from overflow, any more than it would

apply to the flat country of Holland which has to be protected from overflow.

Q. That is true enough, but, nevertheless, going down Nine Mile bayou southward into the Gulf proper, there is some point between that bayou and Lake Borgne and the Mississippi river where
1049 the flow of the tide is arrested and it ebbs. I want to ask you if you have any personal knowledge about that point where the flow of the tide around that bayou and towards the Mississippi river, marks its high tide?

A. I doubt whether there is any such point anywhere in that locality, for the reason that that locality is perfectly flat. There may be here and there individual ridges along the banks of small streams and bayous that were formerly connected with the Mississippi river which are above ordinary high tide; but all of that territory, as a rule, goes under water at high tide, and would go under every high tide except these small ridges, unless protected by levees or embankments of some sort.

Q. Do you know of any levee or embankment down the western bank of Nine Mile bayou that reaches around towards Bayou Terre Bœuf?

A. No sir. I doubt whether there are any levees there except possibly some small private levees that may have been put around properly that has been re-claimed.

Q. I do not understand you to mean by that, do I, that every high tide that comes in there, flows across this marsh into Lake Borgne by Proctorville?

A. No sir; because the high tide rises in Lake Borgne just as it rises on the outside. The tide comes up slowly and it rises on one side as well as on the other side, it rises on both sides.

Q. Now, Judge Farrar, I want to call your attention to another contention that Mississippi has in this matter. On this map, No. 7, introduced by Louisiana in this case, you will notice three distinct markings in blue lines. They are double markings, one being nautical miles and the other statute miles. The first one to the southwest undertakes, as we understand it, to mark the three leagues from the main land of Louisiana at the northeast and crosses west of Grand pass, as you see from the map?

A. Yes sir.

Q. The second double markings, measures from Grand pass and is supposed to be three leagues from that point. The third one, as we understand it, is three leagues from the northeast point of Isle à Pitre and reaches out to the artificial channel between Gulfport and Ship island. And you will notice that this last marking, that I have mentioned, near the Ship Island channel, strikes the Mississippi shore a little west of Gulfport; the second or middle marking would strike the main shore of Mississippi at Point Clear; while the first one or the one that is supposed to be measured from the main land of Louisiana, strikes the coast east of Point Clear. In other words, either one of those measurements would practically cut off the sov-

eignty and jurisdiction of Mississippi, in Mississippi sound and ake Borgne west of Gulfport. Do you think that if Louisiana ould claim jurisdiction and sovereignty to either of these three istant points, that it would interfere with the navigation and com- erce, the jurisdiction and sovereignty, and general prosperity of e State of Mississippi, taking it for granted that Louisiana would ass laws with reference to paying license for the taking of fish, ysters and shrimp by the boats out of Pearl river way to the west of ese lines, and other matters which you are more competent to con- der than I can suggest. Look at those lines, please sir, and tell me what effect upon the commerce, navigation and the prosperity 050 of the State of Mississippi it would have if Louisiana should have jurisdiction up to Gulfport?

A. So far as the commerce is concerned I do not see how an naginary line of jurisdiction over waters of that sort, could have ny effect,——

Q. May not the State establish a quarantine law separate from nother State, and oyster laws; don't you think that would seriously ffect it?

A.—for the simple reason that the admiralty courts of the United tates take jurisdiction over all torts that happen upon navigable aters of the United States, and all vessels of every kind that are ngaged in commerce are licensed and naturally under the laws of ne United States and not under the laws of either State. And be- ause under the Constitution of the United States there is absolutely ree trade between the ports and commerce of one State and the orts and commerce of another State. So far as the advantage hich results to the sovereign, from the conceded principle in this ountry that the sovereign owns the soil under navigable waters ithin the three mile jurisdiction and has the right to legislate bout fishing in her own waters, whether of oysters or of other kinds f fish, why, if the State of Louisiana should undertake to legislate, aving this jurisdiction over all the waters in her jurisdiction it ould necessarily exclude the citizens of the State of Mississippi nd the State of Mississippi, from those rights of fishing either of ysters or fish of other kind which the State of Louisiana might hoose to exclude them from. That would be the effect of giving urisdiction to the State of Louisiana over that territory. It would ive the State control of the right to fish and of the right to deal ith the soil lying under the water. So far as the quarantine is oncerned, I do not understand that the laws of the State can pre- ent a vessel from sailing along the high seas; they simply can revent them from having contact with another vessel from shore r with the shore; but I have never yet understood, and I know of o quarantine law, and I doubt whether a State could pass a quar- ntine law, which would prohibit a vessel from sailing through her aters, going either between ports in her own State or going be- ween ports in her State and ports in another State.

Q. What about landing within the ports of Mississippi——

A. If this territory would include any part of the main land of Mississippi I should say that that would be an interpretation of the act that was never in contemplation of the Congress, that any grant of this jurisdiction within the three mile limit should touch or take in any part of the main land of that State.

Q. But tell us about this view of it Judge. If a cargo of lumber or other commerce, should undertake to go up Pearl river, according to the claim of Louisiana, supposing that her local jurisdiction extended out to Gulfport, she could force that cargo of lumbor to go somewhere else, even though under the local laws of the State it would not be permitted by some quarantine regulations to go?

A. No sir; I do not think so. The Mississippi river is the boundary line between the State of Louisiana and the State of Mississippi, and I have never understood that either the State of Louisiana or the State of Mississippi ever undertook to regulate the navigation of vessels up and down the Mississippi river on account of quarantine.

Q. I mean Pearl river?

1051 A. Pearl river being the boundary line would be governed by the same rule. The State of Louisiana has no control whatever, expressed or implied, direct or indirect*ly*, over commerce that floats on her waters even those within her State and especially upon a river which is a boundary line between two States. She cannot pass any law which regulates commerce, directly or indirectly. She cannot license vessels. She cannot enroll them. She cannot prohibit licensed and enrolled vessels of the United States from entering her ports except in accordance with her quarantine laws.

Q. Do you understand that rule to apply to interstate commerce lumber that might come along the Mississippi coast desiring to go up to the mills on Pearl river?

A. My view of the quarantine powers, under the Constitution of the United States, is, that those quarantine powers are entirely under the control of the State. The Federal Government has nothing to do with them. That each State has the right to protect her own citizens by proper inspection laws and quarantine laws, from importation of diseases; but under the pretense of protecting her own citizens she has no right in the guise of a quarantine law to pass a regulation which would be a regulation of commerce.

Q. However that may be, if the State has sovereignty and jurisdiction, under the common law, three miles from her shore, and if it be true that the act of Congress admitting the State into the Federal Union should extend her common law sovereignty and jurisdiction from three miles to 18 miles, that State could inaugurate laws that would seriously interfere with an adjacent State who had different laws from her own?

A. If the Congress of the United States could extend the territory of Mississippi 18 miles from her shore, the State of Mississippi would have the constitutional authority to legislate for everything within that territory that a State has the power to legislate with reference

to it, under the Constitution of the United States, and if those laws were within the Constitution and objectionable to the citizens of another State, why, the citizens of the other State would have to stand the objectionable law.

Redirect examination.

By Mr. DYMOND:

Q. Let us suppose there was a point on the southern coast of Mississippi where there were no islands, and the opening was more than six miles broad between the ends of the islands if there were islands east and west of them, I do not understand you to say, do I, that Mississippi would have jurisdiction 18 miles out into the sea where there were no islands, under the act of Congress creating Mississippi?

A. The general law of nations, as I understand it, is, that the high sea belongs to the earth, to the world, and that the jurisdiction of every country extends three marine miles from shore. I doubt whether Congress would have the power to extend the jurisdiction of the State of Mississippi beyond the three marine miles. I do not believe that any other nation in the world would recognize such authority, because if they could extend it 18 miles they could extend it 40 miles, and one nation could extend its own limits
1052 as far as it pleased. So, that, I should say that the State of Mississippi has no jurisdiction, under the law of nations, beyond three miles from the main shore.

By Mr. MCCLURG:

Q. Just to interject. But, there is one State to the east of us somewhere that has 20 leagues.

A. I do not believe that any nation in the world outside of the United States would recognize any such grant of authority.

Q. Do you think that that would be binding, Mr. Farrar, between the States of the Union, independently of any controversy with any foreign country, if the United States through its law making power should grant that; would it not be binding as between the States of the United States, whether it would be, or not, as to foreign countries?

A. I do not think that if Congress of the United States had any such power that it would be binding as between the States.

By Mr. DYMOND:

Q. Do you know the rule of international law, where a boundary between two States is a river and that river empties into an estuary, bay, or strait, or sound, what the rule of international law is, in the sound, bay or strait, as to the boundary?

A. That it follows the main thread of the main channel if there is one through the estuary or through the sound. That is the rule, as I understand it, of international law.

Q. Was it on that theory, that Pearl river was the boundary between Louisiana and Mississippi, that you reached the conclusion, for yourself, that through Mississippi sound this estuary of the sea, the deep water channel should be the proper boundary?

A. I have never considered the question to any extent, or made up my mind what, under the law, the true boundary between Mississippi and Louisiana was. I never was called on to study it, therefore I have not expressed any opinion that I know of as to what that line definitely is, under the law. I stated to the ex-attorney general of Mississippi that it appears to me that the first thing to determine was what Congress meant by the original organization of the Louisiana Territory, what did the United States get from France under its treaty with France, what was the boundary line between the then territory of the United States and the required territory of the United States, and determine from that what the territory of Louisiana was according to that description, because it appears to me that it was the evident intention of the act of Congress to take that territory which it had acquired from France and to organize it into a government and it was possible and probable not the intention of Congress to give to this territory of Louisiana any other or different boundaries from what it had when it got it from France, and that after you had determined what the territory of Louisiana was as obtained from France, then look at the act of Congress organizing the Territory of Mississippi and if there is any conflict between the two, why, the Louisiana boundary must govern being the oldest in time and because it was beyond the power of Congress after it had organized the State of Louisiana to take any territory away from it without its consent.

1053 Q. Are you familiar with the topography, so as to testify, of what we call the Rigolets joining Lake Pontchartrain and Lake Borgne and Mississippi sound?

A. I have been through that very often and I know it is a very wide and a very deep channel through which a very strong current runs first one way and then the other according as the tide changes.

Q. Has it the general features of a river reaching into the sea?

A. I should not call it a river at all. It is more of an estuary connecting these two expanses of water known as Lake Pontchartrain on one side and Mississippi sound on the other.

Q. From your knowledge of the general topography of the country if you were told that dating back since 1683, in the treaties which have been made between the various continental governments concerning this territory, that the boundary line was described as thence through the centers of Lakes Maurepas and Pontchartrain to the sea or to the gulf of Mexico, from your knowledge of the country, how would that boundary reach the sea or gulf of Mexico as interpreted by international law?

A. It could only be reached by treating the Rigolets or by treating another similar channel and smaller in nature known as the

Chef Menteur which runs from this lower point here to Lake Borgne as an estuary and as part of Lake Pontchartrain.

Q. How then would it reach the sea or the gulf of Mexico?

A. Only by treating all of the water from there to the gulf of Mexico as an estuary.

Q. Would you follow the deep water channel in reaching the sea through that estuary?

A. Assuming that it was an estuary, yes.

By Mr. ZACHARIE:

Q. Counsel for Mississippi read to you an extract from the act admitting Louisiana, that is, the original act of April 6th 1812, and he read particularly to you this clause, "Thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast." Now, on the 14th of April 1812, eight days thereafter, Congress passed an act which was accepted by the State of Louisiana, and added to their constitution, some additional territory which reads as follows: "Beginning at the junction of the River Iberville with the Mississippi river; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the eastern branch of the Pearl river to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana." You therefore see that the eastern mouth of Pearl river is mentioned as the southeastern boundary line of Louisiana. Now, construing these two acts together, is it not true then, that the boundary should extend to the eastward from the mouth of Pearl river to the gulf of Mexico or to any arm of the gulf of Mexico. Counsel for Mississippi did not read the second act, the act of April 14th.

1054 A. Necessarily the two acts must be construed together according to a well known principle of law, and necessarily they must be read, if possible, so as not to produce conflict, if they can be so read, and necessarily as the second act purported to add to the territory of Louisiana it must be read in the light of an addition to that territory. The second act of Congress does not appear to make any additions or to make any changes relative to the boundary of the State of Louisiana from the mouth of the Pearl river eastward, different from that made in the original act, so that you must go to the original act to determine what Congress meant by the boundary of the State of Louisiana from that point, or from Lake Borgne around to the eastward.

By Mr. MCCLURG:

Q. Let me ask you now, right in that immediate connection. According to the original act, where did the line strike Lake Borgne out of Lake Pontchartrain?

A. I should say that depends; if you consider the wide deep channel called the Rigolets, as part of Lake Pontchartrain, why, then, Lake Pontchartrain and Lake Borgne touch each other.

Q. What about Chef Menteur?

A. Chef Menteur is a small stream, an insignificant stream of the same character as Lake Borgne, but way down here at the lower end of the lake.

Q. It is so shown on that map and I understood you to say that you had some personal observation——

A. I have been through Chef Menteur and I have been through the Rigolets.

Q. Well, which is the wider of the two, Judge?

A. Oh, the Rigolets is very much wider than Chef Menteur and deeper.

Q. Did you notice a fort on Chef Menteur?

A. Yes, sir. After the battle of New Orleans the United States Government finding the manner in which the English had approached New Orleans through the rear they fortified the Rigolets, put a fort there, and they fortified the Chef Menteur, so as to close the entrances into Lake Pontchartrain and they fortified these various bayous leading from Lake Borgne up towards the city of New Orleans. You will find at the mouth of the Bayou Dupre through which the Lake Borgne canal now runs, a fort; you will find another fort on Bayou Bienvenu and another fort down near the shell beach at a small bayou that comes in there. All of those inlets to the city of New Orleans were fortified by the United States after the war of 1812. They have now all been abandoned by the Government.

By Mr. ZACHARIE:

Q. Will you consider again and see if you have not made a mistake and whether that addition does not shift the eastern boundary of Louisiana to the mouth of East Pearl river?

A. I have stated that it does shift it to the mouth of East Pearl river, but I have stated that inasmuch as the mouth of Pearl river and the mouth of the Rigolets are not very far apart and that they both run into Lake Borgne, that this act of Congress does not
1055 undertake to change or to modify the boundary of the State of Louisiana east of that point or of a line joining those two points.

Q. I will read to you the description of the boundaries of the State of Mississippi as laid down in the act admitting the State to the Union "Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same thence along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the gulf of Mexico." Now is the clause to which I want to attract your particular attention, "thence westwardly, including

all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne." Do you interpret that boundary as including all waters within 18 miles of the southern coast of Mississippi, or, is not her southern boundary limited to the three mile limit except where there are islands and the boundary gives her the islands. Does that mean to say that, starting from a point near Pascagoula and going westward, it takes in all the waters within 18 miles, or does it only include the islands within 18 miles?

A. You want my opinion as a lawyer?

Q. Yes?

A. I should say that this was a grant of jurisdiction over the islands within six leagues of the shore, and that it was not a grant of absolute jurisdiction to the State of Mississippi over the waters and the soil under the waters within six leagues of the shore because there is absolutely nothing said in the act with reference to the three mile limit or to any other limit or with reference to the jurisdiction of the State over the waters or with reference to the jurisdiction of the State over the soil under the waters. That was apparently left to the general rule of international law, that the jurisdiction of the State extended for three marine miles. The grant is made, however, to the islands that are within six leagues because those islands were part of the territory of the United States and it was not evidently the policy of Congress to have islands belonging to the United States lying off the shores of a State that were not within the control or jurisdiction of some State.

OBJECTION.—Mr. MCCLURG: The question and answer is objected to as plainly calling for a mere opinion.

By Mr. MCCLURG:

Q. There can be no doubt in your mind, Judge, of the power of Congress to change the common law rule, within her jurisdiction, by special act, can there?

A. Congress has the power to legislate within the grants made to the Congress by the Constitution and for the purpose of carrying those grants into effect. She has no other powers than those. The Government of the United States is a government of delegated powers. If a subject is within the powers of the United States
1056 it can make any rule with reference thereto, it chooses, whether that rule is in conformity with or in contravention of the common law rule or not. It can change the common law as it pleases in so far as granted powers are concerned.

Q. That is the extent of my inquiry. I understand from what you said a few moments ago that you doubted very much whether the Congress of the United States had jurisdiction to legislate beyond the three mile limit?

A. My opinion as a lawyer, is, that the Congress is absolutely without power to legislate any matter beyond the conceded limits of the United States according to the law of nations, except to de-

fine offenses upon the high seas committed upon vessels of the United States. In other words, Congress cannot assume to herself powers that no other nation possesses, and it is conceded by the law of nations that no nation has a right to legislate except within her own territorial limits and that her own territorial limits extend to within three marine miles of the shore, and the islands, of course, that are adjacent thereto and over which the country has jurisdiction.

Q. May not Congress make a grant within those three miles of the shore in the language that it has made in admitting the State of Mississippi into the Union granting her six leagues from shore. That means six leagues from the shore intending to give the State sovereignty and jurisdiction subject to the common right of nations over the face of the waters and the soil under the waters, and when it says to include all islands, not to limit the grant that it has made but to make certain facts of the grant of jurisdiction to the water and the territory under the water and whatever islands may protrude above the water. Would that not be a reasonable construction of these acts?

A. I should say no. I would not interpret an act of Congress as extending the jurisdiction and power of a State beyond the limits conceded by the law of nations, to be the limits of any nation's territory unless the act of Congress said so in terms so specific and so clear that no other interpretation could be put upon it, and if the act of Congress did undertake to extend its own territory, or the territory of any State which it might create out of its own territory beyond the conceded limits established by the law of nations, I should say that that act, in so far as such extension was concerned was absolutely null and void and was not binding either upon any foreign State or binding upon any other State in the Union.

Q. Not going beyond the three mile limit; taking for an illustration the act admitting Louisiana into the Union and giving her three leagues from her coast to include all islands within that reach, do not the words to include all islands mean the accumulation rather than the limitation of the jurisdiction of the State over the islands?

A. I do not understand your question.

Q. Where an act of Congress creating a State says that the line is to run from one sea point to another, and to include all islands within three leagues of the shore, are the words "to include all islands" words of limitation or does it not mean to make the act certain that she shall not only have jurisdiction over the water that distance but also over the islands.

A. I cannot so interpret the act. You might have an act of that sort apply to a coast line 500 miles long; there might within that distance be one or two or three islands situated a short distance
1057 from the coast. To interpret such an act in that way would be to mean that Congress undertook to violate the law of nations and stretch a State out through hundreds of miles of country into the ocean, very much further than the law of nations conceded her jurisdiction to extend. As I understand it, the three marine

miles applies not only to an island but it applies to the main land; in other words, the territory of the State extends, under the international law, not only three miles from the main land but it extends three miles from an island because an island is just as much a part of the territory as the main land and that limit extends all around every island. If the limits lap each other, why, then all included waters are within the jurisdiction of the State. If the three mile limit around the islands do not lap, then there is a wide space of territory between which is high sea and not under the jurisdiction of the State.

Q. Then, it is your opinion that where Congres, as it has done in the formation of these States, the Atlantic and Pacific and Gulf States, has undertaken to grant jurisdiction, subject always of course to international right, farther out than three marine miles, she has exceeded her constitutional powers?

A. Yes sir. If the Government of the United States has undertaken, with reference to any State, to extend the jurisdiction and power of that State for more than three marine miles beyond the shore line, either of the main land or of some island, then Congress has exceeded her powers and no sovereign in the world is bound by such excess of powers with reference to the territory in question.

Q. You know that Congress has done that in the formation of nearly all her sea bound States?

A. She may have done it, but in my judgment she had no power to do it.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana offer, introduce and file in evidence, a certified copy of act No. 26, being senate concurrent resolution adopted by the General Assembly of the State of Louisiana, approved by the governor of the State of Louisiana June 17th 1904, ratifying, approving and confirming the action of W. W. Heard governor of Louisiana in instituting this suit, which said exhibit is to be known as Document No. 99, a certified copy thereof being delivered to counsel for the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner until Thursday September 15th 1904.

Resumption of Proceedings.

1058 NEW ORLEANS, THURSDAY, Sept. 15, 1904.

Pursuant to adjournment the hearing was this day resumed at the same time and place.

Present: Hon. W. W. Bullard, commissioner.
Hon. Walter Guion, att'y general of the State of Louisiana.
Mess. John Dymond, Jr., and F. C. Zacharie, associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

CASIMIR HARVEY, witness sworn and examined on behalf of the State of Louisiana, testified as follows:—

Direct examination.

By Judge GUION:

Q. What is your name?
A. Casimir Harvey.
Q. What is your age?
A. I am 59 years old to day.
Q. Where do you live?
A. At Back Bay, Biloxi, Mississippi.
Q. How long have you been living there?
A. I was born there, that is 59 years ago.
Q. And you have always lived there ever since you were born?
A. Yes sir, except a little while I lived at another place.
Q. Did you ever, at any time, write to the land office in Mississippi, a letter with a view of acquiring from the State of Mississippi land down in what is called the Louisiana marsh?
A. Yes, sir.
Q. About what time was that, how many years ago?
A. Let me see, it was about 1887.
Q. Did you forward the letter?
A. No, sir.
Q. Did you mail it, was it mailed?
A. It must have been mailed because it came back to me, you know. Mr. Seal wrote it for me and he sent it to the land office at Jackson and the clerk or whoever he was he wrote back on it there was no such thing on record there and when Mr. Seal got the letter he sent it to me and I opened the letter and I read it my self and threw it to one side.
Q. What do you mean by, there was no such thing on record?
A. There was no such piece of land as Creole gap there.
Q. Where was this land that you wanted to purchase?

A. What I wanted to get?
Q. Yes?
A. It was around Creole gap.
Q. Land in the neighborhood of Creole gap?
A. Yes, well, the whole of Creole gap I wanted to buy, about half a mile or a mile square there.
Q. Do you mean by that the water or what?
A. I wanted to buy the water and the land, it is all included.
Q. And you got the letter sent back to you?
A. Yes, sir.
Q. That Mr. Seal had written for you?
1059 A. Yes sir, because he knowed the gentleman there.
Q. Now, Mr. Harvey, I understand that the letter that was written by Mr. Seal for you, came back to him?
A. Yes sir.
Q. And he, Mr. Seal, sent it to you?
A. Yes sir.
Q. And was there any letter from the land office in Mississippi with it?
A. No sir. The same letter that went, that was wrote to him.
Q. What came back on the letter?
A. To let me know there was no such thing on record, of the land, of that Creole gap?
Q. Where was that from?
A. That was from the land office.
Q. In Mississippi?
A. Yes sir, Jackson.
Q. Then do I understand that on the letter or the blank part of the letter that Mr. Seal wrote, there was endorsed the statement there was no such land to be got from the State of Mississippi?
A. Yes sir.

Mr. McCLUNG: I think it would be better to let him account for the letter.

Q. Where is that letter?
A. That is what I would like to know myself, where it is.
Q. Did you ever give it up to anybody?
A. No sir; I threw it away; when I went to look for it, it was not in the big box where I threw my letters in, I looked for it the other day and I could not find it.
Q. When did you look for it?
A. Yesterday. I threw about 100 letters or more out of that box, I went through it piece by piece and I could not find it. I had one that the roaches got in and ate every bit of it nearly, all of the letters the roaches had been eating.
Q. You found that the letters you had in that box — eaten by roaches?
A. There was one eaten up, plum- gone, they had been living on the letters in there.

Q. Was this letter in that box?

A. Yes sir, and a good many were all torn up and wet in the there was a leak in the roof of that old store, everything was w and soaked and stained.

Q. Then after you searched through all your papers, you failed find that letter?

A. Yes sir, I tried to find it.

Q. And you were satisfied that you never gave it up to anybod

A. Yes sir. Nobody had any business with it. It was no go to me or anybody else when I found out I couldn't do anythi there.

Q. Will you look at this map that is marked Exhibit A whi was introduced in evidence by the State of Mississippi during t examination of Mr. W. K. M. Dukate and while being cross exa ined, and state whether or not you can point out to us the pla where you wanted to enter this land. This is Creole gap here?

A. This is the place I wanted to get, right there, Creole g

1060 Q. Did you want to get any land in that neighborhood?

A. I wanted to get the land and water so I could use t grounds for oysters as well as get the land.

Q. What land did you want to get?

A. That piece there.

Q. This piece here?

A. Yes sir.

Q. You mean between Grand pass and Creole gap?

A. I mean at the edge where Mr. Leovy was, he came close Creole gap, and I wanted from his line to the west, I wanted hal mile or a mile there and I couldn't get it.

Q. Of land?

A. Yes sir, and we did get it afterwards anyhow.

Q. In examining Creole gap on this map before you, do you fi that the Creole gap you referred to is the same Creole gap that vides Isle à Pitre?

A. Yes sir.

Q. Then the piece of property you wanted to get was between t land that Mr. Leovy owned to the west of Creole gap and all east his property as far as Creole gap?

A. Yes sir, that is what I wanted, from his property going to t westward.

Q. When you couldn't get that property from the State of Mis sippi, what did you do?

A. I came to New Orleans, when I found out that Mr. Leovy own this here.

Q. Owned what?

A. The point here.

Q. Point of what?

A. Of Isle à Pitre. I came here to see him for him to tell me h he got it and he told me he got it through the land office at Bat Rouge in Louisiana; then I went and saw Mr. Gilmore and we s

them blanks or application and filled them out and he got that piece there first, that was the first piece we got.

Q. Where was the first piece you got, near Creole gap?

A. We got Creole gap, we got what he owns now, Creole gap on the map.

Q. Mr. J. C. Gilmore?

A. Yes sir.

Q. Do you own any part of this Isle à Pitre?

A. No sir, he bought that, that was for us.

Q. Who do you mean by us?

A. Me and Mulholland and J. C. Gilmore, he was the head man about it, he did the buying and we furnished the money with him and so he bought that there and bought a whole lot more for himself.

Q. Where else did he buy?

A. All along in there, I don't know, he bought this place near this big bay here.

Q. Do you mean near Jack Williams bay?

A. Yes sir, and we made a swap for that piece here for our interest in there.

Q. Interest in what?

A. In this.

Q. For the interest in this piece down near Jack Williams bay?

A. Yes sir.

Q. Where do you own now, you and Mr. Mulholland?

A. This here.

1061 Q. When you speak of this here pointing at the map as you do what place do you mean. You have to tell us what it is because the Supreme Court does not see you pointing here with your finger.

(Witness being asked to point on the map before him the place which he now owns with Mr. Mulholland states that the property that he now owns is shown on a sketch which shows that the property is in township 11, south range 20, east, being the southeast quarter of section 29, the west half of the southwest quarter of section 28, the east half of section 32 and the west half of the northwest quarter of section 33 and the north half of the northeast quarter of section 5 township 12, south range 20 east.)

Q. You say that the property that you then got from Mr. Gilmore is shown on this map before you as being near Jack Williams bay?

A. Yes sir, the Southeast bay they call it, that is, of course I can't say nothing more than what it looks like on that map, it looks like it by the map here.

Q. Did you apply to the State of Mississippi to get this property?

A. No sir.

Q. The property that you applied for to the State of Mississippi was near Creole gap?

A. Yes sir.

Q. Is that correct?

A. Yes sir. If I am not mistaken that is what I applied for. I know I applied for that there, I don't know if I mentioned Creole gap, or not, because it is so long ago I couldn't exactly say that I mentioned Creole gap but I wanted to see if I could enter the piece of land——

Q. Did you describe it at all in your application or in the letter that was written for your account?

A. I don't know if I stated Creole gap or not, at least, I told the man to write up there to see if I could enter a piece of land over there.

Q. Over there?

A. Over at Isle à Pitre, you know, and they wrote back to him there was no such record there, but I believe, I am not sure, I said I wanted to enter Creole gap, I believe I told Mr. Seal to tell him so, to write that to him.

Q. Did you read the letter that came back from the land office that had been written by Mr. Seal?

A. Yes sir.

Q. When it came back did you read it?

A. Yes sir and it said——

Q. No, I am speaking of the letter that was written for you by Mr. Seal, did you read that?

A. No, the letter came back to Mr. Seal and he sent it to me.

Q. When you got it did you read it?

A. Yes sir.

Q. Did you see what Mr. Seal had written?

A. It said there was——

Q. No, what Mr. Seal wrote.

1062 A. I don't remember what he put in it.

Q. Do you remember whether he wrote to the land office in Mississippi?

A. He said he did.

Q. Well, the letter that you had, that he sent you, was that the letter from Mr. Seal?

A. The same letter that he sent was sent back to him.

Q. I understand you. You have gotten confused. Mr. Seal, as I understand, wrote a letter for you?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Q. To whom was that letter written?

A. To the clerk there at the office at Jackson.

Q. What office?

A. To the clerk's office, I suppose, there.

Q. Do you remember whom it was written to?

A. No sir, I don't know the man's name; he said it was a friend of his.

. At the land office?
. Yes sir, at the land office.
. Well, now, that letter that Mr. Seal wrote, it came afterwards your possession?
. It came to him first and he sent it to me.
. It came back to you from him?
. From Mr. Seal.
. When Mr. Seal sent it to you what was on it besides——
. I don't remember exactly. That is all I noticed, it said there nothing on record there.
. Who had written that upon it?
. I don't know; it must have been the land office I suppose, I t know.
. You don't know whose writing it was?
. No sir.
. Do you know the name that was written on it, the signature?
. No sir; I couldn't tell you that. That is too long ago for me to remember.
Q. Do you remember how he described himself, the man who wrote this on the letter to Mr. Seal, what he claimed to

. I don't know what he was there, I couldn't tell you.
Whom did you understand the letter was from?
. From the land office up there.
You understood that at the time?
. I told Mr. Seal to write up there and he said he had a friend would find out so when the letter came that is all I saw about here was nothing there on record.
Did you read that letter that Mr. Seal wrote to see what he d in his letter. When your letter came back did you read it?
I believe I did.
Well, what did Mr. Seal ask for in his letter?
I believe he asked if there was any land there of that descrip- for sale over there and he said no there was nothing there to t the land office.
You understood, did you, at the time, who it was from?
I understood there was no such land there to sell, to be got, on d.
Did you understand who was writing that letter?
No, I couldn't tell who was writing that letter, I couldn't tell nan's name.
All that you understand is, it was from the land office in Mis- ppi?
Yes sir.
And that letter you have not been able to find?
No sir, and I could not say exactly all what was on there either use it is impossible to say that in that long time, for a person to emember.

Q. How did you happen to look for this letter; were you asked to do it. Here lately have you been asked to look for this letter?

A. Yes sir; this gentleman asked me if I had the letter.

Q. Which gentleman, Mr. Zacharie?

A. Yes sir.

Q. Did he see you in Biloxi?

A. Yes sir; he asked me if I had the letter and I told him I thought it was mighty strange how he knew I had got a letter, it didn't matter much but he asked me if I had got a letter from the land office up there and I told him yes, I had gotten one but I didn't have it now.

Q. How long ago was it he asked you?

A. Three or four days ago.

Q. Were you asked by him to look for this letter?

A. Yes sir.

Q. You did so because he asked you?

A. No, but I thought I would look for it myself.

Q. Were you notified you were expected to be a witness here?

A. Yes sir, he told me.

Q. Colonel Zacharie you mean by he?

A. Yes sir, that gentleman over there.

Q. You were told you were expected to be a witness in this case, is that right?

A. He didn't say I was going to be a witness in this case; he didn't tell me I was going to be a witness.

1064 Q. Did he tell you what he wanted to prove by that letter?

A. I don't hardly know what he told me.

Q. What reason did you have for looking for the letter. Why did you look for it?

A. To see if I could find it.

Q. What did you want to find it for; what did you want to do with it after you found it?

A. I remember now, he told me if I could find that letter may be it would save my property that I got in the marsh, this here, the piece of land I own out there.

Q. Did you make a diligent search for the letter?

A. I did look for it.

Q. Did you look for it carefully?

A. Yes sir; I examined all the papers where I thought the letter was. I examined everything around there, but it is too long ago to be hunting a letter that way, you know.

Q. And when you looked for it you had been told by Colonel Zacharie that you were expected to be a witness in this case?

A. I don't know if he told me or if you wrote to me or not.

By Mr. ZACHARIE:

Q. I told you so and wrote to you also.

A. I don't know whether you told me; I know you wrote to me I would be summoned.

Q. Mr. Harvey, do you remember if you asked me the question how the decision of this suit would affect your title to the land in the Louisiana marshes?

A. Yes sir, I believe I asked you that in case Mississippi takes that boundary, you know.

Q. Didn't I answer you that of course if this land was granted—was decided in this suit as belonging to Mississippi that your Louisiana patent would not do you any good?

A. Yes sir.

Q. Isn't that the substance of our conversation?

A. Yes sir.

Q. Didn't you bring that out yourself by asking me what effect it would have on your title?

A. Yes sir; if a man would lose his property that he bought from Louisiana; that is what I meant; they said the line was going to run through, right straight across.

Q. Did I or did I not make any voluntary statement to you to induce you to testify; didn't this come from you asking me the question as to what effect the decision of this suit would have on your Louisiana patent?

A. You told me it would be good if Mississippi didn't win it.

Q. That was at your request, a reply to your question was it not?

A. Yes sir.

By Judge GUION:

Q. Why was it that when you wanted to get this piece of property in Isle à Pitre that you called Creole gap, that you got Mr. Seal to write to the State of Mississippi, to the land office there?

A. I asked him if he knew anybody up there, I believe, if I am not mistaken, and he told me yes he knew somebody up there and I told him to write to see if there was any land to buy about
1065 there at Isle à Pitre or Creole gap I forget exactly, if I could buy any land over there, and that is the way it came, he wrote back there was no such record of that land over there.

Q. I understand, but that is not my question. Why did you make application to the State of Mississippi for this land instead of Louisiana?

A. I didn't know any better, I didn't know who was claiming it, I don't know who is claiming it now even.

Q. Had you ever heard of this territory down there called the Louisiana marsh?

A. Yes sir, I always did hear it called the Louisiana marsh.

Q. You always heard it called by the name of the Louisiana marsh?

A. Yes sir, I always heard it called the Louisiana marsh and nothing else.

Q. Did you hear it called by the name of the Grand marsh?

A. I suppose I heard that name too many a time but I don't remember of hearing people calling it the Grand marsh.

Q. You had always heard it called the Louisiana marsh?
A. Yes sir, but I heard some people call it Grand marsh.
Q. Where was this Louisiana marsh, where did it begin as you understood it?
A. I always thought south of Cat island was all Louisiana marsh.
Q. That is the way you understood it?
A. It seems to me.
Q. And to the west of Cat island, how did you understand that?
A. I understood that was towards Mississippi, I always heard so.
Q. To the west, not to the east?
A. I always heard that the channel divided the lines.
Q. You always heard that what channel divided the lines?
A. Cat Island channel.
Q. You always heard that channel——
A. Divided the lines.
Q. What channel do you speak of?
A. Cat Island channel.
Q. Where is that, between Cat island and what?
A. Between Cat island and Isle à Pitre.
Q. You always heard that spoken of as the line between what?
A. Between Louisiana and Mississippi.
Q. Going to what place?
A. Going out and coming in.
Q. Going as far west as what?
A. As Pearl river.
Q. Having understood that the channel between Cat island and Isle à Pitre was the dividing line between Louisiana and Mississippi, why did you apply to Mississippi for this piece of property?
A. Because I didn't know any better at the time.

By Mr. ZACHARIE:

Q. Will you examine this map of Mississippi, Exhibit A. What is this territory called, from Isle à Pitre running to the westward as far as Malheureux point? All this territory shown there running to the west. What has that been called. Here is the Mississippi shore up here. Now, this is south down here, what is that called?
A. I can't tell you except the Louisiana marsh.
1066 Q. That is exactly what I want to get at.
A. Louisiana marsh, but when I applied for this I didn't know any better.

By Judge GUION:

Q. Did I understand you to say just now that you had heard people say it was in Mississippi, Isle à Pitre?
A. Some of them, they say until now it belongs to Mississippi.
Q. You didn't know who it belonged to?
A. No sir, I didn't know anything about it. I know that Mr. Gilmore got it at the land office at Baton Rouge. I know he got that there, that didn't seem like it was in Mississippi.

Q. Why did you apply to Mr. Leovy when you came over to New Orleans what was your object in seeing him?
A. To find out how it could be got.
Q. To find out how you could get the land?
A. Yes sir. That was the only one I ever did find out from, because I didn't know how to go to work it out, and he showed me and told me all about it and I went to see Mr. Gilmore.
Q. Mr. Joseph Gilmore?
A. Yes sir, that was the only way because I didn't know.

Cross-examination.

By Mr. McCLURG:

Q. Was anybody interested with you, Mr. Harvey, in desiring to purchase Creole gap?
A. All three of us, me and my son in law and Mr. Gilmore.
Q. Mr. Joe Gilmore?
A. Yes sir.
Q. And did you all talk about applying to Mississippi for it before you did do it?
A. No sir; nobody knew anything about it but me; I was the one that happened to be at the courthouse one day and I asked Mr. Seal to write for me, that was the only way.
Q. That was Mr. Florian Seal?
A. Yes sir.
Q. What office did he hold then?
A. Sheriff, like he is holding sheriff's office now. I don't suppose that he knows about it any more.
Q. When was that?
A. That was in 1887. He don't know anything about it any more.
Q. How much did you pay the State of Louisiana for that land?
A. I paid a bit an acre. I didn't buy it from the State of Louisiana.
Q. Whom did you buy it from?
A. I got it from Mr. Gilmore.
Q. Creole gap?
A. He bought that, but we were together in that and then he bought some more land up in there and he bought this, bought what we were looking at, and we made a swap of our share and what stock we had in Creole gap we gave to him for this part.
Q. What did Creole gap cost him, a bit an an acre?
A. Yes sir, all of it, a bit an acre.
Q. How much of the Creole gap was water and how much land?
A. I believe there was 80 acres.
1067 Q. How much of it was land and how much water?
A. We bought all the overflowed land.
Q. Didn't you get as much water as land?
A. Overflowed land, overflowed marsh.

Q. Did you get the pass, the water through the gap?
A. Well, there was nothing much of a pass through there.
Q. Does it go through the land you bought?
A. Yes sir, the water goes through.
Q. Through the land you bought?
A. Yes sir.
Q. You bought on both sides?
A. Yes sir.
Q. You wanted it for oyster purposes?
A. Yes sir.
Q. You never cultivated any of that land, did you?
A. We put—how many barrels we put in there?
Q. I mean this, you never planted any crops of any kind?
A. We planted oysters in there.
Q. I am talking about on the land; did you ever plant any cane cotton, corn, vegetables?
A. No sir; I never planted much of that.
Q. On this land did you plant anything there but oysters?
A. No sir; that is all we are working for now, oysters.
Q. You say Mr. Seal told you he had a friend up at Jackson h would write to?
A. At that time, yes sir, he had a friend that he wrote that to.
Q. And he wrote to his friend?
A. Yes sir.
Q. Did he tell his friend to inquire at the land office?
A. I believe that is what he wrote if I am not mistaken.
Q. He wrote to his friend then at Jackson to go and inquire at th land office?
A. I don't know, but I know it was at the land office anyhow, bu I don't know who he was, I don't know anything about that.
Q. Here is what I want to know, did he write to the land offic direct or did he write to his friend up there to go to the land office
A. May be it was to his friend, I don't know, that is it, I don't kno anything about that you see, he said he had a friend up there, I don' know whether he meant in the office or not, you see, I couldn't tell
Q. You had an idea, you and your son in law, at that time, tha that land was in Mississippi, did you not?
A. No, not after I found out it was not. How can a man tell o what line I have got a piece of land now, just the same thing, a ma can't tell nothing, on which line, you see what Mississippi is claim ing now. Well if she claims that Louisiana don't own Isle à Pitre you see you can't tell on which line it is now.
Q. You thought it was in Mississippi?
A. I thought it was in Mississippi when I got him to write; bu when I found it was not in Mississippi then I came to New Orlean and saw Mr. Leovy, you see, and I saw his papers, he showed me al his papers and he wanted to sell it and I told him no, I wanted t buy a piece next to you and I saw on his map that he did not com quite to Creole gap and we bought from Creole gap——

Q. From Creole gap west?

1068 A. From the east side of Creole gap over west, 80 acres.

Q. You say you have heard that marsh territory down there called Grand marsh?

A. I heard it called Grand marsh and I heard it called Louisiana marsh.

Q. You heard it called the marsh too, have you not?

A. I always thought that the Grand marsh was on the west side of the Mississippi river.

Q. You stated a while ago that you always considered that the Cat Island channel was the line between the two States?

A. That is what they said.

Q. You did not think that when you applied to Mississippi for that land?

A. No, you see I had not studied about that; furthermore they say that the Louisiana line now runs and takes that Nigger point, takes a part of that, that is what I hear, I don't know anything about it.

Q. Are you interested in any land about Nigger point?

A. No sir.

Q. Your land is over there by Jack Williams bay?

A. Yes sir, Southeast bay I believe they call it.

Q. South of Grand pass?

A. Yes sir, about five miles.

Q. How far is it from Creole gap to Bay St. Louis?

A. You have got me now. Creole gap to Bay St. Louis, it ought to be fully 20 miles, in that neighborhood.

Q. Did you ever hear, Mr. Harvey, that Mississippi claimed 18 miles from her shore?

A. That is what I hear now.

Q. Did you ever hear it before this suit started?

A. No sir.

Q. You never heard that?

A. No sir; I never heard it.

Q. Did you ever hear anything of any armed conflict between the officers of Saint Bernard parish and the officers of Harrison county over the State line?

A. No sir, not that I know of.

Q. What is your occupation?

A. I am a ship builder by trade.

Q. Have you ever fished oysters any?

A. I fished oysters a little, I fish very little oysters.

Q. When were you last at Isle à Pitre, Creole gap, Grand pass and Jack Williams bay?

A. The last time I was about Creole gap I went through there, that is about ten years ago, after I took my schooner off the island, she was ashore and I went there for her and I went through Creole gap.

Q. Did you ever go through Grand pass?

A. Yes sir.
Q. How long ago?
A. A good many years ago, about 15 years ago.
Q. Were you ever at Nine Mile bayou?
A. No sir.
Q. Were you ever at Three Mile bayou?
A. No sir, I never was there at all and I have been running here for 40 years, to New Orleans, and I never went to those places after you come out of the Rigolets to the southward, I never went in there.
Q. When was it you say you saw Colonel Zacharie; when did you see this gentleman here?
1069 A. Three or four days ago, it was last Saturday.
Q. You inquired about the condition of your title then?
A. I wanted to, talk to him but he was in such a hurry he would not stay there to talk.
Q. He talked enough to you to let you know if Mississippi won your title was not good?
A. I thought may be Louisiana must stand good for what she sold, you know. You asked me what I bought this place for. Well, I bought there for the same purpose they are claiming those 18 miles for don't you see. I bought that for oysters, that is just what they are claiming too, those 18 miles too for oysters.
Q. The oysters are at the bottom of the business?
A. Yes sir, that is just what is the matter.
Q. That is all that territory in there is fit for?
A. That is all, nothing else; you can't raise cabbages very well, you can't raise anything except oysters, that is what it is for, they are going in pretty heavy for it too.
Q. Well, are you familiar enough with it to say whether the oysters in that territory are better than they are in other portions of the sound?
A. They are better. I have seen mighty fine oysters come out of there, of course that is all the best grounds.
Q. You mean in the marsh?
A. Yes sir, all the best ground.
Q. Best oyster grounds you mean?
A. Yes sir; you see they know exactly where to make those lines run.
Q. What is your son-in-law's name?
A. Mullholland.

Redirect examination.

By Judge GUION:

Q. You said a while ago, if I mistake not, that you had always heard that the line between Louisiana and Mississippi was the deep water channel between Cat island and Isle à Pitre; is that true?
A. Yes sir.

Q. Whom did you hear that from?

A. By people just like me that didn't know anything more about the law, about the lines, than what I did, they just thought so.

Q. Did you hear that lately?

A. I heard that a long time ago.

Q. Did you hear it when you were a child?

A. Yes sir, I heard the navigators say so.

Q. Those navigators young or old men?

A. Some were young and some were old.

By Mr. DYMOND:

Q. You sa[illegible] a moment ago that when you applied for the land around Creole gap, that you did so because you did not know any better and at that time thought that the land was in Mississippi. Why was it, you thought it was in Mississippi?

A. Well, I thought that was in Mississippi like I told you once before.

1070 Q. Do you know of any reason for thinking so?

A. No, I only though- that Isle à Pitre was in Mississippi, I didn't know, I didn't have any idea that it was owned by anybody at all, I didn't know it.

Q. Had you heard, before that, that the channel was the dividing line?

A. I heard all my life that was the division line, that channel, but I didn't know that that division line threw this Isle à Pitre in Louisiana, you know, I didn't know that.

Q. Did you think about that when you wrote to Jackson about getting the land?

A. No sir; I did not.

Q. Did you think about it afterwards when you found out you could not get the land?

A. Yes sir, when I found out I couldn't get it.

Recross-examination.

By Mr. MCCLURG:

Q. You knew Creole gap was south of Cat Island channel?

A. Yes sir.

Q. You knew that at the time you applied to Mississippi to buy it?

A. Yes sir.

Q. And you knew that at that time that it was in the State of Mississippi?

A. Well at first I thought may be it was in there and applied there first before applying over on this side.

Q. Notwithstanding those facts you say that you always heard that was the dividing line, the channel?

A. Yes sir, but I didn't know that threw in that ground or marsh either one side or the other to any man or State. I thought that

Government busines there you know, I thought that was Gover ment survey, the main channel, I didn't know this Isle à Pitre l longed to Mississippi or Louisiana, I didn't know it then at t time.

Q. You mean the Government line?

A. Yes sir.

Q. The deep water channel sailing line?

A. Yes sir.

Q. You mean by the Government line that it was for ships an vessels of heavy draft?

A. Yes sir, the main channel, that was the division line, yo know, that is the line what I mean.

Q. You know how long it has been buoyed, that that line h been buoyed?

A. No sir, I couldn't tell you.

Redirect examination by Mr. DYMOND:

Q. Will you please look at this survey which, for purposes identification will be marked Document No. 100, and state wheth it is a sketch of the survey of your lands concerning which yo have been testifying and which are located near Jack Willia bay?

1071 A. Yes sir, you can have this.

Q. You don't understand my question. Read the questi back to the witness.

(Question read)

A. It seems like it. It is off the map from the customhouse he

Q. Have you been on your land?

A. Not very much.

Q. Does this look like it from what you saw?

A. I never have been in there, never have been inside there.

Q. Was this given to you as a plan or sketch of your land?

A. Yes sir.

Q. You always recognized it as such?

A. I never saw the land down there.

By Judge GUION:

Q. Compare this sketch with the map Exhibit A of Mississip that is before your eyes and see if it corresponds with the map E hibit A down here in the territory that you claim as your property

A. There are no lines on here like on here.

Q. No lines on what?

A. No section lines or nothing.

Q. On map Exhibit A?

A. Yes sir.

By Mr. DYMOND:

Q. You notice this long peninsular. Do you find the same on this map Exhibit A?
A. It looks like it, don't it.
Q. We are asking you, you are not asking us. Do you notice this body of water that runs like a snake down into that land?
A. Yes sir.
Q. Have you such a body of water on your map?
A. Yes sir, that is right there. You see it is not all here, you can't see, there is more land there.

By Judge GUION:

Q. Who gave you this paper?
A. I think Mr. Gilmore or Mr. Duke.
Q. Did Mr. Duke go down there and make a survey for you?
A. I don't know if he did, I think he did.

JOSEPH C. GILMORE, witness, recalled on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Did you transfer to Mr. Casimir Harvey certain lands located in the neighborhood of Jack Williams bay which you had acquired from the State of Louisiana?
A. Yes sir.

1072 By Judge GUION:

Q. Was it to Mr. Casimir Harvey alone?
A. No sir, it was to him and his son-in-law.
Q. Jeff Mulholland?
A. Yes sir.
Q. Will you please look at these patents which are the originals of which copies are in evidence, marked Documents Nos. 82 and 83, and state whether you recognize them as the patents that were issued to you.
A. Yes sir.
Q. Will you now look at this sketch of survey marked Document No. 100 and state who Mr. W. D. Duke was.
A. He was a surveyor, he had been a surveyor for the parish of Saint Bernard.
Q. Did you cause those lands which were transferred by you to Mr. Casimir Harvey and Mr. Jeff Mulholland, to be surveyed by Mr. Duke?
A. Mr. Duke was out there and went over the land here on this coast and verified the surveys on maps which I have previously offered here, of Mr. Richardson.

Q. What has become of Mr. W. D. Duke?
A. He is dead. He has been dead a good many years.
Q. What was Mr. Duke's profession?
A. He was a surveyor, a civil engineer.
Q. And he was a surveyor for the parish of Saint Bernard?
A. Yes sir.
Q. Was he a United States surveyor?
A. He had been a surveyor for the parish of St. Bernard.
Q. Was he also a deputy United States surveyor?
A. I think so; he so represented himself.

OFFER.—Mr. DYMOND: In connection with the testimony of witness and that of Mr. Casimir Harvey, counsel for the State Louisiana now offer, introduce and file in evidence, said Docum No. 100 a copy thereof to be furnished to counsel for the State Mississippi.

Q. You purchased, as shown by the records, a great deal of pr erty from the State of Louisiana which is located in this area in pute at present between the States of Louisiana and Mississi As you acquired title or patent from the State of Louisiana, did y or not, cause your patents to be recorded in the conveyance of of the parish of Saint Bernard of the State of Louisiana?
A. We did, yes sir.
Q. Did you record all of them?
A. I think every one of the patents on this area here.

ADMISSION.—It is admitted by counsel for the State of Mississi that the endorsement upon patent No. 751 being the original which Document No. 83 is a copy and which original belongs and is in the possession of Mr. Casimir Harvey and Jeff D. Mull land, is in the handwriting of Charles M. Gardanne the d
1073 uty clerk and *ex-officio* recorder in this State of the parish Saint Bernard; and that said certificate is in the followi words "State of Louisiana, parish of St. Bernard, clerk's offi October 18th 1888. I do hereby certify that the within patent w this day duly recorded in my office in Book of Conveyances No. folio 196. Signed Charles M. Gardanne, deputy clerk and *ex-offi* recorder."

It is also admitted by counsel for the State of Mississippi that t certificate signed J. R. Ducros, deputy clerk and *ex-officio* rec ord upon original patent No. 750 of which a copy has al- ady be offered in evidence by the State of Louisiana and marked Doc ment No. 82 is in the handwriting of J. R. Ducros, deputy clerk a *ex-officio* recorder of the parish of St. Bernard and is in the followi language to-wit: State of Louisiana, parish of St. Bernard, cler office, October 15th 1888. I do hereby certify that the with patent No. 750 was this day recorded in my office in Book of Co veyances No. 17, folio 194. Signed J. R. Ducros deputy clerk a *ex-officio* recorder.

Q. Now, Mr. Gilmore, you transferred these two patents Nos. 750 and 751 to whom?

A. To Jeff D. Mulholland and Casimir Harvey. This is my handwriting on the back.

Q. Look at this one too, No. 751?

A. To Jeff D. Mulholland and Casimir Harvey.

Q. Then I understand, do I, that you transferred all of your right title and interest in the property described in these two patents Nos. 750 and 751 to Jeff D. Mulholland and Casimir Harvey?

A. Yes sir; the title was in my name and I turned it over to them.

Cross-examination.

By Mr. McCLURG:

Q. That is the property near Jack Williams bay?

A. Yes sir.

ADMISSION.—It is admitted by counsel for the State of Mississippi that patent No. 750 of which a copy has been already offered in evidence by the State of Louisiana, bears the following endorsement which is in the handwriting of J. C. Gilmore in whose favor the patent was issued, to-wit: "New Orleans, November 10th 1890. I hereby assign and set over to Jeff D. Mulholland and Casimir Harvey all my right, title and interest in and to the within patent and the property therein described and conveyed without warranty or recourse against me. Signed J. C. Gilmore, dated November 10th 1890."

It is also admitted by counsel for the State of Mississippi
1074 that patent No. 751, copy of which has been already offered in evidence by the State of Louisiana bears the following endorsement which is in the handwriting of J. C. Gilmore in whose favor the patent was issued, to-wit: "New Orleans November 10th 1890. I hereby assign and set over to Jeff D. Mulholland and Casimir Harvey all my right, title and interest in and to the within patent and the property therein described and conveyed without warranty or recourse against me. Signed J. C. Gilmore, November 10th 1890."

Mr. DYMOND: Counsel for the State of Louisiana, having procured official copies of the report of John Wheeler surveyor to A. G. McNutt governor of the State of Mississippi, December 13th 1839, being a survey of the coast of the State of Mississippi, with accompanying map, the whole thing being Senate Official Document of the First Session of the 26th Congress, page 163, printed by the United States Government, is, by consent of counsel for Mississippi substituted in lieu of Document No. 73 already offered.

OFFER.—Mr. DYMOND: Counsel for the State of Louisiana now offer, produce and file in evidence a certified copy of warrant No. 5696, swamp and overflowed lands, in favor of Ann B. Gordon, dated

April 28th 1859, and a certified copy of land warrant No. 7785 in favor of Henry Florence, dated November 22nd 1859, to be respectively known as Documents 101 and 102, copies thereof being tendered to counsel for the State of Mississippi.

Adjournment of Proceedings.

At this stage of the proceedings the hearing was adjourned by the commissioner, to be resumed September 16th 1904, at the same time and place.

Resumption of Proceedings.

NEW ORLEANS, September 16th, 1904.

Pursuant to adjournment the hearing was this day resumed at the same time and place.

Present: Hon. W. D. Bullard, commissioner.
Hon. Walter Guion att'y general of the State of Louisiana.
Mess. John Dymond Jr. and F. C. Zacharie associate counsel for the State of Louisiana.
Hon. Monroe McClurg, associate counsel for the State of Mississippi.

1075 Miss MARIE SEEBOLD, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. DYMOND:

Q. Miss Seebold, will you please look at this Hardee's official map of the State of Mississippi, approved under act of the legislature by Benjamin G. Humphreys governor, and state whether you were requested to color certain photographs which had been made from that part of this official Hardee's map which represented the area in dispute in this suit?

A. I was.

Q. Will you please look at this colored photograph which, for purposes of identification, is called map No. 65, and state whether that is the photograph that you have colored?

A. It is.

Q. Will you please compare the coloring on the original map with the coloring of the photograph and state by whom that coloring was made?

A. It was made by me.

Q. How does the coloring of the photograph compare with the coloring of the original?

A. It is exactly like it.

Q. Was that work done carefully by you?

A. Yes sir.

Q. And the colors reproduced represent the original colors on the original official map now before you?
A. Yes sir.

OFFER.—Mr. DYMOND: In connection with the testimony of the witness, counsel for the State of Louisiana now offer, produce and file in evidence, the photograph of the disputed area as extracted from the official map of Hardee of the State of Mississippi approved by Benjamin G. Humphreys governor of Mississippi, dated A. D. 1868, said map to be known as No. 65 a copy of which is tendered to counsel for the State of Mississippi.

No cross-examination.

LOUIS CUCULLU, witness sworn and examined on behalf of the State of Louisiana, testified as follows:

Direct examination.

By Mr. ZACHARIE:

Q. How old are you?
A. I am 65.
Q. Where do you reside?
1076 A. I am residing now in New Orleans.
Q. How long have you resided in New Orleans?
A. All my life.
Q. What official positions have you held during your life?
A. Well, I have held that of a councilman.
Q. Of the city counsel of New Orleans?
A. Yes sir.
Q. Are you connected with any bank here?
A. Yes sir.
Q. What bank and in what capacity?
A. I am president of the Peoples bank.
Q. Have you been in the habit of visiting the southern coast of Mississippi?
A. Yes sir.
Q. For how long?
A. From my infancy.
Q. Do you know the territory which lies south of the southern shore of Mississippi?
A. Yes sir.
Q. This broken portion particularly as appears on map No. 65 offered by Louisiana, what is that territory known as, amongst the people residing along the coast of Mississippi?
A. I always heard this part spoken of as the Louisiana shore, Louisiana marshes.
Q. Have you heard it called by any other name?
A. No sir.

Q. How often have you visited this Mississippi shore?

A. Well we used to go and spend every summer there, before the war.

Q. And after the war?

A. I have been several times on the coast since.

Q. And you never have heard it called by any other name than the Louisiana shore or the Louisiana marsh?

A. No sir.

Cross-examination.

By Mr. McCLURG:

Q. You have always heard that sound immediately south of the Mississippi shore called the Mississippi sound, have you not?

A. Must I give a full explanation of what I knew or heard from my youth, about it; or must I answer yes or no?

Q. Just answer yes or no?

A. I will simply state this, at the time that this Mobile line of steamers used to run, before the establishment of the Louisville and Nashville railroad, I always heard from my infancy up I may say until I left for the war, that what they called the sound was from, between the main land and the line of islands that existed, up to Mobile bay.

Q. Which line of islands do you have reference to?

A. You have Cat island, you have Ship island, you have Dauphin island and Horn island and all those islands.

Q. And your understanding has been that the sound extended between the shore and those islands?

A. Always did.

Q. And never beyond the islands?

1077 A. Never did.

Q. You notice from Cat island to the mouth of Pearl river there are some other islands and some of the Mississippi sound; where do you consider the southern boundary of the sound from Cat island to the mouth of Pearl river?

A. As far as my recollection of it and as far as my knowledge goes, I must tell you I am a sport, I am a great fisherman and a hunter, and I have always gone over the old railroad before the war, the old Mexican Gulf road that used to go to Proctorville, and I have hunted and fished on all that coast and I always considered and everybody else, that we were in Louisiana.

Q. You mean everybody else in Louisiana?

A. Always did. That is something like 45 years ago.

Q. The reason I make that modification is that some old fellows about your age, that lived in Mississippi always considered it Mississippi soil, so it depends largely on where you lived how you considered it?

A. Well, at Pass Christian where we were one of the first that went over there to establish ourselves a summer residence, my fam-

ily, we always considered this part to be Louisiana, because from our plantation, we lived in Louisiana at that time, there were no vessels, we took schooners and went through the Rigolets and went over to Mississippi, that was how we travelled at that time when I was a boy, and as far as I can recollect and as I have heard all the old people say, I have known all those people, the old Sauciers, in Pass Christian, they are still there, they are Mississippians, I always heard them talk about the Mississippi side and the Louisiana side, and they considered the outside part of these islands as the Louisiana side because when they wanted to go fishing or hunting, and I was of an age that I can recollect that, I have gone with them in their boats, they crossed over to the Louisiana side.

Q. When you struck the marsh you considered you had struck the Louisiana line?

A. Yes sir. Of course I don't know all the treaties etc., what they specified, but that is the impression that I have always been under.

Q. Do you mean to say that was the impression that was gathered from any study of the line fixed by law?

A. No sir, only by hearsay and what was considered generally.

Q. That the Mississippi line ran down to the marshes and stopped there and Louisiana began?

A. At the time I recollect the Mississippi sound, that is what they called it, Mississippi sound, in line with Cat island and all those islands.

Q. What did they call that between Point Clear or we will say Half Moon island and Malheureux point; what was that down there?

A. I suppose it was, as far as I can recollect it was always considered as crossing the Gulf and I suppose from those islands to the Louisiana marshes it was considered, that part of the water, as the Gulf, outside of Pass Marianne.

Q. Don't you think it is true that the people of Louisiana and Mississippi never considered themselves in the Gulf until they passed around Chandeleur, around east of Chandeleur, before they got into the Gulf proper; in other words, Chandeleur sound, Cat Island pass, Ship Island pass, and all those places, they were not considered the Gulf were they?

A. Well, of course we did not go that far, but I always understood we had to cross the waters, the Gulf, to go to the Louisiana side and I considered, from my knowledge of it, that the mo-
1078 ment we left the sound we had to cross the Gulf before we reached that part of Louisiana, that is what I always considered.

Q. So, then, you think that the northern shore of Cat island is the southern boundary of the Mississippi sound?

A. That is how I always considered it to be.

Q. Now, going west from that then, into Lake Borgne, and to the mouth of Pearl river, you had to cross a part of the Gulf?

A. That is what we considered at that time. You know I could-'t tell whether it was the Gulf or not.

Q. Do you think there was any part of the gulf of Mexico proper between Bay St. Louis and Isle à Pitre, Grand pass, Three Mile bayou or Nine Mile bayou?

A. Well, that I couldn't answer with certainty.

Q. Has it not been universally regarded that the Gulf was to the east and southeast of the Chandeleurs and that between the Chandeleurs and Louisiana was the Chandeleur sound?

A. It may have been by mariners, but us, that had absolutely no object in learning exactly the thing, I couldn't answer you precisely on that point.

Q. Do you know such a thing as the Chandeleur sound?

A. No; whenever we went to the Chandeleurs, we simply said we were going to the Chandeleur islands.

Q. You don't know where Chandeleur sound is?

A. I never looked so close to that, never studied that geographically.

Q. Did you ever hear of it?

A. No sir.

Q. Did you ever hear of Cat Island pass?

A. Is that what you mean by Pass Marianne, I think——

Q. No, Pass Marianne is north of Cat island, as I understand it. Cat Island pass, as I understand it, is between Cat island and Isle à Pitre, Pass Marianne is north and northeast of Cat island?

A. That line of islands, and that Pass Marianne where the steamers used to go through to Mobile in low tide, at that time was considered so I always heard, as the line between the two States, whoever went on one side or the other was either in Mississippi or Louisiana.

Q. There have been some maps introduced in this case that showed that the sailing line or line of steamers from New Orleans to Mobile went north of Cat island and Ship island and of this line islands you speak of; that was one route. And another route was to go down through Cat Island pass to the northeast of Chandeleur islands and around to Mobile. Which of those lines have you reference to?

A. I understand exactly, I know very well all that line from Mobile; I have been so often all through that country, I understand exactly. I saw one map but I don't know that it could be found in this city. It was made for the use of the Mobile and New Orleans line of steamers. It used to be in the office of Mr. R. Heddes who was the agent of that line.

Q. When was that?

A. That was before the war; I saw that myself in the office because I used to go, very often there, nearly every day. But that is an old map and possibly that cannot be found. That is the only map I ever saw drawn where the line of steamers, their route was put exactly as you have got them across the Atlantic or Pacific.

Q. And that was between Cat island, and Ship island and the Mississippi sound?

1079 A. It was right along that whole line.

Q. And that is the line that you always considered was the dividing line between the two States?

A. That is always what I understood it to be.

Q. Have you any idea how much sea frontage that line, if it is the boundary line between the two States, would leave to the State of Mississippi?

A. From my recollection, I knew Mr. Quavers who used to be for years and years the keeper of Ship island and very often we saw him at home. He died I think about the year 1902 or 1903, about two years ago, in Biloxi, and I always heard him say it was to Ship island from the shore about 12 miles, I recollect that much. Now about the other measurements. I could not. I never had any interest to study that.

Q. This steamer line that you speak of from New Orleans to Mobile, is not more than 12 miles at any point from the Mississippi shore is it?

A. That is what I always understood. Of course I had no interest to go and measure those things, I couldn't say exactly.

Q. You have never been engaged in the oyster taking industry?

A. No sir, but I tell you what I did, I went out to Ship island and ate some mighty good oysters there.

Q. Did you ever go down through Nine Mile bayou?

A. Yes sir I have.

Q. I wish you would tell me, if you can, in passing through Nine Mile bayou down towards the Lake of the Mound, do you know where that is, Indian Mound bayou?

A. No, I don't recollect.

Q. Down towards Treasure bay?

A. I don't recollect, many of those things have escaped my memory. A man that goes out hunting does not go there to make a survey.

Q. Nor to establish State boundaries?

A. No sir.

Q. I want to ask you, if you can tell me, where the high tide mark is on the Louisiana land west of Nine Mile bayou?

A. I couldn't tell you.

Q. There is a high tide mark across the eastern boundary of St. Bernard parish somewhere, is there not, a place where the ebb and flow of the tide reaches?

A. Yes sir, there are many places. I have gone all through that St. Malo country.

Q. You know where Bayou aux Terre Bœuf is?

A. Yes sir.

Q. Now what I want to know is, north of Bayou aux Terre Bœuf where the high tide mark is on the Louisiana soil along the western coast of Three Mile bayou?

A. I have known where there were camps on Riviere au Chenes used to go through Bayou Terre Bœuf to reach there. Then I hav known the encampments of the Malays that were there on St. Mal that is way off inside of the marsh further.

Q. Is St. Malo north of Terre Bœuf?

A. Oh, yes, it reaches toward the shore of Mississippi. And the I knew La Chinch, that is where the big settlements begin.

Q. Tell me if you can where is the point at Proctorville whic the map shows to be at the southern shore of Lake Borgne, and am sure you understand it that way, do you? Look at the map i front of you. You see Proctorville is right at the southern extren ity of Lake Borgne. Now, run your finger from Proctorville du east, and tell me about where you strike the high tide mark

1080 A. Where the camp was of those Malays on that rive there, I can tell you I came very often and crossed from m club at Lake Catherine and crossed over here at Bay Biloxi, Litt Biloxi——

Q. And came down Nine Mile bayou?

A. On here, yes sir, to go to Biloxi and fish.

Q. You failed to answer my question. Putting your finger o Proctorville and moving it directly eastward, where do you strik the high tide mark on the main land of Louisiana?

A. That I could not answer because those are things I neve studied.

Q. You don't know?

A. No sir.

Q. Now, please go up a little higher on your map there and pu your finger at Point aux Marchettes and then move eastward an tell me if you can where you strike the high tide mark on th Louisiana main land?

A. I tell you frankly I don't know.

Q. Does the high tide ever entirely over run Malheureux point

A. On the edge I found out that it takes a good tide to go over— a heavy tide to go over the edges, they are always dry.

Q. It takes something above the ordinary high tide to go ove Malheureux point?

A. Yes sir, I think it does.

Q. You notice Nine Mile bayou is the first water course eastwar from Malheureux point. Is there not some place along the west shor of Nine Mile bayou down towards Point aux Marchettes and in th direction of Proctorville where the high tide stops?

A. That is exactly what I can't answer. You will agree with m that a man that goes out sporting is not going to survey the land o tide whether they are high or low, therefore it would be impossibl for me to tell you whether—to tell the distance whether it is——

Q. I don't ask you for the distance. I ask you if it is not a fac if there is not some point about the western shore of Nine Mil bayou where the ebb and flow of the high tide mark on the Louisi ana main land is; it stops somewhere and I want you to fix it a

near as you can according to your best judgment. I understand, of course, you never made any survey.

A. Like I tell you, on the shore, all along the shore of Lake Borgne and the Gulf, those marshes are always above water, and it takes a high tide to cover most of those marshes.

Q. And the most of them are covered by the high tide are they not?

A. That is what I understand.

Q. Hardee's map of 1868 has been introduced in evidence and I will ask you to please look at this map beginning at Malheureux point and going to the northeastern point of Isle à Pitre and tell me whether or not you find on this map a string of islands?

A. I see them there; but when I went in a boat I was not going to stop on all those islands.

Q. In passing you saw a number of islands?

A. I went right out to the place I wanted to go, whether for fishing or hunting. Of course I am acquainted with those things like all those men that go fishing and see a lot of things passing by.

Q. You saw no industrial life of any kind in there, any stores, habitations or houses?

A. No sir, the only thing that I ever heard was I know that one of the oldest families of Mississippi, the McCans, they are from Mississippi City I believe, they had cattle there, most of those
1081 people could give you testimony, they had cattle on all those islands and they owned——

Q. Which islands do you mean?

A. On the Louisiana side, they had cattle, even up to the parish of Plaquemines, that they sold since the war.

Q. Are you not referring to the cattle that Mr. Seal had on Chandeleur island and Cat island? He never had any cattle on Isle à Pitre or any islands——

A. I can't tell you on which, but I often heard of them.

Q. You never saw them?

A. No sir.

Q. Well, the record shows that Mr. Seal or Mr. —— had cattle on Chandeleur and perhaps on Cat island, but nobody testified about any cattle being in the marsh and you never saw any in the marsh?

A. No sir.

Q. And in fact you never saw any on Chandeleur or Ship island or Cat island yourself?

A. I saw hogs.

Q. On what?

A. On all those islands.

Q. You mean on Cat island and Ship island?

A. There are still some in the marsh territory right along that coast.

Q. What?

A. Hogs, even on this coast.

Q. You are pointing to the north coast of Lake Borgne, that is not in controversy.

A. Well, right in here they had hogs.

Q. Now, you are pointing in the heart of St. Bernard parish; we are talking about the marshes?

A. I am talking about the marshes.

Q. Did you ever see any hogs on Isle à Pitre?

A. No sir, I never stopped on Isle à Pitre.

Q. Where was it you saw hogs?

A. I saw some of the hogs I believe on this island.

Q. That is Chandeleur island?

A. Yes sir, I saw them on Chandeleur island; I am telling you simply what I heard from people that had cattle there.

Q. I am asking you whether you saw any hogs in this marsh land?

A. No sir, I never went inside there, I never paid any particular attention to that.

Q. I suppose at this late date you do not remember any discussion before the war as to where the boundary was between Louisiana and Mississippi in those waters?

A. No sir. I must say the only thing I ever heard as I said before, was, on this side we called it the Louisiana side, that is all I can tell you.

Q. And on the other side what?

A. I mean all over; when we wanted to cross over to the marshes we called it the Louisiana marshes.

Q. You mean sailing from Mobile?

A. No, from Pass Christian, for instance, where I spent most of my youth, there in Mississippi, we would always, when we wanted to cross, say, let us go to the Louisiana marshes.

Redirect examination.

By Mr. ZACHARIE:

Q. You have said, in regard to what you have called the
1082 Louisiana marshes and the Louisiana shore, that we always called them so and so considered them. Who do you mean by we, do you mean Louisianians only or people from Mississippi living on that coast.

A. I mean all those people.

Q. You mean Mississippians as well as Louisianians?

A. Yes sir. I used to go with young Mississippians over there.

Q. Now you have mentioned that in going, in your hunting and fishing days, starting from the parish of St. Bernard, that you would go north to the channel, do you mean the channel that runs north of Grand island, Half Moon island and Round island?

A. Let me make it clear and you will know as well as I do what I am going to say what is the route that the people went for amusement. All these parties that went either for fishing or

hunting, they all went about the same route. Now when they would go for ducks and fish they would go for them and not to study the channels. Now, if you ask me about a line, that it came there for a specific purpose, I could not tell you, because I never went there to survey or study the country, I went there to fish or hunt ducks.

By Mr. McCLURG:

Q. You never went to look for the State line?
A. No sir.

By Mr. ZACHARIE:

Q. Now, you have spoken about what was considered the boundary line. Will you look at map No. 57 offered by the State of Louisiana and you will see a channel running from the mouth of East Pearl river, running east and coming down between Cat island and Isle à Pitre. Is that the channel which you have testified to as the one that was considered the boundary line between Louisiana and Mississippi?

A. From what I understood, I will repeat it again, that they considered—of course I suppose they were all like myself, they had no interest in studying the geography or topography of that part of the boundary—they considered that line of islands and the sound, and after that was——

Q. Answer my question. Is that the channel which you spoke of as pursued by the Mobile boats, running out to a certain—continuing out to a certain point and then diverging and going down between Isle à Pitre and Cat island, is that the channel which you have alluded to as the one that was considered the boundary line between Louisiana and Mississippi; just answer that question?

A. You want me to show you exactly what they did and not what the map shows. I have gone over that 500 times so I ought to know that route. We passed St. Joseph island coming from Milneburg——

Q. Did you go through the Rigolets at that time?

A. Yes sir, followed that route to St. Joseph island, right into Bay St. Louis.

Q. Now is that the channel that goes down between Cat island and Isle à Pitre?

A. No sir.

Q. You mean to say that you followed that channel partly and then went up towards Mississippi, do you?

1083 A. You want to know the line of the steamers, I suppose?

Q. I am talking about the line going on to Mobile.

A. I don't know——

Q. Now, the line which you have described as the boundary, left Grand island and Grassy island and Round island to the south of that channel, did it not, as belonging to Louisiana?

A. I don't know about this outside island?

Q. That is south of that channel, south of the channel which the Mobile line of steamers pursued, those islands are all south of it are they not?

A. If you let me explain the route, and if I am wrong and don't come to your question, then we will begin over, but let me show the route. If you are trying to get what I know I am going to show you what I know, and then afterwards if it is not what you wish, then question me. Starting from Milneburg we reach the Rigolets, we go through the Rigolets and pass by the St. Joseph lighthouse.

Q. Did you pass north of Half Moon or Grand island?

A. No, because I never saw those islands, the route of the steamers was too far away to see those islands. From St. Joseph lighthouse we followed the course up to Bay St. Louis.

Q. In what direction?

A. This way.

Q. Isn't that northeast?

A. I suppose so, I have not the compass to see.

Q. Here is the arrow in front of you?

A. We followed the coast, we could see the coast very well, after reaching Bay St. Louis we go around there to Pass Christian and from there to Mississippi City and from Mississippi City to Biloxi and from Biloxi to Ocean Springs and then to Mobile, that is exactly the route we followed. Now if that is not what you want just ask me the question. That is what I know.

Q. You see on this map, do you know where these islands are, Grassy island, Grand island, Round island.

A. I heard of them, but I never saw them.

Q. Are they south of that channel, or not, in going from the Rigolets to Bay St. Louis?

A. How could I know that if I didn't see them, just now I told you so.

Q. Now, do you know, after passing St. Joseph island, whether there was another channel which went off to the southeast passing between Isle à Pitre and Cat island?

A. Yes, sir.

Q. Was that the main channel for large vessels?

A. It was a channel that was used for the Mobile line of steamers that came then at that time very much loaded and they were pretty large steamers; they took the outside pass; they came right inside of Cat island; I have seen them hundreds of times, that was done only in low tide and in winter.

Q. Was that the channel which was considered the boundary line between Louisiana and Mississippi?

A. I don't know whether they considered it at that time, that channel as the line itself, but what I always understood from all the old people over there that the line of islands constituted the line. That is what I always understood.

1084 Recross-examination.

By Mr. McCLURG:

Q. Look at this map about which you have just been examined, map No. 59, offered by the State of Louisiana. There is a channel that runs between Cat island, Ship island, Horn island and the Mississippi shore?

A. They used to call that Pass Marianne, I don't know whether that is correct.

Q. That is correct.

A. That is the channel that many vessels travelled from New Orleans to Mobile, that was the channel in winter especially.

Q. And that is the channel which you say those people considered on one side of it Louisiana and on the other side Mississippi?

A. No, I don't say that, I just said no, that I could not say that, but I recollect very well they considered that line the line of islands, but how far outside or how far inside——

Q. On the outside of the islands was Louisiana and on the inside was Mississippi?

A. All that was inside of the islands was Mississippi.

Q. And on the outside Louisiana?

A. Yes sir.

JOHN DYMOND, JR., is recalled by the State of Mississippi for further cross examination.

By Mr. McCLURG:

Q. I notice in the original bill of complaint, Mr. Dymond, upon which you are marked as counsel in this cause, that you refer to the reconnoissance of the Fish Hawk, and you filed an exhibit to the bill, a map filed with the report of that reconnoissance showing a portion of the oyster beds and some of the soundings, and I infer from the draft of the bill that some of the information obtained by you in preparing the original bill of complaint was taken from that reconnoissance and the Report of the United States Commission of Fish and Fisheries, George C. Bowers Commissioner, Report on the Oyster Beds of Louisiana by H. F. Moore, Washington, Government Printing Office, 1899. It seems that this reconnoissance by the Fish Hawk was the result of a resolution passed by the legislature of Louisiana which Hon. Adolphe Meyer who is a member of Congress from this State as I understand it, presented in Congress, and this reconnoissance was ordered accordingly. In the rebuttal testimony on the part of Mississippi I will offer this report in evidence to show that the Fish Hawk map filed with your bill is not claimed to be accurate and that the survey and reconnoissance by the Fish Hawk was imperfect and the report thereof was not made by Lieut. Franklin Swift whom it had been intended should make the report. You will notice on page 49 and 50, statements in the report

that it was to the effect that it was not thorough and it was a hurried examination and especially at the bottom of page 49 the reporter says "Contrary to expectation was found that the topography in general had not
1085 gone many important changes since the survey which the Coast Survey charts were based and several could be identified and located with sufficient accuracy to serve purpose of a reconnoissance" and similar expressions throughout report which indicates that it was not intended to be an accurate survey or that the map accompanying it was accurate. I call attention to the fact that the writer of the report acknowledges indebtedness to Col. F. C. Zacharie, Hon. E. McCullom, Hon. Adolph Meyer and Hon. S. P. Henry, for valuable assistance and information and to Mr. F. F. Hansell for the use of his yacht in visiting St. Bernard beds in August 1897, for the purpose of asking whether these gentlemen were not then and are now citizens of State of Louisiana?

A. Yes sir, they were and are.

Q. And the Colonel F. C. Zacharie mentioned here is one of counsel in this case?

A. Yes sir.

Q. Have you any personal knowledge, Mr. Dymond, of that survey?

A. There was no survey. The purpose of that expedition was to locate the natural oyster reefs and to examine them and make a report. Dr. Moore was the oyster expert of the Bureau of Fisheries of the United States Government; Lieut. Swift was also to a certain extent pretty well posted on the oyster industry but not as well posted as Dr. Moore. Lieut. Swift had taken charge in the survey of the Apalachicola waters in Florida a report of which was previously made on the oyster conditions existing in that portion of Florida, but it was [illegible] in regard to St. Bernard that they made a map at all; the other parishes, Plaquemines, Jefferson, Terrebonne and other localities visited by Dr. Moore he merely mentioned in his report and described the conditions without essaying to show with the assistance of any map where the oyster beds were located. I understood that Dr. Moore or the topographer in making up the map took the data which was originally compiled by the Coast and Geodetic Survey and shown in the Land Office of the United States in making up this map of that portion of St. Bernard.

Q. Exactly so, but the purport of my question was whether any actual surveys were made to locate the boundaries of St. Bernard parish or the lines of township and range?

A. No sir; there was none.

Q. Then I want to ask you, Mr. Dymond, with reference to the first annual report of the Oyster Commission of Louisiana to the legislature and General Assembly, dated from August 11th 1902 to January 31st 1904, whether Mr. N. H. Nunez a member of that commission, Mr. Breaux, Mr. Cage, Mr. Smith and Mr. John Dymond

Jr., are the same persons who have testified on the part of Louisiana in this case?

A. Yes sir.

Q. I notice in this report that the oyster commission called upon Mr. J. B. Baylor to prepare a written report to your commission to recommend such changes in the present oyster laws of Louisiana as would seem to him to encourage a development of the oyster industry in the State of Louisiana. He is the same Mr. Baylor who testified in this case?

A. Yes sir. With the assistance of our Congressmen, General Adolph Meyer endeavored to get the United States Fish and Fisheries Commission to co-operate with us in developing the
1086 oyster industry in Louisiana and investigating it from a scientific point of view. One of the greatest questions that we were confronted with was to devise an intelligent system by which we could locate the surveys of private leased bedding grounds and the department of Coast and Geodetic Survey at Washington had a balance which was available on the request of the head of another department, and the Fish and Fisheries Commission or the superintendent of that body got the United States Coast and Geodetic Survey to send Mr. Baylor down here and he co-operated with us in the matter of locating township and range lines for the purpose of locating our surveys of private leased bedding grounds and devise and recommend a system whereby we could effectively carry out all future locations of that character.

Q. When was that?

A. That was, I should judge, about, a little over a year ago. You said when was that?

Q. That he came down here to devise with you about it?

A. He made two trips. He first came down here in the spring of 1903, and worked for some time using the oyster commission's patrol boat and I think left here about the month of May or June; then he came down again the following winter and was here in the spring of 1904. His first work was in the neighborhood of St. Bernard parish and his work on the second trip was down around the mouth of the Mississippi river to the eastward in the neighborhood of Cubics gap and Paptiste Collette.

F. C. ZACHARIE, witness sworn on behalf of the State of Louisiana, testified as follows:

I wish to state that in regard to the mention of my name in connection with the report on the oyster beds of Louisiana by H. F. Moore, my only connection with that is, that having written an essay on the general subject of the oyster fisheries of Louisiana for which I was employed by the Manufacturers Record of Baltimore, Dr. Moore the biologist of the Fishery Commission brought a letter of introduction to me and asked my assistance in getting proper accommodation for visiting the oyster beds of Louisiana. I succeeded in getting the loan of Mr. Hansell's nap-tha or gasoline

launch and at the request of Dr. Moore secured for him a pilot to take him out to a portion of the oyster beds located in the neighborhood of St. Bernard and I accompanied him at his request on that trip to the oyster beds of St. Bernard. The trip had nothing to do at all with any boundary question. It was simply a courtesy that I showed Dr. Moore. Subsequently when Dr. Moore returned to the city of New Orleans I gave him letters of introduction to gentlemen living west of the Mississippi river, in order that they might assist him in inspecting the oyster beds of Louisiana to the westward of the Mississippi river. My connection with Dr. Moore had nothing at all to do with the boundary question in any way in the world nor was it ever mentioned or discussed between us.

1087 By Mr. McCLURG:

Q. One question, Colonel, that I want to ask you in conclusion, is, of you and Mr. Dymond who has just left the stand, whether these services and reconnoissances and work done by Mr. Baylor were not *ex parte?*

A. I don't know anything about that.

Mr. Dymond what do you say about it. Mississippi was not invited to take any part?

Mr. DYMOND: What the Baylor——

Mr. McCLURG: Yes.

Mr. DYMOND: That had nothing to do with the boundary line.

Mr. McCLURG: I know but it has something to do with it now because the result of his work is used not only in your bill indirectly but directly by his testimony showing his familiarity with it. You used him to good effect in his testimony by reason of his having been out there and my sole purpose now is to show that Mississippi knew nothing of that and had nothing to do with it, it was *ex parte.*

Mr. DYMOND: In answer to that question, unquestionably Mississippi had no knowledge, officially, of the surveying work being done here by Mr. Baylor of the United States Coast and Geodetic Survey or the Fish Hawk reconnoissance. On the other hand it is equally true that Mr. J. B. Baylor's work had no connection intentionally with the boundary dispute between Louisiana and Mississippi.

By Judge GUION: Counsel for the State of Louisiana announce their endeavor to have produced as a witness in this case Hon. F. A. McLain member of Congress from the State of Mississippi and offer and produce and file in evidence the subpœnas issued for service upon him with the returns thereon which read as follows:

" United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi:

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans (in clerk's office, U. S. district court, room No. 4) on Friday the 26th day of August 1904 at 11 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana *vs.* State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. Aug. 19,'04.

(Signed) FRANK H. MORTIMER,
Commissioner."

1088 Return of Sheriff on Above.

" I have this day executed the within writ personally by leaving a true copy of this writ at the residence of F. A. McLain with his daughter who is over the age of sixteen and was willing to take and deliver same.

This August 22nd A. D. 1904.

(Signed) W. H. BATES, Sheriff."

" United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi:

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Tuesday the 6th day of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana *vs.* State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. August 31, 1904.

(Signed) FRANK H. MORTIMER,
Commissioner."

Return of Sheriff on Above.

"The within named F. A. McLain not found in my county.
This Sept. 5th 1904.
(Signed) W. H. BATES, Sheriff."

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Gloster, Mississippi:

You are commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Friday the 16th day of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana *vs.* State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La. Sept. 10, '04.

(Signed) FRANK H. MORTIMER,
Commissioner."

Return of Sheriff on Above.

"The within named F. A. McLain not found in my county.
This the 13th day of Sept. 1904.
(Signed) W. H. BATES, Sheriff."

"United States Supreme Court.

No. 11, Original, Oct. Term, 1903.

The President of the United States to Hon. F. A. McLain, Hot Springs, Arkansas:

You are hereby commanded to appear before me, a commissioner appointed by the Supreme Court of the United States, at my office in the U. S. customhouse building, New Orleans, (in clerk's office, U. S. district court, room No. 4) on Friday the 16th day
1089 of September 1904, at 10.30 o'clock a. m. and there to testify the truth according to your knowledge in the matter of State of Louisiana *vs.* State of Mississippi. And herein fail not under the penalty of two hundred and fifty dollars.

Commissioner's office, New Orleans, La., Sept. 10th 1904.

(Signed) FRANK H. MORTIMER, Comm'r."

Return of Marshal on Above.

"Received this subpœna Sept. 13, at Little Rock in the eastern district of Ark. and after diligent search the within named F. A. McLain could not be found in the eastern dis. of Ark.

(Signed) A. S. FOWLER,
U. S. Marshal,
By F. D. LEARNING, Deputy."

ADMISSION.—It is admitted by counsel for Mississippi that the letter dated Gloster, Mississippi, 10th September 1904 addressed to Hon. F. H. Mortimer, New Orleans, is written by Hon. F. A. McLain and that the same is in the following language, to-wit:

"GLOSTER, MISS., 9/10/04.

Hon. F. H. Mortimer, New Orleans, La.

DEAR SIR: On my return home Sept. 3rd the enclosed subpœna was handed to me (by a member of my family) which explains itself. I did not know of the existence of the subpœna until my return home Sept. 3rd and you will note the subpœna required my appearance before you on Friday the 26th day of August last. Since my return home I have been sick in bed with rheumatism and am so afflicted now, and I will leave for Hot Springs Ark. tonight. Should you still need me, if you will notify me the day on which you require my presence I will come down. I could not do so now for I am suffering intensely with rheumatism and fever, but I hope to be well and at home within the next ten days or two weeks. Any time after this I can come down upon short notice.

I assure you my non-appearance before you on August 26th was caused for the reason above stated—that I did not know of the existence of the subpœna until Sept. 3rd of this month, and since then I have been sick. I hope you did not enter a penalty against me for non-appearance.

Yours sincerely,
(Signed) F. A. McLAIN."

Mr. DYMOND: The evidence in rebuttal on the part of the State of Louisiana is this day closed, with the agreement on both sides that either side shall have the right up to October 1st to introduce any documentary evidence or maps which they may deem necessary and thereupon the commission was adjourned to meet in Jackson, Mississippi, on Thursday September 22nd 1904, at 10 o'clock a. m. at the office of the attorney general of the State of Mississippi.

FRANK HASTINGS MORTIMER,
Commissioner.

1090 In the Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } Original Bill, No. 11.

I, Reginald H. Carter, appointed stenographer by the Honorable Frank H. Mortimer, commissioner appointed by the Supreme Court of the United States in the above entitled and numbered proceeding, do hereby certify, that under the agreement between counsel for the respective parties therein of record, I took testimony on behalf of the State of Louisiana at the several sittings the commission held in the city of New Orleans, and that a true and faithful transcript thereof is contained in the record of testimony of the State of Louisiana in volumes I., II., III., and IV., beginning on page 1, and ending on page 1477.

In witness whereof, I have signed these presents at the city of New Orleans, State of Louisiana, this 23rd day of February, A. D. 1905.

REGINALD H. CARTER.

1091 COMPLAINANT'S EXHIBITS.

1092 DOCUMENT No. 1.

Office of Police Jury of the Parish of Saint Bernard.

1st ward, Sebastian Roy.
2nd " Gustave Jacques.
3rd " Lovinski Nunez, president.
4th " Adam Estopinal.
5th " Henry Verret.
6th " Nick Fernandez.
7th " A. C. Ruiz.
Alcide Gutierrez, secretary.
J. C. Bourg, treasurer.

ST. BERNARD, P. O., LA., ——, 190–.

Whereas, it has come to the knowledge of this police jury that a great number of citizens of other parishes and of the State of Mississippi are fishing oysters within the limits of this parish, in contravention of the State oyster law, and the police jury being desirous of correcting such violations of the law,

Be it resolved, That the president of the police jury is hereby authorized and empowered to equip and man a boat for the purpose of sending an expedition to the oyster reefs; and

Resolved further, That the object of said expedition being, primarily, the gathering of all information essential for the proper enforcement of the law, the parties composing the said expedition are hereby instructed to make a protracted cruise, covering all the oyster territory and make an intelligent report of all information gathered to this police jury.

(Endorsed.)

I hereby certify the reverse hereof to be a true and correct copy of resolutions adopted by the police jury of the parish of St. Bernard, on January 10th, 1898.

ALCIDE GUTIERREZ,
Secretary of the Police Jury, Parish of St. Bernard, La.

(Endorsed:) Resolutions of police jury parish of St. Bernard January 10, 1898. Document No. 1. Offered by State of Louisiana Apr. 4, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1093 DOCUMENT No. 2.

Office of the Police Jury of the Parish of St. Bernard.

1st ward, Sebastian Roy.
2nd " Gustave Jacques.
3rd " Lovinski Nunez, president.
4th " Adam Estopinal.
5th " Henry Verret.
6th " Nick Fernandez.
7th " A. C. Ruiz.
Alcide Gutierrez, secretary.
J. C. Bourg, treasurer.

ST. BERNARD P. O., LA., ——, 190–.

On motion of Mr. Verret, the sum of (57 00/100) fifty seven dollars is hereby appropriated by the police jury to defray the expenses incurred by the officers sent out to the oyster reefs, in accordance with resolution of Jan. 10th, 1898.

The foregoing is a true and correct copy of a motion adopted by the police jury of the parish of St. Bernard, on Feb'ry 7th 1898.

ALCIDE GUTIERREZ,
Secretary Police Jury, Parish of St. Bernard, La.

(Endorsed:) Resolutions of police jury parish of St. Bernard February 7th 1898. Document No. 2 offered by State of Louisiana Apr. 4, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1094 DOCUMENT No. 3.

Office of the Police Jury of the Parish of St. Bernard.

1st ward, Sebastian Hoy.
2nd " Gustave Jacques.
3rd " Lovinski Nunez, president.
4th " Adam Estopinal.
5th " Henry Verret.
6th " Nick Fernandez.
7th " A. C. Ruiz.
Alcide Gutierrez, secretary.
J. C, Bourg, treasurer.

ST. BERNARD P. O., LA., ——, 190–.

On motion of Mr. Verret, it was resolved by the police jury of the parish of St. Bernard, that an appropriation of ($75 00/100) seventy five dollars be made to defray the expenses of the oyster committee

appointed by Gov. Heard to confer with a like committee from the State of Mississippi on the matter of the State boundary line.

The foregoing is hereby certified to as being a true and correct copy of a resolution adopted by the police jury of the parish of St. Bernard, on March 2, 1901.

ALCIDE GUTIERREZ,
Secretary of the Police Jury, Parish of St. Bernard, La.

(Endorsed:) Resolutions of police jury parish of St. Bernard. March 2, 1901. Document No. 3 offered by State of Louisiana, Apr. 4, 1904. Frank H. Mortimer. Supreme Court U. S. Filed March 13, 1905. James H. McKenney, clerk.

1095 DOCUMENT NO. 4.

Office Oyster Commission of Louisiana.

NEW ORLEANS, LA., September 9th, 1902.

Oyster Commission of Louisiana met this day in special session. Members present: James M. Breaux, president; Thomas Shannon, Jr., N. H. Nunez, Frank P. Parra and attorney John Dymond, Jr. Absent: Ben Mitchell.

On invitation from President Breaux the Oyster Commission of Mississippi, together with their attorney and chief inspector presented themselves, and after a lengthy address of welcome by President Breaux, the Oyster Commission of Louisiana and Mississippi convened jointly.

On motion of Mr. Breaux, duly seconded by Mr. Nunez, Mr. Hatlestad, president of the Oyster Commission of Mississippi was elected chairman of the joint meeting, and John R. Langridge was elected secretary.

Extract From Minutes of a Joint Conference of the Oyster Commissions of the States of Louisiana and Mississippi, Held at New Orleans, La., Tuesday, September 9th, 1902.

Present: James M. Breaux, president; Frank P. Parra, Thomas H. Shannon, Jr., N. H. Nunez, Louisiana commissioners; John R. Langridge, secretary, John Dymond, Jr., attorney; Harry Cage, chief inspector; H. C. Smith, surveyor oyster commission.

J. A. Hatlestad, president; Frank J. Ladner, Ferdinand Patenotte, O. Y. Cassibry, J. D. Minor, Mississippi commissioners; F. S. Hughes, secretary, Messrs. McDonald attorney, Mosley chief inspector.

On motion of Commissioner F. J. Ladner of Mississippi, seconded by Commissioner N. H. Nunez of Louisiana, the following resolution was adopted:—

Be it resolved by the Oyster Commissions of the States of Louisiana and Mississippi, in joint conference, that all the water territory embraced within the following limits, to-wit:

Beginning at a point in the center of the mouth of Pearl river, thence in a south easterly direction to Malheureux point, thence in an easterly and north easterly direction following the shore lines to Grand pass, thence along the western shore line of Grand pass, thence easterly to the southernmost point of Sundown island, thence in a northeasterly direction to the center of deep water channel called Cat Island pass, and thence following the deep water channel, westwardly, passing between Grassy island and St. Joseph light house to the point of beginning;

Shall, pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted, remain a common fishing ground to be fished by boats of either States in accordance with, and upon compliance with the laws of either State, and inspectors and officers of the respective commissions (oyster) will govern themselves accordingly.

We certify the above and foregoing to be a true extract as aforesaid.

J. A. HATLESTAD,
Chairman Joint Conference Oyster
Commissions of Louisiana and Mississippi.
JNO. R. LANGRIDGE,
Secretary Joint Conference Oyster
Commissions of Louisiana and Mississippi.

I hereby certify that the above and foregoing is a true and correct copy of the minutes of a meeting held on September 9th, 1902, jointly between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi, as taken from the records of my office.

A. G. GUGES, [SEAL.]
Secretary Oyster Commission of Louisiana.

Endorsed: Document No. 4 Offered by State of Louisiana, Apr. 5, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1096 DOCUMENT No. 5.

EXECUTIVE DEPARTMENT,
JACKSON, MISS., December 8th, 1902.

His excellency Gov. W. W. Heard, Baton Rouge, La.

MY DEAR GOVERNOR: Replying to your favor of December 5th advising joint meeting of the oyster commission of our respective States and suggesting Wednesday the 17th instant at 12 o'clock at No. 339 Carondelet street New Orleans, I beg to thank you fi

for the careful and courteous consideration which you have given the subject matter in question, and to say that owing to the fact that the 17th of December will conflict with an engagement which I had previously made I took up the subject with Hon. John Dymond, Jr., attorney for the Louisiana Oyster Commission, who in turn arranged with the president of said commission for the said joint meeting to occur on the 16th instead of the 17th of December, and I indulge the hope that this date will meet your approval and also of our commissions, and that I shall have the pleasure of meeting you on the occasion named and that our joint commissions will have the benefit of your co-operation and wise counsel looking to a just and amicable adjustment of the oyster disagreement. I have advised the Mississippi commission of the above proposed arrangement and asked complyance and co-operation on its part.

I have the honor to be, very sincerely,

A. H. LONGINO, Governor.

Endorsed: Document No. 5 offered by State of Louisiana Apr. 5, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1097

DOCUMENT No. 6.

"Mississippi Boundary Commission.

On February 9, 1901, I appointed the following named gentlemen as commissioners to confer with a like commission appointed by the governor of Louisiana to consider the water boundary line between the two States, and arrange for the easy location and identification of the same by a proper system of buoys, to wit:

Hon. J. I. Ford, Scranton, Miss.
Hon. E. J. Bowers, Bay St. Louis, Miss.
A. Keller, Bay St. Louis, Miss.
Hon. W. A. White, Biloxi, Miss.
Hon. H. T. Howard, Biloxi, Miss.

This commission met at Biloxi and elected H. T. Howard chairman and J. I. Ford secretary. Their report, which is transmitted to you, will acquaint you with the whole matter, and from which you will find that they suggest a friendly suit in the Supreme Court of the United States as the best method to fix the true boundary between the two States. I submit the matter for such legislation as in your judgment is best."

STATE OF MISSISSIPPI,
Hinds County.

I do hereby certify that the above and foregoing is a true and correct copy of that part of a message relative to the Mississippi bound-

ary commission sent to the legislature by the governor of the State of Mississippi at its meeting in January, 1902.

Witness my signature this the 29th day of March, A. D. 1904.

[SEAL.] GEO. E. MYERS,
Clerk of Supreme Court.

(Endorsed:) Report of A. H. Longino governor of Mississippi to Mississippi legislature. Document No. 6 offered by State of Louisiana April 5, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

(Here follows diagram marked Document No. 7, endorsed as follows:)

1098

(Endorsed.)

DOCUMENT No. 7.

Offered by State of Louisiana Apr. 6, 1904.

Frank H. Mortimer, Commissioner.

District. Z 8

to Mississippi River

TABLE OF CONTENTS

No.	Area.	No.	Area.	No.
1		21		31
11		22		32
12		23		33
13		24		34
14		25		35
15		26		36
16		27		37
20		28		38

Total Area

Particulars of the N

FOLD OUT IS TOO LARGE TO BE FILMED

declared void, the aforesaid board shall not reimburse to the said purchaser any sum whatsoever.

This sale is made and accepted for and in consideration of the price and sum of sixty-three & 75/100 dollars ($63.75) cash, which the purchasers have presently paid in ready current money unto the said John Dymond, president, who acknowledges the receipt thereof and grants full acquittance therefor.

By reference to the certificates of the clerk and recorder of the parish of St. Bernard, it appears that the above described lands were not alienated by the State of Louisiana, except by the sale made to the Board of Commissioners for the Lake Borgne Basin Levee District; and by the same certificate it appears that the said lands were not heretofore alienated by the present vendor. The taxes of the year 1902 are assumed by the purchaser.

To have and to hold the above described lands unto the said purchasers, their heirs and assigns forever.

Thus done and passed in the parish of St. Bernard, on the day month and year first above written, in the presence of Messrs. John Dymond, Jr., and Milton P. Doullut competent witnesses who have signed their names hereto, with the said appearers and me notary, after due reading of the whole.

1101 (Original signed) JOHN DYMOND, President.
" " L. LOPEZ.
" " W. K. M. DUKATE.
" " JOHN DYMOND, Jr.
" " M. P. DOULLUT.
" " JAS. D. ST. ALEXANDRE,
Not. Pub.

I hereby certify the foregoing to be a true copy of the original act which is of record in my notarial archives.

In testimony whereof, I have hereunto affixed my hand and the impress of my notarial seal at the parish of St. Bernard, State of Louisiana on the 2d day of April, A. D. 1904.

[SEAL.] JAS. D. ST. ALEXANDRE, Not. Pub.

I hereby certify that the original of the foregoing act was duly recorded at the parish of St. Bernard, on the 15th day of March, A. D. 1902, in Conveyance Book No. 20, folios 77 and 78.

Clerk's office, parish of St. Bernard, April 2d, 1904.

JAS. D. ST. ALEXANDRE,
[SEAL.] Clerk, *ex Officio* Recorder.

(Endorsed:) Document No. 8. Offered by State of Louisiana April 8, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed March 13, 1905. James H. McKenney clerk.

1102 DOCUMENT No. 9.

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, April 7, 1904.

I hereby certify that the annexed is a true copy of the original correspondence of January and February 1901 between Honorable F. A. McLain and the Superintendent of the Coast (*on file in the*) and Geodetic Survey relative to information pertaining to the boundary between the States of Louisiana and Mississippi.

ANDREW T. BRAID,
Assistant in Charge of Office Coast and Geodetic Survey.

OFFICE OF THE SECRETARY.

I hereby certify that Mr. Andrew Braid who signed the foregoing certificate, is now, and was at the time of signing, assistant in charge of office Coast and Geodetic Survey and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce and Labor to be affixed, this 7th day of April one thousand nine hundred and four.

[SEAL.]

GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

1103 Copy.

HOUSE OF REPRESENTATIVES U. S.
WASHINGTON, D. C., 1, 27, 1901.

Hon. O. H. Tittman, Supt. C. & G. Survey, Washington, D. C.

DEAR SIR: I herewith enclose to you a letter from Mr. I. Heidenheim of Biloxi, Mississippi, which fully explains itself. If you can furnish the information he seeks I would appreciate it.

While the letter says "Give us all the information on record at Washington, bearing on the question of the boundary line between Louisiana & Mississippi," I think he *only* wants that information pertaining to boundary line at or near the coast.

Very respectfully,
(Signed) F. A. McLAIN.

Copy.

F.

TREASURY DEPARTMENT,
COAST AND GEODETIC SURVEY,
WASHINGTON, February 8, 1901.

Hon. F. A. McLain, House of Representatives.

DEAR SIR: I send you herewith a report and three sketches showing what information we have been able to obtain regarding the

water boundary of Mississippi and Louisiana. Like all boundary questions, much is left to be desired on the score of a clear definition in the original acts.

Respectfully,

O. H. TITTMAN,
Superintendent.
F. W. P.

1104 Copy.

F.

TREASURY DEPARTMENT,
COAST AND GEODETIC SURVEY,
WASHINGTON, February 1, 1901.

Hon. A. F. McLain, House of Representatives.

DEAR SIR: The information in regard to the Mississippi-Louisiana boundary asked for in your letter of the 27th ultimo, has been collected and will be sent you as soon as it can be put in proper form, probably early next week.

Respectfully,

O. H. TITTMAN,
Superintendent.
F. W. P.

Endorsed: Document No. 9 offered by State of Louisiana, April 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1105 DOCUMENT NO. 10.

DEPARTMENT OF COMMERCE AND LABOR,
COAST AND GEODETIC SURVEY, WASHINGTON, ——.

Hon. Walter Guion, attorney general, State Louisiana, New Orleans, La.

SIR: Your telegram April 11th asking that two certified copies of the letter of I. Heidenheim referred to in letter of McLain of 27th January 1901, be sent you is received.

In reply I beg to state that the letter referred to is not on the files in this office having been returned to Mr. McLain at his request.

Respectfully,

F. W. PERKINS,
Acting Superintendent.

Endorsed: Document No. 10 offered by State of Louisiana Apr. 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1106 DOCUMENT No. 11.

DEPARTMENT OF COMMERCE AND LABOR,
WASHINGTON, D. C., March 18, 1904.

I hereby certify that the annexed is a true copy of the original report of January 30, 1901, and accompanying sketches, submitted by Mr. W. C. Hodgkins, assistant Coast and Geodetic Survey, on the boundary line between the States of Mississippi and Louisiana in the waters bordering upon the gulf of Mexico.

ANDREW BRAID,
Assistant in Charge of Office Coast and Geodetic Survey.
(Official Title.)

OFFICE OF THE SECRETARY.

I hereby certify that Andrew Braid, who signed the foregoing certificate, is now, and was at the time of signing, assistant in charge of office, Coast and Geodetic Survey and that full faith and credit should be given his certificate as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Commerce and Labor [SEAL.] to be affixed this 19th day of March, one thousand nine hundred and four.

GEORGE B. CORTELYOU,
Secretary of Commerce and Labor.

1107 All communications should be forwarded under cover to the "Superintendent U. S. Coast and Geodetic Survey, Washington, D. C."

TREASURY DEPARTMENT,
OFFICE OF THE COAST AND GEODETIC SURVEY,
WASHINGTON, D. C., January 30, 1901.

Mr. O. H. Tittman, Superintendent C. & G. Survey, Washington, D. C.

SIR: I beg to submit the following report upon the question of the boundary line between the States of Mississippi and Louisiana, in the waters bordering upon the gulf of Mexico, referred to in the letter of Hon. F. A. McLain, M. C., dated January 27, 1901, and in the letter of Mr. I. Heidenheim, of Biloxi, Miss., dated January 23, 1901, and transmitted by Mr. McLain.

I have consulted, in my search, the acts of Congress under which both Louisiana and Mississippi were admitted to the Union, and other authorities, like the State codes, in the law library of Congress.

I have also consulted numerous atlases and maps of various scales and dates, both in the library of the Coast and Geodetic Survey and in the Library of Congress.

In addition, I have investigated the information which is on

file in the General Land Office, where every facility was kindly afforded me.

Appended to this report are tracings of the locality in question, compiled from Coast & Geodetic Survey charts Nos. 19, 190 and 191. These are identical in regard to the natural outlines, and serve to illustrate, by means of the colored lines, the differences between various authorities.

The following facts appear on record. According to the treaty with Spain, concluded October 27, 1795, the parallel of 31° north latitude formed the southern boundary of the United States from the Mississippi to the Apalachicola.

1108 By the treaty of Paris, concluded April 30, 1803, the Louisiana territory was ceded by France to the United States and on March 6, 1804, was divided into two Territories, called Orleans and Louisiana.

By the act of April 8, 1812, the Territory of Orleans was admitted to the Union as the State of Louisiana, (the Territory of Louisiana taking the name of Missouri). In this act the eastern and southern limits of the State are thus described: "Down the said river" (Mississippi) "to the River Iberville" (Bayou Manchac) "and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning" (the mouth of the River Sabine) "including all islands within three leagues of the coast."

The boundary line thus established is shown, in part, on the map marked # 1.

In 1812, also, Congress added to Louisiana the territory lying to the eastward of the boundary just described and limited by the parallel of 31° on the north and by the Pearl river, through its eastern mouth, on the east. The territory south of 31° and between the Pearl and Perdido rivers was added to the Territory of Mississippi. It will be noticed that all of this was Spanish territory under the treaty of 1795, but the United States apparently claimed it by right of occupation and in 1819 this occupation was confirmed by the cession by Spain of all of her territory east of the Mississippi river.

In 1817 Congress, by act dated March 1st, provided for the admission to the Union of the western part of the Mississippi Territory under the name of the State of Mississippi. The boundaries of the new State are described as follows:

SEC. 2. And be it further enacted That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north west corner of the county of Washington, thence due south to the gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl

river with Lake Borgne, thence up said river to the thirty-
1109 first degree of north latitude, thence west along the said de-
gree of latitude, to the Mississippi river, thence up the same to the beginning."

The six league limit described by the above, as well as the three league line mentioned in the Louisiana act are shown on the map marked # 2.

A. "league" is generally understood to mean a distance of three miles which may be either statute or nautical miles. As the acts in question do not specify either, both are shown. It is evident that there is a chance for uncertainty as to what line constitutes the "coast" of Louisiana within the meaning of the act, and several different lines might be drawn, according to the way in which this expression is interpreted. These are illustrated upon the drawing. It is pretty evident, at any rate, that the extensive group of islands, of which Isle au Pitre forms the northeastern angle, is part of Louisiana, and the only doubtful points are as to the jurisdiction over Cat island and the islands called *Malheureux*, lying at the entrance of Lake Borgne.

Although under the organic act Louisiana might have some claim to Cat island, it does not appear that such claim was ever made, though on a few of the maps inspected it appears as part of that State. The land surveys of Louisiana were not extended to Cat island, while those of Mississippi were so extended. There seems to have been a general consensus that the passage called Cat Island channel divides the jurisdiction of the two States.

With regard to the Malheureux islands, which are situated at the entrance to Lake Borgne, between point Malheureux and Lower Point Clear, there seems to be more uncertainty. These small marshy islands, which on many of the ordinary maps are either not shown at all or else very incorrectly represented, seem to have been considered by the map makers as of too little importance to receive any careful consideration. In fact, at least one case is found in which two editions of the same map issued by the State of Louisiana vary the ownership of these and other islands.

As shown on the Coast Survey chart, from a survey made in May,
1852, there are four of these islands, viz: *Grassy*, *Grand*,
1110 *Round* and *Petit Pass* islands, St. Joseph's island, east of Point
Clear, Mississippi, being considered as not one of this group and as undoubtedly in Mississippi, by nearly constant usage if not by prescription.

All of the above islands would be included within Louisiana's three-league limit of 1812 and also within Mississippi's six league limit of 1817. It is to be presumed that a later grant would not be held to include islands already granted by an earlier enactment.

The American Atlas, of H. S. Tanner, published at Philadelphia, in 1820, and generally esteemed the best authority of the day, shows the States of Mississippi and Louisiana in conjunction on plate 20. This map is clearly and neatly drawn and is colored by counties,

(or parishes in Louisiana). The southeastern shore of Lake Borgne is not correctly drawn and Petit island is not shown separately. The Malheureux islands are, however, shown and are colored as part of St. Tammany parish, Louisiana. Cat island is shown as part of Hancock county, and Ship and Horn islands as belonging to Jackson county, Mississippi. All islands south west of Cat islands are shown as in Plaquemines, (now St. Bernard) parish, Louisiana.

About 1827 the U. S. land survey was extended to the southwestern part of Mississippi and the marshy point east of the Pearl river was surveyed as township 10. S. range 15 W. and was subdivided into sections. Two small portions of the eastern shore of Point Clear extended into sections 6 & 7 of township 10 S. R. 14 W., and St. Joseph's island, still farther to the eastward, was located by a course and distance from a point on the main shore. The northern point of Grand island was also located by two courses and distances taken from Lower Point Clear and from the south point of St. Joseph's island. Grand island was not subdivided on the rectangular system, but seems to have been surveyed in some way, as the area is given on the plat as equal to 1612 acres. Its outline, however, is very incorrectly given. It falls in the extreme S. E. corner of twp. 10 S. R. 15 W. and small portions of it extend into each of the adjoining townships, viz: T. 10 S. R. 14 W.; T. 11 S. R. 14 W.; and T. 11 S. R. 15 W. As above stated, it was not subdivided and none of the sections within which it would fall are entered on the transfer
1111 books of the General Land Office.

Grassy or Marsh island, which is about three quarters of a mile W. N. W., from Grand island, is not shown on this Mississippi plat, nor are Round and Petit Pass islands.

In the years 1843 and 1845 the land surveys in the southeastern district of Louisiana were extended to the broken marshy region east of Lake Borgne, and all four of the Malheureux islands were included in the survey and were subdivided by the rectangular system upon the plats, the original surveys being by meanders proceeding from Point Malheureux to Petit Pass island and from there to Round, Half Moon (Grand) and Marsh (Grassy) islands, in the order named.

It will be noted that the names of the islands in the Louisiana survey differ from those now in use. In this survey, also, the islands fall in four townships, viz: T. 10 S. R. 17 E.; T. 11 S. R. 17 E.; T. 10 S. R. 18 E.; and T. 11 S. R. 18 E. This was evidently a careful survey, the outlines of the islands upon the plat agreeing very closely with the topographical survey of 1852.

Under the marsh-land act of March 2, 1849, the State of Louisiana selected all of the above islands as marsh land and the release of the same to the State was approved by the Secretary of the Interior on May 6, 1852. This release had the force of a patent and would seem to settle the ownership of these islands as being in the State of Louisiana. Presumably, jurisdiction would go with ownership, especially as no question seems to have been raised. Yet the evidence of the maps is most conflicting. The earliest maps of

Louisiana after the cession represent the Malheureux islands as not belonging to Louisiana. A large and elaborate map of the Territory of Orleans and of western Florida, (then Spanish), with part of the Territory of Mississippi, made by B. Lafon and published at New Orleans in 1806, gives the islands to western Florida, and the latest official maps issued by the State of Louisiana similarly indicate them as part of Mississippi. Of the large number of maps examined I have notes of seventy-three which show these islands more or less distinctly.

1112 Twenty-six of these do not indicate in any definite way the State to which the islands belong; twenty-six put the whole group in Louisiana; seventeen put them in Mississippi; and three divide the group by putting Grassy and Grand islands in Mississippi and Round and Petit Pass islands in Louisiana. An official map of the State of Mississippi by T. S. Hardee, published in 1872 even puts St. Joseph's island in Louisiana. Nine maps put Cat island in Louisiana, but twenty-six put it in Mississippi. All of this shows that the average publisher's map carries very little weight, the possibility being that one is copied from another without discrimination. Great carelessness is frequently shown in the coloring which is the usual mark of distinction between the political subdivisions. Different copies of the same map show the islands colored differently. Comparing the various authorities, it would appear that the earlier map makers generally considered the islands as belonging to the north shore of the lake, probably on account of the wide passage which they showed to the southward in place of the very narrow "Petit pass" as it actually existed. It would also appear that most of the maps issued by the governments of the two States have continued in that view; but the maps of the General Land Office are consistent in showing these islands in Louisiana, and most recent maps and atlases follow them.

Considering that the Malheureux islands lie within the three leagues from the coast of Louisiana mentioned in the organic act of 1812, and that the General Government relinquished title to the State of Louisiana in 1852, it would seem necessary to consider that Louisiana has at least a *prima facie* claim. It is also worth noticing that the principal channel into Lake Borgne lies to the northward of the islands between them and Lower Point Clear.

From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, *i. e.*, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico.

Respectfully submitted,

(Signed) W. C. HODGKINS,
Assistant, C. & G. Survey.

1113 List of Charts Examined on Which the Jurisdiction of th
Islands is Indeterminate.

1820 Tardieu. Paris.
1829 David H. Burr. Islands not colored.
1832 Hinton. Very small and indefinite.
1833 Tanner. Same as foregoing.
1837 E. Gilman. Fair scale but indefinite.
1839 Official chart of the sea coast of Mississippi. John Wheele
engineer.
1841 U. S. Land Office, Jackson, Miss. Diagram of survey show
no islands at all.
1845 Meyer's Hand Atlas. (German.)
1849 Land Office map.
186– Military map of the department of Louisiana.
186– Colton's map of Louisiana.
1863 Colton's map of Mississippi.
1866 Schönberg & Co.
1866 Land Office sketch of Mississippi. Shows no work on island
1868 T. S. Hardee's official map of Mississippi. Does not color C
island.
1868 Adolf Stieler's Hand Atlas.
1868 Keith Johnston's Royal Atlas.
1868 Asher and Adams Atlas and Gazetteer of the U. S.
1879 Hinman's Eclectic Geography, (map of Mississippi).
1885 Bradley's Atlas of the World, Philadelphia.
1889 Rand McNally & Co.'s sectional map of Mississippi, (s
islands not colored).
1890 Mast, Crowell & Kirkpatrick, cheap maps of Louisiana a
Mississippi.
1890 Black's General Atlas.
1897, 1898, 1899 U. S. post route maps of Louisiana and Mississippi.
1898 Rand McNally & Co.'s R. R. map of Mississippi.
1899 G. F. Cram. Rough map.

1114 List of Charts Examined which Represent the Malheure
Islands as in Mississippi.

1806 B. Lafon. Large map, (to Florida).
1816 Wm. Darby. New Orleans. (Whole of Malheureux island
1820 John Melish's map of Louisiana, puts Malheureux and islan
to the east in Mississippi.
1834 Graham and Tanner, Philadelphia. Large. Colored.
1837 H. S. Tanner. Same as last.
1838 Gwin and Dougherty. Philadelphia. Not very definite.

1839 John La Tourrette, Mobile. (Grand and Grassy to Mississippi.)
1842 S. E. Morse and S. Breese. Map of Mississippi.
1853 John La Tourrette, New Orleans. Same as his 1839 map.
1853 G. W. R. Bayley, C. E., New Orleans.
1870 Dr. F. V. Hopkins. Preliminary geological map of Louisiana. Published by Colton's, N. Y.
1871 Colton's map of Louisiana (Grand and Grassy islands in Mississippi).
1871 T. S. Hardee's official State map of Louisiana (including even Petit Pass island).
1871 T. S. Hardee. Another copy of same puts Petit Pass island in Louisiana.
1877 Colton's map of Louisiana.
1877 T. S. Hardee's map of SE. part of Louisiana.
1881 Political map of Louisiana, issued by State bureau of immigration and agriculture (claims Grassy and Grand islands).
1892 Official map of Mississippi. Bureau of immigration and agriculture, (Rand McNally). Same as last but much smaller.)
1895 The Matthews-Northrup "Up to date map of Mississippi," Buffalo, N. Y.

1115 List of Maps which Represent the Malheureux Islands as in Louisiana.

1818 M. Ludlow's map. About the same as Melish's.
1820 John Melish's map of Mississippi. Does not color islands but apparently puts Malheureux islands in Louisiana.
1820 H. S. Tanner's American Atlas.
1820 John Melish's map of Louisiana (differs from his map of Mississippi) (see Mississippi list).
1834 Mitchell. Philadelphia. (Malheureux islands in St. Tammany parish.)
1839 D. H. Burr. Top. to N. O. and geogr. to H. R.
1839 John La Tourrette, Mobile. (Petit pass and Round island to Louisiana.)
1842 S. E. Morse and S. Breese. Map of Louisiana.
1853 John La Tourrette, same as 1839 map.
1857 Land Office sketch of Louisiana surveys.
1868 T. S. Hardee's official map of Mississippi.
1872 T. S. Hardee's colored map of Mississippi, reduced from the last, puts Malheureux islands in Louisiana and also St. Joseph's island.
1872 Louisiana State University map of Louisiana, by Prof. S. H. Lockett.
1873 Colton's map of Mississippi.
1876 Land Office map of Louisiana.
1878 Frank A. Gray's new map of Louisiana. Philadelphia.

1878 Frank A. Gray's new map of Mississippi. Philadelphia.
1879 General Land Office map of Louisiana.
1881 Topographic map of Louisiana by La. bureau of agriculture and immigration.
1882 Official map of Mississippi, by State bureau of immigration and agriculture (gives Round and Petit Pass islands to Louisiana).
1884 Map for Gayarre's History of Louisiana. Same as topographic map of 1881.
1885 R. Hinman. Map of Louisiana, in Eclectic Geography.
1887 General Land Office map of Louisiana.
1890 General Land Office. Township map of Mississippi.
1893 Rand McNally. Small map.
1896 General Land Office map of Louisiana.
1897 Century Atlas.
John Bartholomew's Library Reference Atlas, Lond. & N. Y. 1890.
Rand McNally & Co.'s Atlas of the World, Chicago, 1898.
Light House Board map of 8th Light House district.

(Endorsed:) Document No. 11. Offered by State of Louisiana. April 13, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar 13, 1905. James H. McKenney, clerk.

(Here follow three maps, marked pp. 1116, 1117 and 1118.)

SKETCH No 1

Shewing part of original boundary of Louisiana from the Amite River to Lake Borgne based on Chart and Geodetic Survey Chart No. 9 Scale

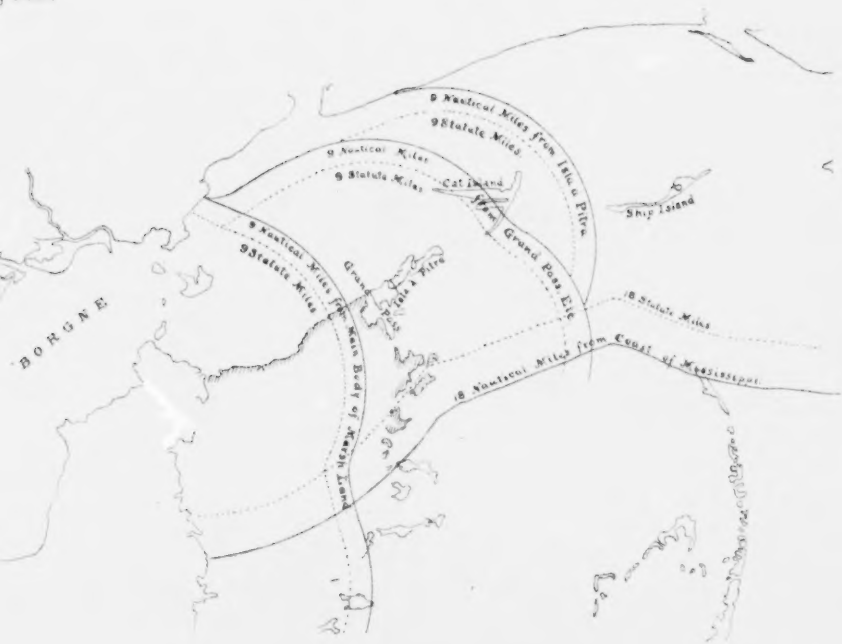


Sketch No. 2.

Showing limits of grants of islands ad
on Coast and Geodetic Survey Cha
No. 19, Scale [illegible]



as Based
Chart





FOLD OUT IS TOO LARGE TO BE FILMED

1119 DOCUMENT No. 12.

UNITED STATES OF AMERICA, }
Library of Congress. }

To all to whom these presents come, Greeting:

I certify that the fifteen maps described on the attached list and forwarded herewith to the Howard Memorial library at New Orleans to be offered in evidence in the suit referred to below, are a portion of the collection in the Division of Maps and Charts in the Library of Congress; that on or about the fourth day of March, A. D. one thousand nine hundred and four, Mr. Alexander Porter Morse, understood to be counsel for the State of Louisiana, in the matter of an original suit in the Supreme Court of the United States, entitled "The State of Louisiana *vs.* The State of Mississippi," now pending in said court, requested the privilege of having photographs taken of such maps; that this request was granted, and that on certain days subsequent to the above date these maps were delivered to Levin C. Handy, a photographer representing the said Morse, in order that he might photograph them in a room within the Library building designated for that purpose; and that on certain days thereafter the same maps were delivered to one Louis P. Spinner, who stated that he desired to color according to the originals, prints made from the negatives thus taken by said photographer.

In testimony whereof I, Herbert Putnam, Librarian of the Library of Congress, have hereunto subscribed my name.

HERBERT PUTNAM.

Done at the city of Washington this 31st day of March, A. D. 1904, and of the Independence of the United States of America, the one hundred and twenty-eighth.

Witness:
ALLEN R. BOYD.

1120 From the Maps & Charts Division.

To the Librarian of Congress:

Referring to La. and Miss. Maps Used by Mr. Morse. March 30, 1904.

The maps in the following list numbered from 1–15 are the maps examined by Mr. Morse, and photographed at his request by Mr. Handy. The same maps were used by Mr. Spinner for the purpose of reproducing their coloring upon certain photographs in his possession.

1. Lafon. Carte generale de territoire d'Orleans. (1806)
2. Darby. A map of the State of Louisiana, 1816.

3. Ludlow. A map of the State of Louisiana with part of th State of Mississippi and Alabama territory. (1819–1820)
4. Melish. Map of Louisiana, (1820)
5. Tanner, Louisiana and Mississippi. 1820.
6. Mitchell. Map of Louisiana, Mississippi and Alabama, 183
7. Graham and Tanner. A map of the State of Louisiana wit its counties, parishes &c., including the central & southern portion of the State of Mississippi 1834.
8. Tanner. A map of the State of Louisiana with its counties parishes, &c., including the central & southern portions of the Stat of Mississippi. 1837.
9. La Tourette. An accurate map or delineation of the State o Mississippi with a large portion of Louisiana and Alabama. 183
10. Bayley. New and improved map of Louisiana, 1853.
11. Schonberg. Map of Louisiana. 1866.
12. Hardee. Geographical, historical and statistical official ma of Louisiana. 1871.
13. Gray. New map of Louisiana. 1878.
14. Wall. Official map of the State of Mississippi. 1882.
15. Hinman. Map of Louisiana. 1885.

P. LEE PHILLIPS,
Chief of Maps and Charts Division.

Endorsed: Document No. 12. Offered by State of Louisiana Apr. 20, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1121 DOCUMENT No. 13.

American History Leaflets of September 10, 1892, No. 5.

The definite treaty of friendship and peace between His Britan-ic Majesty and the Most Christian King and the King of Spain, con cluded at Paris the tenth day of February, 1716, in which the King of Portugal acceded on the same day. * * *

Article VII.

In order to establish peace upon solid and durable foundation and to remove forever all subjects of dispute with regard to the limits of the British and French territories on the continent o America; that for the future the confines between the dominions o His Britan-ic Majesty and those of His Most Christian Majesty, in that part of the world shall be fixed irrevocably by a line drawn along the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea; and for this purpose His Most Christian Majesty cedes in full right and guarantee- to His

Britan-ic Majesty the river and the port of Mobile, and everything which he possesses or ought to possess on the left side of the River Mississippi except the town of New Orleans and the island on which it is situated shall remain to France, provided; that the River Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length from its source to the sea, and expressly that part which is between the said island of Orleans and the right bank of that river, as well as the passage both in and out of its mouth.

It is further stipulated that the vessels belonging to the subjects of either nation, shall not be stopped or subjected to the payment of any duty whatsoever. The stipulations inserted in the fourth article in favor of the inhabitants of Canada, shall also take place with regard to the inhabitants of the country ceded by this article.

Recueil de trites, etc., par Geo. Fred de Martens, tome 1, page 110.

1122 Endorsed: Treaty between England France and Spain Feb'y 10th 1716. Art. VII. Translation appearing in "American History Leaflets" of Sept. 10th 1892. No. 5. Document No. 13 offered by State of Louisiana. Apr. 25, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1123 DOCUMENT No. 14.

Treaties and Conventions Concluded between the United States of America and Other Powers Since July the 4th, 1776.

Washington, 1889.

Page 1381, under the Head of Spain.

Translation from Recueil de Trites, etc., par Geo. Fred de Martens.

Tome 1, Page 110.

Article VI (VII).

It is agreed that in the future the boundaries between His Britan-ic Majesty and those of His Most Christian Majesty in that part of the world, shall be irrevocably fixed by a line drawn in the middle of the Mississippi river from its source to the Iberville river, and thence by a line drawn in the middle of the latter river and Lakes Maurepas and Pontchartrain to the sea; and to this end the Most Christian King cedes in absolute ownership and guarantee- to His Britan-ic Majesty, the river and port of Mobile and all that he possesses or ought to possess on the left bank of the Mississippi river

with the exception of New Orleans and of the island on which it situated which shall continue to belong to France.

It is understood that the navigation of the Mississippi river sha be equally free to the subjects of Great Britain and those of Fran throughout its breadth and length from its source to the sea, an especially that part which is between that island and the right ban of the river, both at its entrance and at its outlet through its mout

Endorsed: Treaty between England France and Spain Februar 10th 1716. Art. VI. (VII) Translation as appearing in "Treati and Conventions between the United States and Other Powers Sin July 4th 1776" Washington 1889. Document No. 14. Offere by the State of Louisiana April 25, 1904. Frank H. Mortime commissioner. Office Supreme Court U. S. Filed Mar. 13, 190 James H. McKenney clerk.

1124 DOCUMENT No. 15.

Treaty of Peace, &c., between the Kings of France, Spain, an England, Signed at Paris on 10th of February, 1763.

Article VII or VI.

In order to re-establish peace on solid and durable foundation and to remove forever all motives for dispute respecting the limi of the French and British territories on the American continent, has been agreed that the limits between the States of His Most Chri tian Majesty and those of His Britannic Majesty in that part of th world, shall hereafter be irrevocably fixed by a line drawn alon the middle of the River Mississippi from its source to the Riv Iberville; and thence by another line through the middle of th river and the Lakes Maurepas and Pontchartrain to the sea; an for this purpose the Most Christian King cedes to His Britan- Majesty, and guarantees to him, the entire possession of the riv and port of Mobile, and all that he possesses or should have po sessed, on the left bank of the River Mississippi, with the exceptio of New Orleans and the island whereon that city stands, which a to remain subject to France; it being understood that the navig tion of the Mississippi river is to be equally free to the subjects Great Britain and of France in its whole breadth and extent, fro its source to the sea, and particularly that part between the sa Island of New Orleans and the right bank of that river, as well the entrance and departure by its mouth. It is moreover stip lated, that vessels belonging to the subjects of either nation are n to be detained, searched, or obliged to pay any duties whatsoev The stipulations contained in the fourth article in favor of the i habitants of Canada are to be of equal effect with regard to the i habitants of the countries ceded by this article.

Land Law in California, Oregon, Texas &c., by Joseph White—1839—vol. 2, page 533.

Endorsed: Treaty between France, Spain and England—10th of February 1763. Art. VII or VI. From Land Law in California, Oregon, Texas &cf. by Jos. M. White, vol. 2, page 533. Document No. 15. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney clerk.

1125 DOCUMENT No. 16.

Extracts from the Revised Statutes of the United States.

Forty-third Congress, 1st Session, 1873–'74.

Page- 704 & 705.

Treaty of Friendship, Limits, and Navigation between the United States of America and the King of Spain, Oct. 27, 1795.

"His Catholic Majesty and the United States of America, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to establish, by a convention, several points, the settlement whereof will be productive of general advantage and reciprocal utility to both nations.

With this intention, His Catholic Majesty has appointed the most excellent Lord Don Manuel de Godoy, and Alvarez de Faria, Rios, Sanchez, Zazosa, Prince de la Paz, Duke de la Alcudia, Lord of the Soto de Roma, and of the State of Albala, grandee of Spain of the first class, etc., * * * and the President of the United States with the advice and consent of their Senate has appointed Thomas Pinckney, a citizen of the United States and their envoy extraordinary to His Catholic Majesty. And the said plenipotentiaries have agreed upon and concluded the following articles:

Article I.

"There shall be a firm and inviolable peace and sincere friendship between His Catholic Majesty, his successors and subjects, and the United States and their citizens, without exception of persons or places."

Article II.

"To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of east and west Florida, shall be designated by a line beginning on the River Mississippi, at the northernmost part of
1126 the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the

River Apalachicola, or Catahouche, thence along the middle there to its junction with the Flint; thence straight to the head of S Mary's river, and thence down the middle thereof to the Atlant ocean. And it is agreed that if there should be any troops, garr sons or settlements of either party in the territory of the other, a cording to the above-mentioned boundaries, they shall be withdraw from the said territory within the term of six months after the rat fication of this treaty, or sooner if it be possible; and that they sha be permitted to take with them all the goods and effects which the possess."

* * * * * * *

Article IV.

"It is likewise agreed that the western boundary of the Unite States which separates them from the Spanish colony of Louisian is in the middle of the channel or bed of the River Mississippi, fro the northern boundary of the said State to the completion of th thirty-first degree of latitude north of the equator. And His Cath lic Majesty has likewise agreed that the navigation of the said rive in its whole breadth from its source to the ocean, shall be free onl to his subjects and the citizens of the United States, unless he shoul extend this privilege to the subjects of other powers by special con vention."

Endorsed: Treaty. Between the United States and Spain—Octo ber 27th 1795. Revised Statutes of the U. S. 43d Congress—1s session 1873–'74 pages 7044–'5. Document No. 16 Offered by Stat of Louisiana April 25, 1904. Frank H. Mortimer, commissioner Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKen ney, clerk.

1127 DOCUMENT No. 17.

Extracts from the Revised Statutes of the United States.

Forty-third Congress, 1st Session.

1873–'74.

Page- 232 & 233.

Treaty between the United States of America and the French Re public, April 30, 1803.

Article I.

"Whereas by the article the third of the treaty concluded at S Idelfonso, the 9th Vendemiaire, an 9 (1st October 1800,) between th first consul of the French Republic and His Catholic Majesty, it wa agreed as follows: "His Catholic Majesty promises and engages o

his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." And whereas in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: the first consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty."

Article II.

"In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers and documents, relative to the domain and sovereignty of
1128 Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them."

* * * * * * *

Endorsed: Treaty between the United States and France. April 30th 1803. Revised Statutes of the U. S. 43d Congress, 1st session 1873–74. Pages 232 & 233. Document No. 17 offered by the State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1129 DOCUMENT No. 18.

U. S. Statutes at Large.

Chapter 28, vol. 1, page 549.

An Act for an Amicable Settlement of the Limits with the State of Georgia and Authorizing the Establishment of a Government in the Mississippi Territory.

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

the President of the United States be, and he hereby is authoriz to appoint three commissioners: any two of whom shall have pow to adjust and determine with such commissioners as may be a pointed under the legislative authority of the State of Georgia interfering claims of the United States and that State to territ situate west of the River Chatahouchee north of the thirty-first gree of north latitude and south of the cession made to the Unit States by South Carolina; and also to receive proposals for the linquishment or cession of the whole or any part of the other te tory claimed by the State of Georgia and out of the ordinary ju diction thereof.

SEC. 2. Be it further enacted, That all the lands thus ascertain as the property of the United States shall be disposed of in su manner as shall be hereafter directed by law; and the net proce thereof shall be applied to the sinking and discharging the pub debts of the United States in the same manner as the proceeds the other public lands in the territory north-west of the River Oh

SEC. 3. Be it further enacted, That all that tract of country bou on the west by the River Mississippi; on the north by a line dra due east from the mouth of the Yassous to the Chatahouchee rive and on the south by the thirty first degree of north latitude, sh be, and hereby is, constituted one district to be called the Mississip territory; and the President of the United States is hereby autho tized to establish therein a government in all respects similar to th now exercised in the territory north-west of the Ohio riv
1130 excepting and excluding the last article of the ordinan made for the government thereof by the late Congress on th 13th day of July one thousand seven hundred and eighty-seve and by and with the advise and consent of the Senate, to appoi all the necessary officers therein, who shall respectively receive th same compensation for their services; to be paid in the same ma ner as by law established for similar officers in the territory nort west of the River Ohio; and the powers, duties and emoluments superintendent of Indian affairs for the southern department sha be united with those of the governor; *Provided always* That if th President of the United States shall find it most expedient to esta lish this government in the recess of Congress, he shall neverthele have full power to appoint and commission all officers herein au thorized; and their commissions shall continue in force until th end of the Congress next ensuing the establishment of the gover ment.

SEC. 4. Be it further enacted, That the territory hereby constitute one district for the purpose of government may, at the discretion o Congress be hereafter divided into two districts with separate terr torial governments in each similar to that established by this act.

SEC. 5. Be it further enacted, That the establishment of this gov ernment shall in no respect impair the right of the State of Georgia or of any person, either to the jurisdiction or the soil of the said territory; but the rights and claims of the said State and of al

persons interested are hereby declared to be as firm and available as if this act had never been made.

* * * * * * *

Approved April 7, 1798.

Endorsed: Act of Congress. For an amicable settlement of the limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi territory. Approved April 7th 1798. U. S. Statutes at Large. Chapter 28, vol. 1, page 549 Document No. 18 offered by State of Louisiana April 25, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1131 DOCUMENT No. 19.

Extracts from the Annals of Congress.

Eighth Congress, 2nd Session. Appendix 1804 and 1805.

Description of Louisiana.

(Communicated to Congress Nov. 14, 1803.)

To the Senate and House of Representatives of the United States.

Page 1498.

I now communicate a digest of the information I have received relative to Louisiana, which may be useful to the legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in the press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

TH. JEFFERSON.

November 14, 1803.

An Account of Louisiana.

Page 1498.

The object of the following pages is to consolidate the information respecting the present State of Louisiana, furnished to the Executive by several individuals among the best informed on the subject.

Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed probable that surveys have never been made upon so extensive a scale as to afford the means of laying down the various regions of a country which in some of its parts, appears to have been but imperfectly explored.

* * *

Page 1504.

St. Bernardo.

On the east side of the Mississippi, about five leagues below New Orleans, and at the head of the English bend, is a settlement known by the name of the Poblacion de St. Bernardo, or the Terre au Bœufs extending on both sides of a creek or drain, whose head is contiguous to the Mississippi, and which flowing eastward,
1132 after a course of eighteen leagues, and dividing itself into two branches, falls into the sea and Lake Borgne. This settlement consists of two parishes, almost all the inhabitants of which are Spaniards from the Canaries, who content themselves with raising fowls, corn and garden stuff for the market at New Orleans. The lands can not be cultivated to any great distance from the banks of the creek, on account of the vicinity of the marsh behind them, but the place is susceptible of great improvement, and of affording another communication to small craft of from eight to ten feet draught, between the sea and the Mississippi.

Page 1505.

Country from Plaquemines to the Sea, and Effect of the Hurricanes.

From Plaquemines to the sea is twelve or thirteen leagues. The country is low, swampy, chiefly covered with reeds, and having little or no timber, and no settlement whatever. It may be necessary to mention here, that the whole lower part of the country, from the English Turn downwards, is subject to overflowing in hurricanes, either by the recoiling of the river, or reflux from the sea on each side; and, on more than one occasion, it has been covered from the depth of two to ten feet, according to the descent of the river, whereby many lives were lost, horses and cattle swept away, and a scene of destruction laid. The last calamity of this kind happened in 1794, but fortunately they are not frequent. In the preceding year the engineer who superintended the erection of the fort at Plaquemines was drowned in his house near the fort, and the workmen and garrison escaped only by taking refuge on an elevated spot in the fort, on which there were notwithstanding two or three feet of water. These hurricanes have generally been felt in the month of August. Their greatest fury lasts about twelve hours. They commence in the southeast, veer about to all the points of the compass, are felt most severely below, and seldom extend more than a few leagues above New Orleans. In their whole course they are marked
1133 with ruin and desolation. Until that of 1793, there had been none felt from the year 1780.

Page 1574.

San Bernardo, or Terre au Bœufs, on a Creek Running from English Turn, East to the Sea and Lake Borgne.

Endorsed: Description of Louisiana, Message of Thos. Jefferson. Extracts from Annals of Congress, 8th Congress—2d session. Appendix 1804 & 1805. Document No. 19. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S., Filed Mar. 13, 1905. James H. McKenney, clerk.

1134 DOCUMENT No. 20.

United States Statutes at Large.

Chapter 38, Vol. 2, Page 283.

An Act Erecting Louisiana into Two Territories and Providing for the Temporary Government Thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the country ceded by France to the United States under the name of Louisiana which lies south of the Mississippi territory and of an east and west line to commence on the Mississippi river at the thirty third degree of north latitude, and to extend west to the western boundary of said cession, shall constitute a territory of the United States under the name of the Territory of Orleans; the government whereof shall be organized and administered as follows:

* * * * * * *

SEC. 12. The residue of the province of Louisiana ceded to the United States shall be called the district of Louisiana, the government whereof shall be organized and administered as follows:

* * * * * * *

Approved March 26, 1804.

Endorsed: Act of Congress erecting Louisiana into two territories and providing for the temporary government thereof. Approved March 26th 1804. U. S. Statutes at Large chapter 38, vol. 2, page 283. Document No. 20. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1135 DOCUMENT NO. 21.

U. S. Statutes at Large.

Vol. 2, Page 641.

An act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of such State into the Union on an equal footing with the original States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of the said river, including all islands, to the thirty second degree of latitude, thence due north to the northernmost part of the thirty third degree of north latitude, thence along the said parallel of latitude to the River Mississippi, thence down the said river to the River Iberville, and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico, thence, bounded by the said Gulf, to the place of beginning, including all islands within three leagues of the coast, be, and they are hereby authorized to form themselves a constitution and State government, and to assume such name as they may deem proper, under the provisions and upon the conditions hereinafter mentioned.

SECT. 2. And be it further enacted, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial, county or district, or parish tax, and all persons having in other respects all legal qualifications to vote for representatives in the General Assembly of the said Territory, be, and they are hereby authorized to choose representatives to form a constitutional convention,
1136 who shall be apportioned amongst the several counties, districts, or parishes, in the said Territory of Orleans, in such manner as the legislature of the said Territory shall by law direct. The number of representatives shall not exceed sixty, and the election for the representatives aforesaid shall take place on the third Monday of September next, and shall be conducted in the same manner as is now provided by the laws of the said Territory for electing members of the house of representatives.

SECT. 3. Be it further enacted, That the members of the convention when duly elected, be, and they are hereby authorized to meet at

the city of New Orleans on the first Monday of November next, which convention, when met, shall first determine by a majority of the whole number elected, whether it be expedient or not at that time to form a constitution and State government for the people within the said Territory; and if it be determined to be expedient, then the convention shall in like manner declare, in behalf of the people of the said Territory, that it adopts the Constitution of the United States; whereupon the said convention shall be, and hereby is authorized to form a constitution of the said Territory; *provided:* that the constitution to be formed in virtue of the authority herein being given, shall be republican and consistent with the Constitution of the United States, that it shall contain the fundamental principles of civil and religious liberty, that it shall secure to the citizens the trial by jury in all criminal cases, and the privilege of the writ of *habeas corpus*, conformably to the provisions of the Constitution of the United States; and that, after the admission of the said Territory of Orleans as a State into the Union, that the laws which such State may pass, shall be promulgated, and its records of every description shall be preserved, and its judicial and legislative written proceedings, conducted in the language in which the laws and the judicial and legislative proceedings of the United States are now published and conducted; *and provided also:* That the said convention shall provide by an ordinance, irrevocable without the consent of the United States, that the people inhabiting the said Territory, do agree and declare, that they forever disclaim all
1137 right or title to the waste and unappropriated lands lying within the said Territory, and that the same shall be and remain at the sole and entire disposition of the United States; and moreover, that each and every tract of land sold by the Congress shall be and remain exempt from any tax laid by the order, or under the authority of the State, whether for State, county, township, parish or any other purpose whatever, for the term of five years from and after the respective days of sales thereof; and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to persons residing therein; and that no taxes shall be imposed on lands the property of the United States; and that the River Mississippi and the navigable rivers and waters leading into the same, or into the gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State, as to other citizens of the United States, without any tax, duty, import or toll therefor imposed by the said State.

SEC. 4. Be it further enacted, That in case the convention shall declare its assent, in behalf of the people of the said Territory, to the adoption of the Constitution of the United States, and shall form a constitution and State government for the people of the said Territory of Orleans, the said convention, as soon thereafter as may be, is hereby required to cause to be transmitted to Congress the instrument by which its assent to the Constitution of the United States is

thus given and declared, and also a true and attested copy of su constitution and form of the State government as shall be form and provided by the said convention; and if the same shall not disapproved by Congress at their next session after the receipt ther the said State shall be admitted into the Union upon the same fo ing with the original States.

SEC. 5. And be it further enacted, That five per centum of the proceeds of the sales of the lands of the United States, after the fi day of January, shall be applied to laying out and constructing pu lic roads and levees in the said State, as the legislature thereof m direct."

Approved February 20th 1811."

1138 Endorsed: Act of Congress to enable the people of Territory of Orleans to form a constitution and State gove ment. Approved Feb'y 20th 1811. U. S. Statutes at Large. V 2, page 641. Document No. 21 offered by State of Louisiana Ap 25, 1904. Frank H. Mortimer, commissioner. Office Supre Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1139 DOCUMENT No. 22.

U. S. Statutes at Large.

Vol. 3, Page 472.

An act concerning an act to enable the President of the Uni States under certain contingencies to take possession of the coun lying east of the Perdido and south of the State of Georgia a the Mississippi territory, and for other purposes, and the decla tion accompanying the same.

Be it enacted by the Senate and House of Representatives of t United States of America in Congress assembled, That this act, a the act passed during the present session of Congress entitled " act to enable the President of the United States under certain c tingencies to take possession of the country lying east of the Ri Perdido and south of the State of Georgia and the Mississippi te tory, and for other purposes" be not printed or published until t end of the next session of Congress, unless directed by the Presiden the United States any law or usage to the contrary notwithstandi

Approved March 3. 1811

Endorsed: Act of Congress concerning an act to enable the Pr dent of the U. S. under certain contingencies to take possession the country lying east of the Perdido. Approved March 3d, 18 U. S. Statutes at Large, vol. 3, page 472. Document No. 22 offe by State of Louisiana April 25, 1904. Frank H. Mortimer, co missioner. Office Supreme Court, U. S. Filed Mar. 13, 19 James H. McKenney, clerk.

1140 DOCUMENT No. 23.

U. S. Statutes at Large.

Vol. 3, Page 471.

An act to enable the President of the United States under certain contingencies to take possession of the country lying east of the River Perdido and south of the State of Georgia and the Mississippi territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized to take possession of and occupy all or any part of the territory lying east of the River Perdido and south of the State of Georgia and the Mississippi territory, in case an arrangement has been made or shall be made with the local authorities of the said territory for delivering up the possession of the same, or any part thereof to the United States, or in the event of an attempt to occupy the said territory or any part thereof by any foreign government; and he may for the purpose of taking possession and occupying the territory aforesaid, and in order to maintain therein the authority of the United States, employ any part of the Army and Navy of the United States which he may deem necessary.

SEC. 2. Be it further enacted, That one hundred thousand dollars be appropriated for defraying such expenses as the President may deem necessary for obtaining possession as aforesaid, and the security of the said territory, to be applied under the direction of the President out of any money in the Treasury not otherwise appropriated.

SEC. 3. Be it further enacted, That in case possession of the territory aforesaid shall be obtained by the United States as aforesaid, that until other provision is made by Congress, the President be, and he is hereby authorized to establish within the territory aforesaid a temporary government, and the military, civil and judicial powers thereof shall be vested in such person or persons and be exercised in such manner as he may direct for the protection and maintenance of the inhabitants of the said territory in the full enjoyment of their liberty, property and religion.

Approved January 15, 1811.

1141 Endorsed: Act of Congress to enable the President of the U. S. under certain contingencies to take possession of the country lying east of the River Perdido. Approved January 15th 1811. U. S. Statutes at Large. Vol. 3, page 471. Document No. 23 offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1142 DOCUMENT NO. 24.

U. S. Statutes at Large.

Chapter 1, Vol. 2, Page 701.

An Act for the Admission of the State of Louisiana into the Union and to Extend the Laws of the United States to said State.

Whereas, the representatives of the people of all that part of the territory or country ceded under the name of "Louisiana" by the treaty at Paris on the thirtieth day of April one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: Beginning at the mouth of the River Sabine; thence by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast; had on the twenty-second day of January one thousand eight hundred and twelve formed for themselves a constitution and State government, and given to the said State the name of Louisiana, in virtue of an act entitled "An act to enable the people of the Territory of Orleans to form a constitution and State government; and for the admission of the said State into the Union on an equal footing with the original States, and for other purposes," and the said constitution having been transmitted to Congress and by them being hereby approved; therefore: Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said State shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on equal footing with the original States in all respects whatever, by the name of Louisiana; *Provided* That it shall be taken as a condition upon which the said State is incorporated in the Union, that the River Mississippi and the navigable rivers and waters leading into the same, and
1143 into the gulf of Mexico shall be common highways and forever free, as well to the inhabitants of the said State as to the inhabitants of other States and the Territories of the United States, without any tax, duty, impost or toll therefor imposed by the said State; and that the above condition and also all other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered, deemed and taken fundamental conditions and terms upon which the State is incorporated in the Union.

* * * * * * *

SEC. 3. Be it further enacted that the said State, together with the residue of that portion of the country which was comprehended within the Territory of Orleans, as constituted by the act entitled "An act erecting Louisiana into two territories and providing for the temporary government thereof," shall be one district and called the Louisiana district; and there shall be in the said district a district court to consist of one judge who shall reside therein and be called the district judge; and there shall be annually four stated sessions of the said court held at the city of New Orleans, &c.

* * * * * * *

Approved April 8, 1812.

Endorsed: Act of Congress for the admission of the State of Louisiana into the Union &c. Approved April 8, 1812. U. S. Statutes at Large chapter 1, vol. 2, page 701. Document No. 24, offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1144 DOCUMENT NO. 25.

U. S. Statutes at Large.

Chapter 57, Vol. 2, Page 708.

An Act to Enlarge the Limits of the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case the legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following bounds, to wit: Beginning at the junction of the Iberville with the River Mississippi; thence along the middle of the Iberville, the Amite river and the Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the said eastern branch of Pearl river to the thirty first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State.

SEC. 2. And be it further enacted, That it shall be incumbent upon the legislature of the State of Louisiana, in case they consent to the incorporation of the territory aforesaid within their limits, at their first session to make provision by law for the representation of the said territory in the legislature of the State upon the principles of the constitution and for the securing to the people of the said territory equal rights, privileges, benefits and advantages with those

enjoyed by the people of the other parts of the State; which law shall be liable to revision, modification and amendment by Congress, and also in the manner provided for the amendment of the State constitution, but shall not be liable to change or amendment by the legislature of the State.

Approved April 14, 1812.

Endorsed: Act of Congress to enlarge *to* limits of the State of Louisiana, approved April 14, 1812. U. S. Statutes at Large, chapter 57, vol. 2, page 708. Document No. 25, offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1145 DOCUMENT No. 26.

State of Louisiana.

A Resolution Giving the Assent of the Legislature to an Enlargement of the State of Louisiana.

"Resolved by the senate and house of representatives of the State of Louisiana in General Assembly convened: That whereas the Senate and House of Representatives of the United States of America in Congress assembles by an act entitled, "An act to enlarge the limits of the State of Louisiana," *and* provided; that in case the legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following boundaries to wit: Beginning at the junction of the Iberville with the River Mississippi; thence along the middle of the Iberville, the River Amite, and the Lakes Maurepas and Pontchartrain, and the mouth of the Pearl river; thence up the eastern branch of the Pearl river to the thirty-first degree of latitude to the River Mississippi; thence down the said river to the place of beginning shall become and form a part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State."

Be it resolved and it is hereby resolved: That the senate and house of representatives of the State of Louisiana in General Assembly convened, do approve of, and consent to the enlargement of the limit- of the said State of Louisiana, in manner as provided by the above in part recited act of Congress hereby declaring that the same shall forever be and remain a part of the State of Louisiana.

(Signed) P. B. ST. MARTIN,
Speaker of the House of Representatives.

(Signed) WILLIAM C. C. CLAIBORNE,
Governor of the State of Louisiana.

(Signed) J. POYDRAS,
President of the Senate.

Approved August 4, 1812.

Endorsed: State of Louisiana Resolution of legislature giving assent to an enlargement of the State of Louisiana. Document No. 26. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1146

1147

DOCUMENT No. 27.

U. S. Statutes at Large.

Vol. 3, Page 471.

Resolution.

Taking into view the peculiar situation of Spain and her American provinces, and considering the influence which the destiny of the territory adjoining the southern boundary of the United States may have upon their security, tranquillity and commerce; therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States, under the peculiar circumstances of the existing crisis, can not without serious inquietude see any part of the said territory pass into the hands of any foreign power; and that a due regard to their own safety compels them to provide under certain contingencies for the temporary occupation of the said territory; they at the same time declare that the said territory shall in their hands remain subject to future negotiations.

Approved January 15, 1811.

Endorsed: Resolution of Congress relating to Spanish provinces. Approved January 15th, 1811. U. S. Statutes at Large. Vol. 3, page 471. Document No. 27. Offered by State of Louisiana, April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1148

DOCUMENT No. 28.

U. S. Statutes at Large.

Chap 67, Vol. 2, Page 713.

An Act for Ascertaining the Titles and Claims to Land in that Part of *the* Louisiana which Lies East of the River Mississippi and Island of New Orleans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining the titles and claims to lands in that tract of country which lies south of the Mississippi territory, east of the

River Mississippi and island of New Orleans, and west of the Ri
Perdido and a line drawn with the general course thereof to
southern boundary of the said Mississippi territory to the la
within the said limits, shall be laid off into two land districts,
tween which Pearl river shall be the boundary; and for each
which districts a commissioner for land claims shall be appoin
by the President of the United States, with the advice and cons
of the Senate. The said commissioners shall respectively h
power to appoint a clerk who shall be capable of translating
French and Spanish languages, and who shall, in addition, to
other duties required of him by this act, perform the duties of tra
lator when required by the commissioner. And the said comm
sioner and clerk shall, before entering on the duties of their appoi
ments, respectively take an oath or affirmation truly and faithfu
to execute the duties imposed on them by this act.

SEC. 2. Be it further enacted, That for the more convenient asc
tainment of the titles and claims to the lands aforesaid, it shall
the duty of each of the said commissioners respectively, and th
clerks, to attend in each of the several parishes in his district,
such time and place therein as he shall appoint, for the purpose
receiving notices and evidences of titles and claims to lands wit
the same; and when the commissioner shall have appointed
time and place for his attendance in any parish, he shall ca
public notice thereof to be given to the inhabitants of the same
at least twenty days previous to the time of his commencing
business of his appointment therein.

* * * * * * *

Approved April 25, 1812.

1149 Endorsed: Act of Congress for ascertaining the titles a
claims to lands in that part of Louisiana which lies east
the River Mississippi and the island of New Orleans. Approv
April 25th, 1812. U. S. Statutes at Large. Chapter 67, vol. 2, p
713. Document No. 28. Offered by State of Louisiana April
1904. Frank H. Mortimer, commissioner. Office Supreme Cou
U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1150 DOCUMENT NO. 29.

U. S. Statutes at Large.

Vol. 3, Page 472.

An Act Authorizing the President of the United States to Take Possession of the Tract of Country Lying South of the Mississippi Territory and West of the River Perdido.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the President be, and he is hereby authorized to occupy and hold all that tract of country called West Florida which lies west of the River Perdido, not now in the possession of the United States.

SEC. 2. And be it further enacted, That for the purpose of occupying and holding the country aforesaid, and of affording protection to the inhabitants thereof under the authority of the United States, the President may employ such parts of the military and naval forces of the United States as he may deem necessary.

SEC. 3. And be it further enacted, That for defraying the necessary expenses, twenty thousand dollars are hereby appropriated to be paid out of any money in the Treasury not otherwise appropriated, and to be applied for the purpose aforesaid under the direction of the President.

Approved February 12, 1813.

Endorsed: Act of Congress authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory and west of the River Perdido. Approved Feb'y 12, 1813. U. S. Statutes at Large. Vol. 3, page 472. Document No. 29. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1151 DOCUMENT NO. 30.

U. S. Statutes at Large.

Chapter 84, Vol. 2, Page 734.

An Act to Enlarge the Boundaries of the Mississippi Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory; to be governed by the

laws now in force therein, or which may hereafter be enacted, a
the laws and ordinances of the United States relative thereto, in l
manner as if the same had originally formed part of the said Te
tory; and until otherwise provided by law, the inhabitants of
said district hereby annexed to the Mississippi Territory, shall be
titled to one representative in the General Assembly thereof.
Approved May 14, 1812.

Endorsed: Act of Congress to enlarge the boundaries of the M
sissippi Territory. Approved May 14, 1812. U. S. Statutes at La
chapter 84, vol. 2, page 734. Document No. 30 Offered by State
Louisiana April 25, 1904. Frank H. Mortimer commissioner. Of
Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenn
clerk.

1152 DOCUMENT No. 31.

U. S. Statutes at Large.

Vol. 3, Page 348, Chapter 23.

An act to enable the people of the western part of the Mississi
Territory to form a constitution and State government, and for
admission of such State into the Union on an equal footing w
the original States.

Be it enacted by the Senate and House of Representatives of
United States of America in Congress assembled, That the inh
itants of the western part of the Mississippi Territory be, and th
are hereby authorized to form for themselves a constitution a
State government, and to assume such name as they shall de
proper; and that said State when formed shall be admitted into
Union upon the same footing with the original States in all respe
whatever.

SEC. 2. Be it further enacted, That the said State shall consis
all that territory included within the following boundaries, to w
Beginning on the Mississippi river at the point where the south
boundary line of the State of Tennessee strikes the same; the
east along the said boundary line to the Tennessee river; the
up the same to the mouth of Bear creek; thence by a direct l
to the north-west corner of the county of Washington; thence
south to the gulf of Mexico; thence westward, including all isla
within six leagues of the shore to the most eastern junction of P
river with Lake Borgne; thence up the said river to the thirty
degree of north latitude; thence west along the said degree of
itude to the Mississippi river; thence up the same to the beginni

SEC. 3. Be it further enacted, That all free white male citizen
the United States who shall have arrived at the age of twenty

years and resided within the said Territory at least one year previous to the time of holding the election, and shall have paid a county or territorial tax, and all persons having in other respects the qualifications to vote for representatives in the General Assembly of the said Territory, be, and they are hereby authorized to
1153 choose representatives to form a convention who shall be apportioned among the several counties within the Territory as follows, to wit: From the county of Warren two representatives; from the county of Claiborne four representatives; from the county of Adams eight representatives; from the county of Franklin two representatives; from the county of Wilkinson six representatives; from the county of Amite six representatives; from the county of Pike four representatives; from the county of Lawrence two representatives; from the county of Marion two representatives; from the county of Hancock two representatives; from the country of Wayne two representatives; from the county of Green two representatives; from the county of Jackson two representatives; and the election shall be holden on the first Monday and Tuesday in January next throughout the several counties above mentioned, and shall be conducted in the same manner as is provided by the laws of said Territory regulating elections therein for members of the House of Representatives.

* * * * * * *

Approved March 1, 1817.

Endorsed: Act of Congress to enable the people of the western part of the Mississippi Territory to form a constitution and State government &c*t*. Approved March 1, 1817. U. S. Statutes at Large chapter 23 vol. 3, page 348. Document No. 31. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1154 DOCUMENT No. 32.

U. S. Statutes at Large.

Vol. 3, Page 472.

Resolutions.

1. Resolution for the Admission of the State of Mississippi into the Union.

Whereas, in pursuance of an act of Congress passed on the first day of March one thousand eight hundred and seventeen entitled "An act to enable the people of the western part of the Mississippi territory to form a constitution and State government, and for the

admission of such State into the Union on an equal footing with the original States," the people of the said territory did on the fifteenth day of August in the present year, by a convention called for the purpose, form for themselves a constitution and State government, which constitution and State gove-nement so formed is republican and in conformity to the principles of the articles of compact between the original States and the people and States in the territory north-west of the River Ohio, passed on the thirteenth day of July one thousand seven hundred and eighty-seven,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Mississippi shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Approved December 10, 1817.

Endorsed: Resolution of Congress for the admission of the State of Mississippi into the Union &*et.* Approved December 10, 1817. U. S. Statutes at Large vol. 3, page 472. Document No. 32 offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1155 DOCUMENT No. 33.

56TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 720.

DEPARTMENT OF THE INTERIOR.

Bulletin of the United States Geological Survey, No. 171.

Boundaries of the United States and Territories, with Outline of History of Important Changes (Second Edition). Gannett.

Washington,
Government Printing Office,
1900.

1156 * * * * * * *

Louisiana and the Territory Acquired from Mexico.

The Louisiana purchase was effected in 1803. In 1804 it was divided into two parts, that portion which now comprises the State of Louisiana being organized as Orleans Territory, while the balance remained as the Louisiana Territory. The State of Louisiana, comprising most of the Territory of Orleans, was admitted to the Union in 1812, and in the same year it was enlarged by the addition of

the portion lying between the Mississippi and Pearl rivers, in the southeastern part. In the same year the name of Louisiana Territory was changed to Missouri Territory. In 1819 Arkansaw Territory was created, and in 1836 it was admitted as a State.

* * * * * * *

1157 Louisiana.

The original Territory of Louisiana was acquired from France (see p. 21). In 1804, a portion of this, comprising the area of the present State of Louisiana, with the exception of the southeastern portion immediately adjoining the present State of Florida, was organized into a territory under the name of Orleans, while the balance of the Louisiana purchase retained the name of Louisiana Territory. On April 30, 1812, the Territory of Orleans was admitted as a State under the name of Louisiana, and at the same time the name of the Territory of Louisiana was changed to Missouri Territory. In the same year the limits of the State were enlarged in the southeast to its present boundaries.

The following act defines the Territory of Orleans:

All that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a Territory of the United States, under the name of the Territory of Orleans. (Eighth Congress, first session.)

The following clause from the act admitting Louisiana defines its original boundaries:

Beginning at the mouth of the River Sabine, thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence, bounded by the said Gulf, to the place of beginning, including all islands within three leagues of the coast. (Twelfth Congress, first session.)

The following is a description of the addition to the State of Louisiana, in terms of the act:

Beginning at the junction of the Iberville with the River Mississippi, thence along the middle of the Iberville, the River Amite, and of the Lakes Maurepas and Pontchartrain, to the eastern mouth of the Pearl river; thence up the eastern brance of Pearl river to the thirty-first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana. (Twelfth Congress, first session.)

The north boundary of Louisiana was surveyed by a joint commission of the State and the United States.



HISTORICAL DIAGRAM OF LOUISIANA.

* * * * * * *

1158 Mississippi.

(For the early history of the extent of Mississippi territory *vide* Alabama, p. 108.)

On December 10, 1817, the western part of the Mississippi territory was made a State and admitted into the Union, with the following boundaries, viz:

Beginning on the River Mississippi at the point where the southern boundary of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along said degree of latitude to the Mississippi river; thence up the same to the beginning. (*Vide* U. S. Stat. at Large, vol. III, p. 348.)

(For further information concerning eastern boundary, *vide* Alabama, p. 108.)

In 1819 the line between Mississippi and Tennessee was run by commissioners. Their report is not at hand. In 1833 the legislature of Tennessee passed an act establishing "Thompson's line." The detail of "Thompson's line" have not been found. In 1837 the line was again run by commissioners from the two States, and ratified by the legislatures. The commissioners' report was as follows, viz:

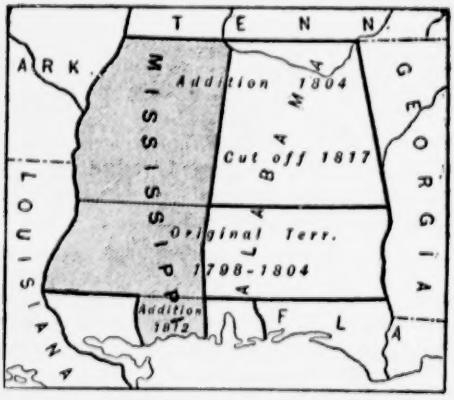
Commencing at a point on the west bank of the Tennessee river six four-pole chains south, or above the mouth of Yellow creek and about three-quarters of a mile north of the line known as "Thomp-

on's line," and twenty-six chains and ten links north of Thompson's ne at the basis meridian of the Chickasaw surveys, and terminating t a point on the east bank of the Mississippi river (opposite Cow isl-nd) sixteen chains north of Thompson's line. (See Laws of Ten-essee, 1837, p. 27.)

The boundaries were fixed by the act of Congress admitting the tate of Mississippi as follows, viz.

Commencing at the most eastern junction of Pearl river with Lake Borgne, thence up said Pearl river to the thirty-first degree of north atitude, thence west along said degree of latitude to the Mississippi iver, thence up the same to the point where the southern boundary f Tennessee strikes the same. (See U. S. Laws, vol. 6, p. 175.)

Mississippi claims to the middle of the Mississippi river, where he river forms her western boundary. (See Rev. Stat., 1857.)



HISTORICAL DIAGRAM OF MISSISSIPPI.

159 Endorsed on cover: Document No. 33. Offered by State of Louisiana April 25, 1904. "To be extracted from as shown y stenographer's notes." Frank H. Mortimer, commissioner. Office upreme Court U. S. Filed Mar. 13 1905 James H. McKenney, lerk.

1160 DOCUMENT No. 34.

Extracts from Abridgment of Debates of Congress, by D. Apple & Co., New York, 1857.

Vol. 4, p. 320.

Orleans Territory.

The house resolved itself into a committee of the whole on bill for admitting the Territory of Orleans as a State into the Uni

Mr. Bibb said it was very far from his intention to oppose the p sage of the bill. On the contrary, he was favorably disposed to but a difficulty had occurred to him, which he would state a reason for delaying decision on the bill for the present; the bill p posed including in the State all that part of the territory which west of the Perdido &c*t*. The President by his proclamation, though he had required its occupation, he declared that the ri should be subject to negotiation. Now if it became a State, wo not all right of negotiation on the subject be taken away from President?

Mr. Barry said that the necessity of the State government, want of proper control by the General Government, and its inabil to attend to the municipal concerns of the territory imperiou called upon Congress to erect it into a State. * * *

Vol. 4, p. 323.

Mr. MILLER: * * * Again sir, there are objections to the as presented that renders it impossible for me to give it my sancti It will be seen sir, that the bill proposes to annex that portio West Florida in dispute between this and the Spanish governm to the State to be formed out of the Territory of Orleans. President has declared to the world, that this portion of the coun in our hands shall be subject to mutual arrangements hereafte be entered into between the two governments. But once anne to a State, and the power to negotiate ceases. What power have to negotiate about the territory of any State? We have none.

Again sir, I never will consent that the bay of Mobile shall annexed to any State which includes New Orleans and the mouth the Mississippi, unless indeed they were included in the same St with the whole country north up to the Tennessee line.

* * * * * * *

I therefore move sir, to strike out the whole of the bill from words "A bill," for the purpose of inserting a section by way amendment, the effect of which will be to consolidate both terri into a single State, which will include the whole country belongi to the United States east of the Mississippi and south of the State Tennessee.

* * * * * * *

1161 Page 324.

Mr. GHOLSON: * * * In no point of view, said Mr. G., in which the subject has been considered can I perceive any reason for adopting the amendment offered by the gentleman from Tennessee (Mr. Miller). If the gentleman will advert to the treaty of cession between France and the United States, and to the act of Congress passed pursuant to that treaty, he will readily discover that the amendment he proposes cannot be sanctioned without a manifest violation of public faith. By the third article of the treaty it is stipulated that "the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages and immunities of citizens of the United States." On the second of March 1805 Congress proceeded by an act of legislation to fulfill this engagement with France; and accordingly by the seventh section of that act provided "that whenever it shall be ascertained by actual census or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of free inhabitants included therein shall amount to sixty thousand, they shall thereupon be authorized to form for themselves a constitution and State government, and will be admitted into the Union upon the footing of the original States in all respects whatever, conformably to the provisions of the third article of the treaty concluded at Paris on the thirtieth of April one thousand eight hundred and three between the United States and the French Republic." Now if to the Orleans Territory you add the Mississippi Territory, and of the two erect one State, you evidently will not comply either with your stipulations with the French Republic, or with your covenant to the Orleans Territory * * *

Page 324.

Mr. Bibb conceived that the House could not adopt such an amendment as that proposed, without the consent of Georgia, for without her consent they could not make an addition to or division of the Mississippi Territory. It was true, he said, that he had on a former day proposed to make an addition of territory to the Mississippi Territory, but it was only during such time as it should remain a Territory. To this there could be no objection, as there was no prohibition to it in the compact. It had been his intention, if the House had thought proper to sanction his motion, to have made a proposition to the State of Georgia to admit that territory to be incorporated with the Mississippi. The amendment now offered evidently proposed a violation of the compact with Georgia.

Page 325.

Mr. POINDEXTER: * * * That geographical limits other than those which now divide the Orleans and Mississippi Territories

might be designated to comport more with the future convenie
and prosperity of the country cannot be denied. I would su
for the reflection of the gentlemen who have to act on this su
the expediency of making the great River Mississippi the high
between the Eastern and Western States to be formed on its wa
that no one State should possess both banks of that river.

* * * * * * *

Mr. Miller's motion was not agreed to.

Endorsed: Extracts from Abridgment of Debates of Congres
D. Appleton & Co. New York 1857. Vol. 4 p. 320 *et seq.* Orl
Territory. Document No. 34. Offered by State of Louis
1162 April 24, 1904 Frank H. Mortimer commissioner. O
Supreme Court U. S. Filed Mar. 13 1905. James
McKenney, clerk.

1163 DOCUMENT NO. 35.

Extracts from Abridgment of Debates of Congress, by D. Appl
& Co. New York, 1857.

Vol. 3, p. 8.

Boundaries of the Province of Louisiana as Contained in a P
Communicated by Mr. Jefferson to Congress.

The precise boundaries of Louisiana westward of the Mississ
though very extensive, are at present involved in some obsca
The data are equally wanting to assign with precision its north
extent. From the source of the Mississippi it is bounded eastwa
by the middle of the channel of that river to the thirty first de
of latitude; thence it is asserted upon very strong grounds that,
cording to its limits when formerly possessed by France, it stretc
to the east as far at least as the River Perdido, which runs into
bay of Mexico eastward of the River Mobile. It may be consis
with the view of this notice to remark that Louisiana, including
Mobile settlements, was discovered and peopled by the Fre
when monarchs made several grants of its trade, in particula
Mr. Crozat in 1712, and some years afterwards, with his acquiesce
to the well known company projected by Mr. Law. This comp
was relinquished in the year 1781. By a secret convention on
third of November 1762, the French government ceded so muc
the province as lies beyond the Mississippi, as well as the islan
Orleans, to Spain; and by the treaty of peace which followed
1763, the whole territory of France and Spain eastward of
middle of the Mississippi to the Iberville, thence through the mid
of that river and the Lakes Maurepas and Pontchartrain to the

was ceded to Great Britain. Spain having conquered the Floridas from Great Britain during our Revolutionary war, they were confirmed to her by the treaty of peace of 1784. By the treaty of St. Ildefonso of the first of October 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic six months after the full and entire execution of the conditions and stipulations therein contained relative to the Duke of Parma "the colony and province of Louisiana with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States."

This treaty was confirmed and enforced by that of Madrid of the twenty first of March 1801. From France it passed to us by the treaty of the thirtieth of April last, with a reference to the above clause as descriptive of the limits ceded.

(Endorsed:) Extract from Abridgment of Debates of Congress by D. Appleton & Co. New York. 1857. Vol. 3, p. 8. Boundaries of the province of Louisiana. Document No. 35 Offered by States of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1164 DOCUMENT No. 36.

De Bow's Review, Vol. 23, Pages 513 *et seq.*

(1857.)

List of Hurricanes on the Coast of the South Atlantic States and on the North Coast of the Gulf of Mexico.

1700, Sept. 16.—(Ramsey.) Sea rushed in upon Charleston with amazing impetuosity." Many lives lost.

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1723.—(Burton.) A remarkable hurricane visited New Orleans this year, and nearly destroyed all the buildings.

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1772, 31 Aug. to Sep. 3.—(Gayarre.) A destructive hurrican in the southern Louisiana, though not so great in the city of New Orleans. The sea was driven over the islands along the Gulf coast. East of Lake Borgne the wind was from the sea (E. S. E.), but further westward it blew with the greatest violence from N. N. E. and E. Towards Mobile it destroyed woodlands for thirty miles inland; and spray was driven four or five miles inland in heavy masses and showers. Mulberry trees subsequentle bloomed and bore a second crop of fruit.

1778, Oct. 7 to 10.—(Galvez, Gayarre.) Cited by Gayarre as very destructive to coast establishments near New Orleans.

1779, Aug. 18.—(Gayarre.) Cited by this author as of less severity than others.

1779, Oct. 7 to 10.—(Galvez and Gayarre.) "It raged with such violence in lower Louisiana that the sea was higher than ever before, entirely destroying all establishments at the Balize, Bayou St. John and Tigouyou."

1780, Aug. 21.—(Gayarre.) This swept over the province of Louisiana, destroying all crops, tearing down buildings, and sinking every vessel or boat which was afloat on the Mississippi river. The Intendant, Navarro issued a consolatory circular to the inhabitants.

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1811.—(Dr. Burton.) Hurricane cited in Dr. Burton's report at New Orleans.

* * * * * * *

1812, Aug.—(Drake.) At the mouth of the Mississippi the Balize inundated, buildings washed away &c*t*.

* * * * * * *

1821.—(Dr. Burton.) Cited as one of the hurricanes experienced at New Orleans.

1831, Aug. 10 to 18.—(Redfield, 1832, Berlandier.) At Barbadoes Aug. 10; 13 east of Cuba; 14 at west end of Cuba and Havana; 16 near north shore of Gulf south of New Orleans; 17 and 18 continuing on the coast, inundating the Balize, and sweeping away houses, and wasting in heavy rains inland. This did not reach the Atlantic coast, though in all respects like those that do so by the longer route west of Florida. The rate of the movement was 13 & ½ nautical miles per hour by Mr. Redfield's calculation. It was very destructive at the Rio Grande in lower Texas.

1831.—(Burton.) Cited by this author as one of the storms inundating New Orleans.

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1835, Aug. 12 to 18.—(Redfield; Berlandier.) At Antigua &c*t*. on 12th, 13 Porto Rico, 14 Hayti and Turk's island, 15 Matanzas and Havana, 16 Tortugas and the central districts of the Gulf towards New Orleans, 18 at Matamoras, Mexico. "It went to Galveston, but was not felt at New Orleans." This is one of the hurricanes which were exhausted in the western areas of the Gulf, and on the coast of Texas, without returning eastwardly by the higher latitudes.

* * * * * * *

1165 1837, Sep. 27 to Oct. 10.—(Berlandier, Lopez, Redfield.) Sep. 27 south of Jamaica; Oct. 1 at Yucatan, 2′ & 3′ at Matamoras, destroying the town of Brazos Santiago, and inundat-

ing the coast for many miles inland. (Berlandier.) 5th at Galveston, 6th near New Orleans, 7′ at Mobile, 8th near Charleston, 9 & 10 passing E. N. E. from Charleston, southward of the usual line.

* * * * * * *

1842, Aug. 30 to Sep. 9.—(Redfield, Lopez.) This pursued a nearly direct line from its point of origin in long. 63 W. to the coast of Mexico at Tampico, the track lying between the 21st and 30th parallel. First observed in latitude 25′ 54 long. 63 W. on Aug. 30th. Sep. 1 at Turk's island, Sep. 3 south of Nassau N. P. Sep. 4 between Key West and Havana, 5 S. W. of Tortugas, 6 south of New Orleans in lat. 25, 7 S. E. of Matamoras between Matamoras and Tampico, 9 wasting at 60 miles inland from Tampico. This inundated the coast of the lower Rio Grande. The body of the hurricane passed over the south part of the peninsula of Florida on Sep. 4th. Its track was nearly due west at a mean rate of 10½ statute miles per hour. (Redfield.) * * *

1846.—(Barton.) Cited by this author as inundating the coast near New Orleans.

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1856, Aug. 9–12.—(Barton's New Orleans Papers &c.) This hurricane produced a fatally destructive inundation of portions of the coast south of New Orleans, last island (Island Derniere) particularly. At New Orleans 13 inches of rain fell. (Barton.)

From the New Orleans Picayune.

October 7th, 1837.

Last night was really tempestuous and dreadful; the rain continued to pour a torrent until 12 o'clock, when the wind blew from the N. W. a terrible gale. Chimney tops were blown off, awnings ripped up, and the roofs of many buildings greatly injured; and the wind whistled, howled, roared &c. * * *

Effect of the Storm.

Since writing the article on the weather, we have been informed that the damage done to property is much more general than we had supposed. The masts of several ships anchored at our wharves were swept away, and some broke from their moorings. Two steamboats were sent adrift from the other side of the river, and were much damaged. The roofs of several dwellings in the lower part of the city were carried away, being found in some instances a hundred feet from where they were placed. Fences and trees were blown down, and several of the latter were torn up by the roots. * * *

Great Destruction of Property.

Further Effects of the Storm.

Just as our paper was going to press, a gentleman informed us that the destruction of property at the railroad on Lake Pontchartrain by the storm last night has been very great. All the boats at the piers were completely wrecked, and driven into the woods, except the South Alabama.

The steamers Merchant and Mobile, the two best boats in the trade, and the Columbia and Pontchartrain are a total wreck, being so much injured as to be unfit for further use. The waves
1166 are mountain high in the lake. All the houses at the railroad were blown down, except two. The scene is one of distress and uncommon ruin. The water is three or four feet above the railroad. We are pained to hear this news, but cannot wait to give particulars.

New Orleans Picayune, Sept. 10th, 1846.

Wreck of the New York, 18 Lives Lost.

By the arrival of the steamship Galveston, Captain Wright, yesterday morning from Lavacca and Galveston, the sad intelligence was received of the total loss of the steamship New York, Captain Phillips. By this calamity no less than eighteen lives were lost. The following statement of the circumstances of this deplorable event was prepared by the clerk of the New York, and was promptly issued by us yesterday in an extra:

The steamship New York, Captain Phillips, left Galveston on Saturday September 5th at 4 p. m., and at half past 10 o'clock p. m. came to anchor about fifty miles eastward of Galveston, eleven fathoms of water; blowing very heavy from E. N. E. with a very heavy sea running eastward. At 10 a. m. on Sunday 6th the wind having lulled in a great measure, weighed anchor and proceeded on our course. At 11 a. m. finding she had no headway against the sea and wind, came to anchor in ten fathoms of water, it blowing a gale from N. E. At 12 o'clock midnight she commenced dragging her anchor; fired up strong, and commenced working the engines to keep her up to her anchor. At 2 p. m. the wind hauled to the S. W. which hove her in the trough of the sea. Slipped her cable, and set her jib, in hopes to get her before the wind; split the jib. At this time the sea struck the caboose and carried it away; sprung the boat, and caused her to leak. Let go the best bower, and paid out seventy five fathoms of chain, in hopes to bring her head to the sea; but owing to the violence of the wind, she would not come in. At 4 p. m. a heavy squall carried away the smoke pipe, fouled the promenade deck, stove in the starboard guard and wheel-house,

using the boat to leak so badly as to extinguish the fire. All hands went to bailing and working in hopes to get her free, until the wind and sea abated, which was of no avail, for at 6 o'clock p. m. she went down in ten fathoms of water.

New Orleans Picayune, Tuesday, Aug. 11th, 1856.

The Weather.

Frickleness is proverbially characteristic of mete-riological phenomina; and we have just had a very palpable illustration of the fact. It was but Saturday last that we were congratulating ourselves on the moderate heat and gentle showers with which we had been favored, and on Sunday a storm commenced which continued with scarcely abated fury nearly all the day and yesterday, and promises to last for some time to come, although last evening it hauled up. For thirty hours the wind roared and howled and whistled, &c.

167 New Orleans Picayune, August 14th, 1856.

Last Island Inundated.

Shocking Loss of Life.

The rumor which prevailed yesterday of the destruction of Last Island in the late storm is probably too true. We have only some general reports of the greatness of the disaster, and a few vague particulars of the loss of individuals and families. The accounts brought from Thibodaux and Berwicks bay by the Opelousas railroad are confirmatory of the inundation of the island, the destruction of the buildings and the probable loss of a great many lives reaching perhaps to six or seven score. In the mean time the anxiety to learn the particulars is very great, and the means of communication between the city and the scene of suffering are very slight. Last island is an island in the gulf of Mexico which has been for some years made a summer resort for planters and their families from the interior parishes of Louisiana and Attakapas, and some from this city. It is distant from the main land at the mouth of the bayou about twenty miles. The nearest land is five or six miles distant. The island is about twenty five miles in length, and from one half to three quarters of a mile wide—only three or four feet above the level of the Gulf. It is exposed to the full sweep of the waters, and the southern breezes, which have made it a desirable retreat in the summer months. * * *

The depth of the water on the island, referring as we understand it, to the highest point, is reported at five feet. The wreck of the steamboat Star is stated to be lying on the island near where the hotel of John Muggah formerly stood.

The rise of the inundation is said to have been of unparalleled rapidity, the height of five feet being reported to have been attained in two minutes. Although we were to read "hours" instead of "minutes," it will not be difficult to understand what a wild excitement and fearful havoc it must have caused, with no succor on hand. All the houses on the island are swept away, and it is particularly reported that most of those staying at the hotel were drowned. * * *

The Picayune of Aug. 15th, 1856 gives further particulars, and a list of the missing.

New Orleans Picayune, October 2, 1893.

Along the Coast.

The Terrible Experience of the Louisville & Nashville Train.

All Louisville & Nashville trains, passenger and freight, due in the city after ten o'clock were late from three to five hours. Passen- train No. 5, which was due at 10.25 a. m. did not get in until after one o'clock, while three freight trains, all due before ten o'clock, did not show up until after 12. Last night was a severe one on trains. From engineers and crews arriving last night at midnight it was learned that a perfect gale followed all along the line as far as Chef Menteur, twenty miles out of the city. At this place they found the gale so rough that it was impossible to proceed, the wind coming against them from right angles. Freight trains numbers 12, 15 and 2 were all blockaded at or near this point by the violence of the storm, and it was only by each assisting the other that they run into this city.

1168 Speaking of the storm, one engineer said he never experienced such a night; it was simply terrific. So great was the roar of the wild winds as they swept over the black marshes that "when I'd give a signal for brakes, they could not hear it. You could not see your hands before you. All the rain came in torrents—not falling but blowing square in your face, and the wind simply made it impossible to walk a car. The ma-sh country was a jet black wilderness of howling winds. We could only make it by helping one another." This same engineer said that there was imminent danger at one time as they crept slowly through the furious gale towards the city, of the cars being blown from the tracks at points where there were sharp turns in the rails.

The Louisville & Nashville wires were not injured however by the storm. Mr. Hobbs, the Louisville & Nashville's well known train dispatcher had possession of the wires until one o'clock. From him it was learned that at Bay St. Louis there was a gale blowing, one of the fiercest known there for years. At Mississippi City also the rain and storm held high carnival.

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Trainmen all state that the waters along the lake coast and the Gulf were lashed into a perfect overflow of water.

New Orleans Picayune, October 3, 1893.

The Whole Coast Swept by the Storm.

Sad Havoc Among the Resorts Over the Lake.

All the Way from Chef Menteur to Mobile.

The Bridges at Bay St. Louis and Biloxi Reported Damaged.

And Traffic Likely to Be Interrupted for Some Days to Come.

One of the most disastrous washouts in the history of the Louisville & Nashville railroad occurred during the terrific wind and rain storm along the coast Sunday night and Monday morning. The extent of the damage can not be ascertained yet, but from the statements of trainmen it is thought that the entire roadbed between Scheaud and Mobile is in an unpassable condition. Railroad men report that the Bay St. Louis bridge is gone, and part of the Biloxi bridge has been washed away.

* * * * * * *

New Orleans Picayune, October 4, 1893.

Grand Isle—Bayou Cook.

The Two Settlements Swept by Wind and Waves.

And Many Lives Lost in the Terrible Calamity.

Nothing Left of Fort Livingston but the Light.

Grand Bay and Island Settlement Destroyed.

And Much Ruin Wrought to Valuable Property.

Bodies Beginning to Float in from the Wrecks.

Parties who escaped from horrible death bring the stories of many tragedies. The fearful storm which many years ago washed Last Island from the face of the sea in a single night has ever been looked upon as a most terrible calamity in the history of Louisiana. The Last Island disaster has a parallel. Along the shores of Bayou Cook, Oyster bayou, Bayou Challon, Adam's bay and Grand bay, have lived for a number of years several hundred Italian and 50 Austrian fishermen. Of these inhabitants a very small percentage survived the terrible storm of Sunday night. It was 5 o'clock in the afternoon of Sunday when the weather assumed a

threatening aspect. The wind was blowing from the southeast at a lively, but not dangerous rate, and the tide much higher than usual. Later in the night the wind shifted to the northward and began blowing very heavily. Again, about midnight, the course was changed, and in a southwesterly direction, this taken as a steady course. By this time the blast howled over the miles of marsh at the rate of a hundred miles an hour. Within an hour after the wind had taken its permanent course the tide rose five feet, covered the settlements along the shores of the bayous and bays, and was making its way rapidly towards the tracks of the New Orleans, Port Jackson and Grand Isle railroad. A locomotive and three cars were lying on the side track of the little village where the road terminates. During the night many people were carried from their demolished homes to these cars, which served as temporary shelter for fully fifty destitutes, the engineer and porter acting as Samaritans.

* * * * * * *

New Orleans Picayune, October 6, 1893.

The First at Cheniere.

Which Seems to Have Been Fated to Annihilation.

Two Million Dollars Worth of Property Destroyed.

Grand Isle Adding Its Hotel and Eighteen Lives.

To the Long List of Disastrous Results.

Twelve Hundred Lives Lost at Caninada.

Nine Hundred and Fifty Already Given Burial.

And Many Corpses Are Floating in Lakes and Bayous.

Death Also Visits Bayous Andre and Deford.

Captain John F. Krantz' Terrible Night on Grand Island.

He and Sixty Others Brought to the City on the Relief Boat—Which Bore the Picayune's Reporters to the Scene of the Greatest Disaster of the Country.

The following is a partial list of the dead, secured by canvas- of the island by Picayune reporters.

(Here follows a partial list of the dead.)

* * * * * * *

Several hundred were buried unidentified, and several hundred are lost in the bay, and under the wrecked buildings. It will be some days yet before the complete list of the dead and living can be made out.

* * * * * * *

New Orleans Picayune, October 6, 1893.

St. Bernard's Island.

Two Thirds of the Houses Washed Away.

At 174 Marigny lives John Alphonso, who is engaged in the vegetable business. He received a letter yesterday from the firm of V. Gonzeles & Co. of St. Bernard parish, in which is con-
1170 tained the information that the island of St. Bernard received severe damage from the storm. Of the sixty houses on the island only nineteen are left standing; the rest were all washed from their foundations, and many of them washed away. No lives were lost however.

New Orleans Picayune, October 7, 1893.

Death Work at Biloxi &c*t*.

(Page 2.)

* * * * * * *

From Cat island the rescuing party left at four o'clock Thursday morning for the Louisiana marsh. At the mouth of Grand pass three bodies were found and buried; two of the unfortunates were recognized as Frank and Paul Guatan, known as the Rubio brothers of Biloxi. The other body was in such a condition as to be unrecognizable. The unknown dead was a man of about *firty* years, slightly gray and partially bald, with heavy stiff mustache and side beard.

At Brush island five new graves were seen, one near Doe point, three at Caraco bay, five at Creole gap, four at Mitchell keys, one at Drydock, and five at Johnson bayou, all victims of the storm.

Leaving Grand pass the wreck of the lugger Sunnyside of New Orleans was seen. Three of the crew were drowned in Caraco bay, the captain only having been saved.

* * * * * * *

(Endorsed:) Document No. 36. Offered by State of Louisiana April 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1171 NOTE.—There is no Document No. 37.

(Here follow 13 maps, marked pp. 1172 to 1184, endorsed as follows:)

(Endorsed.)
DOCUMENT No. 38.
Offered by State of Louisiana April 25, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 39.
Offered by State of Louisiana April 25, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 40.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 41.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 42.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 43.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 44.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 45.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 46.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

rict.

1047a

East of Missi River

Letter of 31 July 1846

S. R. 18. E.

—

S. R. 18. E.

FOLD OUT IS TOO LARGE TO BE FILMED

(Endorsed.)
DOCUMENT No. 47.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 48.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 49.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

(Endorsed.)
DOCUMENT No. 50.
Offered by State of Louisiana April 26, 1904.
Frank H. Mortimer, Commissioner.

1185 DOCUMENT No. 51.

THE STATE OF LOUISIANA.

Patent (Vignette.) No. 4955.

To all to whom these presents shall come, Greeting:

Whereas, Henry J. Leovy of the parish of Orleans in the State of Louisiana, purchased per certificate No. 4287 N. S. D., Jan. 26, 1883, three islands in sections twenty, twenty one, twenty eight and twenty nine of section No. 20, 21, 28, 29 in township No. 10 S., range No. 20 E., in the S. E., E. of R., land district, containing 51 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Henry J. Leovy and to *their* heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Henry J. Leovy and to *their* heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 26 day of Jan'y in the year of our Lord, one thousand eight hundred and eighty three and of the Independence of the United States the one hundred and seventh.

By the governor:

S. D. McENERY.

Record of patent vol. 22 page 75.

J. G. RICHARDSON,
Register of State Land Office.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, Jas. M. Smith, register of the State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 4955, as appearing in volume 22, folio 75, of record at this office.

Given under my hand and seal of office, this 5th day of April, A. D., 1904.

JAS. M. SMITH,
Register of the State Land Office.

(Endorsed:) Document No. 51. Offered by State of Louisiana, April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 11, ORIGINAL.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

Vol. II.

(Pages 1069 to 2141, Inclusive.)

BILL FILED OCTOBER 22, 1906.



1186 DOCUMENT No. 52.

Patent No. 5093.

THE STATE OF LOUISIANA.

Patent Number 5093.

To all — whom these presents shall come, Greeting:

Whereas, Joseph C. Gilmore, of the parish of Orleans, in the State of Louisiana, purchased per certificate No. 2804, N. S. L. dated 27th April 1894, the east fractional half of northwest fractional quarter—tidal overflow—of section No. four, in township No. eleven, south of range No. twenty east, in the southeastern, east of River Land district, parish of St. Bernard, containing thirty three acres, according to the official plat of the survey of said lands in the State land office.

Know ye, that the State of Louisiana, in consideration of the premises, and in conformity with law in such cases made and provided, has given, granted and sold and by these presents do give, grant and sell, unto the said Joseph C. Gilmore and to his heirs, the above described land to have and to hold the same, together with all the right, titles and privileges thereunto belonging, unto the said Joseph C. Gilmore, and to his heirs and assigns forever.

In testimony whereof, I Murphy J. Foster governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge, on the 27th day of April, in the year of our Lord 1894, and of the Independence of the United States of America the 118th.

By the governor

(Signed) MURPHY J. FOSTER.

" [SEAL.] JOHN S. LANIER,
Register State Land Office.

Recorded patent vol. 28. page 209.

Duly registered at the parish of St. Bernard on the 5th day of May A. D. 1894.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

STATE OF LOUISIANA,
Parish of St. Bernard.

The undersigned clerk of the 29th judicial district court of Louisiana in and for the parish of St. Bernard, *ex officio* recorder of mortgages & register of conveyances, duly commissioned and qualified, does hereby certify the foregoing to be a true copy of patent No. 5093 by the State of Louisiana to Joseph C. Gilmore, as it appears

registered in Conveyance Book No. 18, folio 192, *et seq.*, and that it was there registered on the 5th day of May A. D. 1894.

1187 Clerk's office of St. Bernard April 2 1904.

[The Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed:) Document No. 52. Offered by State of Louisiana April 26. 1904 Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney clerk.

1188 DOCUMENT No. 53.

Patent No. 5094.

THE STATE OF LOUISIANA.

Patent Number 5094.

To all — whom these presents shall come, Greeting:

Whereas, S. Meloché, of the parish of Orleans, State of Louisiana, purchased per certificate No. 2805, N. S. L. dated 27th, April 1894. the north half of section No. thirty-two, and fractional southwest quarter tidal overflow, of section No. twenty nine, in township No. eleven south range No. nineteen, east; in the south eastern east of river land district, in the parish of St. Bernard, containing two hundred and twenty acres, according to the official plat of the survey of the said lands in the State land office,

Now know ye, that the State of Louisiana, in consideration of the premises, and in conformity with law in such case made and provided, has given, granted and sold unto the said S. Meloché and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said S. Meloché, and to his heirs and assigns forever.

In testimony whereof, I, Murphy J. Foster, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be affixed hereunto.

Given under my hand at the city of Baton Rouge on the 27th day of April, in the year of our Lord 1894 and of the Independence of the United States the 118th.

By the governor.

(Signed) MURPHY J. FOSTER.
(") [SEAL.] JOHN S. LANIER,
Register State Land Office.

Record of patent vol. 28 page 210.

Duly registered at the parish of St. Bernard, on the 5th day of May A. D. 1894.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

STATE OF LOUISIANA,
Parish of St. Bernard.

The undersigned clerk of the 29th judicial district court of Louisiana, in and for the parish of St. Bernard, *ex officio* recorder of mortgages and register of conveyances, duly commissioned and qualified, does hereby certify the foregoing to be a true copy of patent number 5094, by the State of Louisiana to S. Meloché as it appears registered in Conveyance Book No. 18, folio 193; and that it was there registered on the 5th day of May A. D. 1894.

Clerk's office, parish of St. Bernard, April 2d, 1904.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex officio* Recorder.

(Endorsed:) Document No. 53 offered by State of Louisiana, April 26 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1189 DOCUMENT No. 54.

Patent No. 5095.

THE STATE OF LOUISIANA.

Patent Number 5095.

To all — whom these presents shall come, Greeting:

Whereas, S. Meloché of the parish of Orleans, in the State of Louisiana purchased per certificate No 2806 N. S. L. dated April 27th, 1894.

Fractional section No. 35 in township No. eleven, south of range No. twenty east, in the south eastern, east of river, land district, parish of St. Bernard, containing 170 acres, according to the official plat of the survey of said lands in the State land office,

Now know ye, that, the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and does by these presents give grant and sell unto the said S. Meloché and to his heirs, the above described land, to have and to hold the same, together with all the rights titles and privileges thereunto belonging, unto the said S. Meloché and to his heirs and assigns forever.

In testimony whereof, I, Murphy James Foster governor of the

State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge, on the 27th day of April, in the year of our Lord 1894, and of the Independence of the United States the 118th.

By the governor

(Signed) MURPHY J. FOSTER.

" [SEAL.] JOHN S. LANIER,
Register State Land Office.

Record of patents vol. 28, page 210

Duly registered at the parish of St. Bernard, on the 5th day of May A. D. 1894.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

STATE OF LOUISIANA,
Parish of St. Bernard.

The undersigned clerk of the 29th judicial district court of Louisiana in and for the parish of St. Bernard *ex officio* recorder of mortgages and register of conveyances, duly commissioned and qualified does hereby certify the foregoing to be a true copy of patent No. 5095, by the State of Louisiana to S. Meloché, as it appears registered in Conveyance Book No. 18—folio 191 *et seq.*; and that it was there registered on the 5th day of May A. D. 1894.

Clerk's office, parish of St. Bernard, April 2d, 1904.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

1190 (Endorsed:) Document No. 54. Offered by State of Louisiana. April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1191 STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI.

DOCUMENT NO. 55.

Lands Transferred to the Lake Borgne Levee District by State Land Office.

Office Supreme Court U. S. Filed Mar. 13. 1905.
JAMES H. McKENNEY, Clerk.

Document No. 55 offered by the State of Louisiana—April 26, 1904.

FRANK H. MORTIMER,
Commissioner.

1192 Descriptive list of State swamp lands situate in the parish of Plaquemines, and transferred by the State land office to the board of commissioners for Lake Borgne Basin Levee district under act No. 14 of 1892, approved June 21, 1892.

Description of tract.	Section.	Area.
T. 14 S., R. 12 E., S. E. E. of R.:		
All of	25	60.80
"	26	309.72
"	27	276.66
"	28	117.51
"	29	127.64
"	30	658.60
"	31	172.53
"	32	163.37
"	33	640.00
"	34	282.29
"	36	682.84
"	37	104.49
"	40	293.60
"	41	54.99
"	42	330.10
"	43	124.77
		4399.91
T. 14 S., R. 13 E., S. E. E. of R.:		
None.		
T. 14 S., R. 14 E., S. E. E. of R.:		
All of	31	380.00
"	32	400.00
		780.00
T. 15 S., R. 12 E., S. E. E. of R.:		
None.		
1193 T. 15 S., R. 13 E., S. E. E. of R.:		
All of	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
"	11	640.00

	Description of tract.	Section.	Area.
All of		12	640 00
"		13	640.00
"		14	640.00
"		15	640.00
"		17	640.00
"		18	640.00
	N. E. ¼ of S. W. ¼, S. E. ¼ of N. W. ¼, N. ½ of N. W. ¼ & E. ½ of	19	480.00
All of		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00
	N. ½ of S. W. ¼, N. W. ¼ & E. ½ of	29	560.00
	N. W. ¼, of N. E. ¼, S. E. ¼ of N. E. ¼, S. W. ¼ of S. E. ¼, N. ½ of S. ½ & W. ½ of N. W. ¼	30	360.00
	N. E. ¼ of N. E. ¼	32	40.00
	W. ½ of N. W. ¼, E. ½ of W. ½ & E. ½ of	33	560.00
All of		34	640.00
"		35	640.00
"		36	640.00
			20560.00

1194 T. 15 S., R. 14 E., S. E. E. of R.:

All of		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		13	640.00
"		14	640.00
"		15	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00

Description of tract.	Section.	Area.
All of	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		17280.00
T. 15 S., R. 15 E., S. E. E. of R.:		
All of south of Bayou Terre aux Bœufs	7	100.00
" " " " " "	8	25.00
" " " " " "	17	630.00
All of	18	640.00
"	19	640.00
"	20	640.00
1195 T. 15 S., R. 15 E., cont'd (am't br't f'w'd)		2675.00
All of west of Bayou Terre aux Bœufs	21	490.00
" south " " " " "	27	80.00
" west " " " " "	28	635.00
"	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
" south of Bayou Terre aux Bœufs	34	635.00
" " " " " " "	35	480.00
" " " " " " "	36	45.00
		5565.00
T. 16 S., R. 12 E., S. E. E. of R.:		
All of fractional	7	6.78
T. 16 S., R. 13 E., S. E. E. of R.:		
All of	1	640.00
N. ½ of	2	320.00
N. ½ of N. ½ of	3	160.00
All of, except S. W. ¼ of S. W. ¼	12	600.00
N. E. ¼ of	13	160.00
		1880.00
T. 16 S., R. 14 E., S. E. E. of R.:		
All of	1	640.00
"	2	640.00
"	3	640.00

	Description of tract.	Section.	Area.
All of		4	640.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		12	640.00
"		13	640.00
	Forward		8320.00
1196	T. 16 S., R. 14 E., cont'd (am't br't f'w'd)		8320.00
All of		14	640.00
"		15	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00
"		29	640.00
"		30	640.00
			18560.00
	T. 16 S., R. 15 E., S. E. E. of R.:		
All of south of Bayou Terre aux Bœufs		1	490.00
All of		2	640.00
"		3	640.00
"		4	640.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		12	640.00
"		13	640.00
"		14	640.00

	Description of tract.	Section.	Area.
"	.....	15	640.00
"	.....	17	640.00
"	.....	18	640.00
1197	T. 16 S., R. 15 E., cont'd (am't br't f'w'd).....		10730.00
All of	.....	19	640.00
"	.....	20	640.00
"	.....	21	640.00
"	.....	22	640.00
"	.....	23	640.00
"	.....	24	640.00
"	.....	25	640.00
"	.....	26	640.00
"	.....	27	640.00
"	.....	28	640.00
"	.....	29	640.00
"	.....	30	640.00
"	.....	31	640.00
"	.....	32	640.00
"	.....	33	640.00
"	.....	34	640.00
"	.....	35	640.00
"	.....	36	640.00
			22250.00
	T. 16 S., R. 16 E., S. E. E. of R:		
All of	south of Bayou Terre aux Boeufs.....	7	480.00
"	" " " " " "	8	200.00
"	" " " " " "	9	40.00
"	" " " " " "	14	100.00
"	" " " " " "	15	400.00
All of	.....	17	640.00
"	.....	18	640.00
"	.....	19	640.00
"	.....	20	640.00
"	.....	21	640.00
"	.....	22	640.00
"	.....	23	640.00
"	.....	24	640.00
"	.....	25	640.00
"	.....	26	640.00
"	.....	28	640.00
1198	T. 16 S., R. 16 E., cont'd (am't br't f'w'd).....		8260.00
All of	.....	29	640.00
"	.....	30	640.00
"	.....	31	640.00

Description of tract.	Section.	Area.
All of	32	640.00
"	35	640.00
		11460.00

T. 16 S., R. 17 E., S. E. E. of R.:

All of south of Bayou Terre aux Bœufs	19	320.00
" " " " " "	20	120.00
" " " " " "	28	80.00
" " " " " "	29	240.00
" " " " " "	30	100.00
" " " " " "	33	80.00
" " " " " "	34	80.00
		1020.00

T. 17 S., R. 13 E., S. E. E. of R.:

None.

T. 17 S., R. 14 E., S. E. E. of R.:

All of	46	640.00
"	47	640.00
"	48	420.00
"	49	160.00
"	50	10.00
"	51	325.00
"	52	640.00
"	53	540.00
"	54	15.00
"	55	120.00
		3510.00

T. 17 S., R. 15 E., S. E. E. of R.:

All of	1	120.00
"	2	280.00
"	3	420.00
"	4	550.00
"	5	640.00
"	6	640.00
1199 T. 17 S., R. 15 E., cont'd (am't br't f'w'd)..	...	2650.00
All of	7	640.00
"	8	640.00
"	9	640.00
"	10	400.00
"	11	200.00
"	12	90.00
"	13	280.00
"	14	550.00

	Description of tract.	Section.	Area.
All of		15	490.00
"		17	640.00
"		18	640.00
"		19	220.00
"		20	450.00
"		21	300.00
"		22	180.00
"		23	180.00
"		24	280.00
"		25	120.00
"		26	250.00
"		27	250.00
"		28	350.00
"		29	40.00
"		33	180.00
"		34	390.00
"		35	250.00
"		36	160.00
			11460.00
	T. 17 S., R. 16 E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
"		3	640.00
"		4	640.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
1200	T. 17 S., R. 16 E., cont'd (am't br't f'w'd)...		5120.00
All of		9	640.00
"		13	640.00
"		14	640.00
"		15	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00

Description of tract.	Section.	Area.
All of	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		19840.00

T. 17 S., R. 17 E., S. E. E. of R.:

All of	2	640.00
Do.	3	640.00
Do.	6	640.00
Do.	7	640.00
Do.	12	640.00
Do.	13	640.00
Do.	17	640.00
Do.	18	640.00
Do.	19	640.00
Do.	20	640.00
Do.	29	640.00
Do.	30	640.00
Do.	31	640.00
Do.	32	640.00
Do.	33	640.00
		9600.00

Grand total 148,171.69 acres.

1201 Descriptive list of State swamp lands situate in the parish of Saint Bernard and transferred by the State land office to the board of commissioners for Lake Borgne Basin Levee district under act No. 14 of 1892, approved June 21, 1892.

Description of tract.	Section.	Area.
T. 10 S., R. 20 E., S. E. E. of R.		
T. 11 S., R. 17 E., S. E. E. of R.:		
All of	1	640.00
"	2	640.00
"	11	640.00
"	14	640.00
"	22	640.00
"	23	640.00
"	25	640.00
"	26	640.00

Description of tract.	Section.	Area.
All of	27	640.00
"	28	640.00
"	32	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		8960.00

T. 11 S., R. 18 E., S. E. E. of R.:

All of	5	640.00
"	6	640.00
"	30	640.00
S. ½ of fr'l S. E. ¼ N. W. ¼ of fr'l S. E. ¼ & W. ½	31	440.00
All of	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		4920.00

T. 11 S., R. 19 E., S. E. E. of R.:

All of	1	640.00
"	11	640.00
"	12	640.00
"	14	640.00
"	15	640.00
1202 T. 11 S., R. 19 E., cont'd (am't br't f'w'd)	...	3200.00
All of	20	640.00
"	21	640.00
"	24	640.00
"	25	640.00
"	26	640.00
"	27	640.00
"	28	640.00
Frac'l E. ½ of	29	320.00
All of	30	640.00
"	31	640.00
Frac'l S. ½ of	32	320.00
All of	33	640.00
"	34	640.00
"	35	640.00
"	36	650.00
		12160.00

T. 11 S., R. 20 E., S. E. E. of R.:

All of	9	640.00
N. E. ¼ of	17	160.00

Description of tract.	Section.	Area.
N. E. ¼ of	18	160.00
N. W. ¼ of N. W. ¼, S. ½ of N. W. ¼ & S. W. ¼ of	19	280.00
All of	27	640.00
S. E. ¼ of	28	160.00
N. E. ¼ of	29	160.00
W. ½ of	30	320.00
All of, except W. ½ of frac'l N. W. ¼	33	560.00
"	34	640.00
"	36	640.00
		4360.00

T. 12 S., R. 12 E., S. E. E. of R.:

None

T. 12 S., R. 13 E., S. E. of R.:

All of	17	459.44
Lot 1, N. E. ¼ of S. E. ¼ & S. ½ of S. E. ¼ of	18	135.44
E. ½ of N. W. ¼, S. W. ¼ & E. ½ of	19	519.12
All of	20	502.76
"	21	.92
1203 T. 12 S., R. 13 E., cont'd (am't br't f'w'd)	...	1617.68
All of	25	250.00
"	26	70.00
"	29	183.84
"	30	487.68
"	31	158.52
"	34	60.00
"	35	540.00
"	36	530.00
		3897.72

T. 12 S., R. 14 E., S. E. E. of R.:

All of Error	Error...	[7]*	[640.00]*

T. 12 S., R. 15 E., S. E. E. of R.:

None Error. Error.

T. 12 S., R. 16 E., S. E. E. of R.:

All of	13	640.00
"	14	640.00
"	22	640.00
"	23	640.00
"	24	640.00
"	25	640.00
"	26	640.00

[* Figures enclosed in brackets erased in copy.]

Description of tract.	Section.	Area.
All of	27	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		7040.00

T. 12 S., R. 17 E., S. E. E. of R.:

All of	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
"	11	640.00
"	12	640.00
1204 T. 12 S., R. 17 E., cont'd (am't br't f'w'd)...	...	6400.00
All of	13	640.00
"	14	640.00
"	15	640.00
"	17	640.00
"	18	640.00
"	19	640.00
"	20	640.00
"	21	640.00
"	22	640.00
"	23	640.00
"	24	640.00
"	25	640.00
"	26	640.00
"	27	640.00
"	28	640.00
"	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		21120.00

T. 12 S., R. 18 E., S. E. E. of R.:

All of	1	640.00
"	2	640.00

	Description of tract.	Section.	Acres.
All of		3	640.00
"		4	640.00
"	east of Nine Mile bayou	5	216.36
"		6	640.00
"		7	640.00
"	east of Nine Mile bayou	8	195.04
"		9	640.00
"		10	640.00
"		11	640.00
"		13	640.00
1205	T. 12 S., R. 18 E., cont'd (am't br't f'w'd)	...	6811.40
All of		14	640.00
"		15	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		29	640.00
"		30	640.00
"		31	640.00
"		32	640.00
"		33	640.00
"		34	640.00
"		35	640.00
"		36	640.00
			19611.40
	T. 12 S., R. 19 E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
"		3	640.00
"		4	640.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		12	640.00
"		13	640.00
"		14	640.00

	Description of tract.	Section.	Area.
1206	T. 12 S., R. 19 E., cont'd (am't br't f'w'd)...	...	8960.00
All of		15	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00
"		29	640.00
"		30	640.00
"		31	640.00
"		32	640.00
"		33	640.00
"		34	640.00
"		35	640.00
"		36	640.00
			21120.00
	T. 12 S., R. 20 E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
"		3	640.00
"		4	640.00
S. ½ of N. E. ¼ of		5	80.00
N. W. ¼ of S. E. ¼, W. ½ of N. W. ¼ & S. W. ¼ of		6	280.00
S. ½ of S. E. ¼ & W. ½ of		7	400.00
S. W. ¼ & E. ½ of		8	480.00
All of		9	640.00
"		10	640.00
"		11	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
1207	T. 12 S., R. 20 E., cont'd (am't br't f'w'd)...	...	8920.00
All of		28	640.00
"		29	640.00
"		30	640.00
"		31	640.00
"		32	640.00
			12120.00

Description of tract.	Section.	Ar
T. 12 S., R. 21 E., S. E. E. of R.:		
All of	6	64
T. 13 S., R. 12 E., S. E. E. of R.:		
None.		
T. 13 S., R. 13 E., S. E. E. of R.:		
None.		
T. 13 S., R. 14 E., S. E. E. of R.:		
All of	11	6
"	12	6
"	13	6
E. ½ of E. ½ of	14	1
All of	19	6
W. ½ of W. ½ of	20	1
E. ½ of W. ½, W. ½ of S. E. ¼ & N. E. ¼ of	21	4
E. ½ of	23	3
All of	24	6
"	25	6
N. E. ¼ & S. ½ of	26	4
W. ½ of E. ½ & E. ½ of W. ½ of	28	3
W. ½ of W. ½ of	29	1
All of	34	6
"	35	6
"	36	6
		77
T. 13 S., R. 15 E., S. E. E. of R.:		
All of	5	6
"	6	6
"	7	6
"	8	6
"	19	6
"	29	6
1208 T. 13 S., R. 15 E., cont'd (am't br't f'w'd)	...	38
All of	30	6
"	31	6
"	32	6
"	33	6
"	34	6
		70
T. 13 S., R. 16 E., S. E. E. of R.:		
All of	1	6
"	2	6
E. ½ of E. ½ of	3	1

Description of tract.	Section.	Area.
N. E. ¼ & S. ½ of	10	480.00
All of	11	640.00
"	12	640.00
"	13	640.00
"	14	640.00
"	15	640.00
"	21	640.00
Lots 1, 2, 3, 4, 7, 14, 15, N. W. ¼ of N. E. ¼ & W. ½ of N. W. ¼ of	22	294.64
Lot 1, E. ½ of N. W. ¼, N. E. ¼ & S. ½ of	23	599.72
All of	24	640.00
"	25	640.00
"	26	640.00
"	32	640.00
"	35	640.00
"	36	640.00
		11134.36
T. 13 S., R. 17 E., S. E. E. of R.:		
All of	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
1209 T. 13 S., R. 17 E., cont'd (am't br't f'w'd)	...	6400.00
All of	11	640.00
"	12	640.00
"	13	640.00
"	14	640.00
"	15	640.00
"	17	640.00
"	18	640.00
"	19	640.00
"	20	640.00
"	21	640.00
"	22	640.00
"	23	640.00
"	24	640.00
"	25	640.00
"	26	640.00
"	27	640.00

Description of tract.	Section.	Area.
All of	28	640.00
"	29	640.00
"	30	640.00
N. W. ¼ of	31	160.00
N. ½ of N. E. ¼ & S. E. ¼ of N. E. ¼ of	33	120.00
All of	34	640.00
"	35	640.00
"	36	640.00
		20760.00

T. 13 S., R. 18 E., S. E. E. of R.:

All of	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
"	11	640.00
1210 T. 13 S., R. 18 E., cont'd (am't br't f'w'd)	...	7040.00
All of	12	640.00
"	13	640.00
"	14	640.00
"	15	640.00
"	17	640.00
"	18	640.00
"	19	640.00
"	20	640.00
"	21	640.00
"	22	640.00
"	23	640.00
"	24	640.00
"	25	640.00
"	26	640.00
"	27	640.00
"	28	640.00
"	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00

Description of tract.	Section.	Area.
All of.....	35	640.00
"	36	640.00
		22400.00
T. 13 S., R. 19 E., S. E. E. of R.:		
All of.....	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
"	11	640.00
1211 T. 13 S., R. 19 E., cont'd (am't br't f'w'd)...	...	7040.00
All of	12	640.00
"	13	640.00
"	14	640.00
"	15	640.00
"	17	640.00
"	18	640.00
"	19	640.00
"	20	640.00
"	21	640.00
"	22	640.00
"	25	640.00
"	26	640.00
"	28	640.00
"	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		20480.00
T. 13 S., R. 20 E., S. E. E. of R.:		
All of	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00

	Description of tract.	Section.	Area.
All of		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		14	640.00
"		17	640.00
"		18	640.00
"		22	640.00
1212	T. 13 S., R. 20 E., cont'd (am't br't f'w'd)...	...	8960.00
All of		23	640.00
"		24	640.00
"		26	640.00
"		27	640.00
"		28	640.00
"		29	640.00
"		30	640.00
"		31	640.00
"		32	640.00
"		33	640.00
			15360.00

T. 14 S., R. 13 E., S. E. E. of R.:

None.

T. 14 S., R. 14 E., S. E. E. of R.:

N. ½ of S. ½ & N. ½ of		1	268.00
All of		7	220.00
"		8	250.00
"		9	210.00
"		10	15.00
"		15	230.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		25	170.00
"	, east of Lake Lery	33	9.00
"		36	300.00
			4872.00

T. 14 S., R. 15 E., S. E. E. of R.:

Lot 4 of		3	27.00
All of		4	640.00
N. ½ of S. ½ & N. ½ of		5	480.00

	Description of tract.	Section.	Area.
	N. ½ of S. ½ & N. ½ of	6	480.00
	Lots 1 2 & N. ½ of N. E. ¼ of	9	146.05
	Lots 1, 2 & 3 & N. E. ¼ of S. E. ¼ of	10	110.40
	S. ½ of	11	320.00
1213	T. 14 S., R. 15 E., cont'd (am't br't f'w'd)..	...	2203.45
	S. ½ of	12	320.00
	All of	13	640.00
	N. ½ of N. W. ¼, S. E. ¼ of N. W. ¼ & N. E. ¼ of	14	380.00
	S. ½ of	17	320.00
	All of	18	310.00
	"	19	330.00
	"	20	640.00
	"	21	640.00
	S. ½ of	22	320.00
	N. W. ¼ & S. ½ of	25	480.00
	All of	26	640.00
	"	27	640.00
	"	28	640.00
	"	29	640.00
	"	30	640.00
	"	31	640.00
	"	32	640.00
	"	33	640.00
	"	34	640.00
	"	35	640.00
	"	36	640.00
			13618.45
	T. 14 S., R. 16 E., S. E. E. of R.:		
	N. W. ¼ of S. E. ¼, N. E. ¼ & W. ½ of	1	520.00
	All of	2	640.00
	"	3	640.00
	" south of Bayou St. Malo	4	262.00
	S. ½ of	7	320.00
	S. ½ of	8	320.00
	All of	9	640.00
	"	10	640.00
	"	11	640.00
	"	17	640.00
	"	18	640.00
	N. ½ of	19	320.00
	S. E. ¼ of	21	160.00
	S. ½ of	22	320.00

	Description of tract.	Section.	Area.
1214	T. 14 S., R. 16 E., cont'd (am't br't f'w'd)....	...	6702.00
All of		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		28	640.00
S. ½ of S. E. ¼ of		29	80.00
All of		31	640.00
"		32	640.00
"		33	640.00
"		34	640.00
"		35	640.00
"		36	640.00
			14462.00
	T. 14 S., R. 17 E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
N. E. ¼ of N. W. ¼ & E. ½ of		3	360.00
W. ½ of S. E. ¼, S. ½ of N. W. ¼ & S. W. ¼ of		4	320.00
S. E. ¼ of		7	160.00
All of		8	640.00
"		9	640.00
S. W. ¼ of N. W. ¼, W. ½ of S. W. ¼ & E. ½ of		10	440.00
All of		11	640.00
"		12	640.00
N. ½ of S. W. ¼, N. W. ¼ & E. ½ of		13	560.00
N. E. ¼ of S. E. ¼ & N. ½ of		14	360.00
N. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼, W. ½ of S. E. ¼, W. ½ of N. W. ¼ & S. W. ¼ of		15	400.00
		17	640.00
All of		18	640.00
"		19	640.00
"		20	640.00
"		21	640.00
"		22	640.00
" except N. E. ¼ of N. E. ¼		23	362.20
S. ½ of N. W. ¼ & S. ½ of		24	400.00
All of		25	257.55
1215	T. 14 S., R. 17 E., cont'd (am't br't f'w'd)...	...	11299.75
All of		26	350.00
"		27	614.10
"		28	640.00
"		29	640.00
"		30	640.00

Description of tract.	Section.	Area.
All of	31	640.00
"	32	640.00
"	33	640.00
"	34	635.50
"	35	247.40
"	36	173.49
		17160.24
T. 14 S., R. 18 E., S. E. E. of R. .		
All of	1	640.00
"	2	640.00
"	3	640.00
"	4	640.00
"	5	640.00
"	6	640.00
"	7	640.00
"	8	640.00
"	9	640.00
"	10	640.00
"	11	640.00
"	12	640.00
"	13	640.00
"	14	640.00
"	15	640.00
"	17	640.00
"	18	640.00
N. E. ¼ of N. W. ¼ & E. ½ of	19	360.00
All of	20	640.00
"	21	640.00
"	22	640.00
"	23	640.00
"	24	640.00
"	25	640.00
1216 T. 14 S., R. 18 E., cont'd (am't br't f'w'd)...	...	15080.00
All of	26	640.00
"	27	640.00
"	28	640.00
"	29	640.00
"	30	640.00
"	31	640.00
"	32	640.00
"	33	640.00
"	34	640.00
"	35	640.00
"	36	640.00
		22120.00

	Description of tract.	Section.	Area.
	T. 14 S., R. 19. E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
"		3	640.00
"		4	650.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		15	640.00
"		17	640.00
"		18	640.00
"		19	640.00
"		20	640.00
"		22	640.00
"		23	640.00
"		24	640.00
"		25	640.00
"		26	640.00
"		27	640.00
"		29	640.00
"		30	640.00
1217	T. 14 S., R. 19 E., cont'd (am't br't f'w'd)...	...	15360.00
All of		31	640.00
"		32	640.00
"		33	640.00
"		34	640.00
"		35	640.00
			18560.00
	T. 14 S., R. 20 E., S. E. E. of R.:		
All of		19	640.00
"		30	640.00
			1280.00
	T. 15 S., R. 14 E., S. E. E. of R.:		
All of		1	130.00
	T. 15 S., R. 15 E., S. E. E. of R.:		
All of		1	640.00
"		2	640.00
"		3	640.00
"		4	600.00

	Description of tract.	Section.	Area.
All of		5	660.00
"		6	640.00
"	north of Bayou Terre aux Boeufs	7	540.00
"	" " " " "	8	615.00
"		9	240.00
"		10	630.00
"		11	640.00
"		12	640.00
"		13	300.00
"		14	640.00
"		15	640.00
"	north of Bayou Terre aux Boeufs	17	10.00
"	East " " " "	21	150.00
"		22	640.00
"		23	640.00
"		24	160.00
"		25	320.00
"		26	640.00
"	north of Bayou Terre aux Boeufs	27	560.00
"	east " " " "	28	5.00
"	north of Bayou Terre aux Boeufs	34	5.00
1218	T. 15 S., R. 15 E., cont'd (am't br't f'w'd)	...	11775.00
All of, north of Bayou Terre aux Boeufs		35	160.00
" " " " " "		36	590.00
			12525.00

T. 15. S., R. 16 E., S. E. E. of R.:

All of		1	640.00
"		2	640.00
"		3	640.00
"		4	640.00
"		5	640.00
"		6	640.00
"		7	640.00
"		8	640.00
"		9	640.00
"		10	640.00
"		11	640.00
"		12	480.00
"		13	550.00
"		14	640.00
"		15	320.00
"		17	600.00
"		18	180.00
"		20	280.00
"		21	80.00

	Description of tract.	Section.	Area.
All of		22	20.00
"		23	300.00
"		24	240.00
"		25	320.00
"		26	160.00
"		27	80.00
"		28	320.00
"		29	360.00
"		30	120.00
"		31	360.00
"		32	280.00
"		33	240.00
"		34	120.00
"		35	120.00
1219	T. 15 S., R. 16 E., cont'd, am't br't f'w'd	...	13210.00
All of		36	120.00
			13330.00

T. 15 S., R. 17 E. S. E. E. of R.:

All of fractional		1	160.00
"	"	2	600.00
"	"	3	640.00
"	"	4	640.00
"	"	5	600.00
"	"	6	640.00
"	"	7	620.00
"	"	8	480.00
"	"	9	560.00
"	"	10	480.00
"	"	11	480.00
"	"	12	460.00
"	"	13	520.00
"	"	14	80.00
"	"	15	320.00
"	"	17	240.00
"	"	18	320.00
"	"	19	240.00
"	"	20	480.00
"	"	21	480.00
"	"	22	320.00
"	"	23	15.00
"	"	24	200.00
"	"	25	240.00
"	"	26	160.00
"	"	27	200.00
"	"	28	320.00

	Description of tract.	Section.	Area.
All of fractional		29	200.00
" "		30	160.00
" "		31	380.00
" "		32	10.00
" "		33	80.00
" "		34	330.00
" "		35	640.00
" "		36	530.00
			12745.00

1220 T. 15 S., R. 18 E., S. E. E. of R.:

All of fractional		1	320.00
" "		2	320.00
" "		3	240.00
" "		4	80.00
" "		5	600.00
" "		6	320.00
" "		7	20.00
" "		8	480.00
" "		9	70.00
" "		17	160.00
" "		18	120.00
" "		19	340.00
" "		30	360.00
" "		31	360.00
			3730.00

T. 15 S., R. 19 E., S. E. E. of R.:

All of fractional		3	80.00
" "		4	540.00
" "		5	600.00
" "		6	340.00
" "		7	120.00
" "		8	600.00
" "		9	600.00
" "		10	160.00
" "		11	10.00
" "		14	120.00
" "		15	160.00
" "		17	80.00
" "		22	120.00
" "		23	300.00
" "		25	5.00
" "		26	200.00
" "		27	15.00
			4050.00

	Description of tract.	Section.	Area.
	T. 16 S., R. 15 E., S. E. E. of R.:		
	All of north of Bayou Terre aux Bœufs	1	150.00
1221	T. 16 S., R. 16 E., S. E. E. of R.:		
	All of	1	640.00
	"	2	640.00
	"	3	640.00
	"	4	640.00
	"	5	640.00
	" north of Bayou Terre aux Bœufs	6	620.00
	" " " " " "	7	160.00
	" " " " " "	8	440.00
	" " " " " "	9	600.00
	"	10	640.00
	"	11	640.00
	"	12	640.00
	"	13	640.00
	" north of Bayou Terre aux Bœufs	14	540.00
	" " " " " "	15	240.00
			8360.00
	T. 16 S., R. 17 E., S. E. E. of R.:		
	All of	1	640.00
	"	2	640.00
	"	3	640.00
	"	4	640.00
	"	5	640.00
	"	6	640.00
		7	640.00
	"	8	640.00
	"	9	640.00
	"	10	640.00
	"	11	640.00
	"	12	640.00
	"	13	640.00
	"	14	640.00
	"	15	640.00
	"	17	640.00
	"	18	640.00
	All north of Bayou Terre aux Bœufs	19	320.00
	" " " " " "	20	160.00
1222	T. 16 S., R. 17 E., cont'd, am't br't f'w'd	...	11360.00
	All of	21	5.00
	"	22	640.00
	"	23	640.00

Description of tract.	Section.	Area.
All of	21	640.00
"	26	640.00
"	27	640.00
"	28	240.00
"	29	80.00
"	33	40.00
"	34	120.00
		15045.00

T. 16 S., R. 18 E., S. E. E. of R.:

All of	6	640.00
"	7	640.00
"	19	640.00
		1920.00

RECAPITULATION.

Parish of Plaquemines.

		Br't f'w'd	50471.69
T. 14 S. R. 12 E.	4399.91	T. 16 S. R. 14 E.	18560.00
T. 14 S. R. 13 E.		T. 16 S. R. 15 E.	22250.00
T. 14 S. R. 14 E.	780.00	T. 16 S. R. 16 E.	11460.00
T. 15 S. R. 12 E.		T. 16 S. R. 17 E.	1020.00
T. 15 S. R. 13 E.	20560.00	T. 17 S. R. 13 E.	
T. 15 S. R. 14 E.	1728.00	T. 17 S. R. 14 E.	3510.00
T. 15 S. R. 15 E.	5565.00	T. 17 S. R. 15 E.	11460.00
T. 16 S. R. 12 E.	6.78	T. 17 S. R. 16 E.	19840.00
T. 16 S. R. 13 E.	1880.00	T. 17 S. R. 17 E.	9600.00
F'w'd	50471.69	Total	148171.69

Parish of St. Bernard.

		Br't f'w'd	34297.72
T. 10 S. R. 20 E.		T. 12 S. R. 16 E.	7040.00
T. 11 S. R. 17 E.	8960.00	T. 12 S. R. 17 E.	21120.00
T. 11 S. R. 18 E.	4920.00	T. 12 S. R. 18 E.	19611.40
T. 11 S. R. 19 E.	12160.00	T. 12 S. R. 19 E.	21120.00
T. 11 S. R. 20 E.	4360.60	T. 12 S. R. 20 E.	12120.00
T. 12 S. R. 12 E.		T. 12 S. R. 21 E.	640.00
T. 12 S. R. 13 E.	3897.72	T. 13 S. R. 12 E.	
	34297.72		115949.12

1223

Br't f'w'd.....	115949.12	Br't f'w'd.....	270996.17
T. 13 S. R. 13 E.....		T. 14 S. R. 18 E.....	22120.00
T. 13 S. R. 14 E.....	7760.00	T. 14 S. R. 19 E.....	18560.00
T. 13 S. R. 15 E.....	7040.00	T. 14 S. R. 20 E.....	1280.00
T. 13 S. R. 16 E.....	11134.36	T. 15 S. R. 14 E.....	130.00
T. 13 S. R. 17 E.....	20760.00	T. 15 S. R. 15 E.....	12525.00
T. 13 S. R. 18 E.....	22400.00	T. 15 S. R. 16 E.....	13330.00
T. 13 S. R. 19 E.....	20480.00	T. 15 S. R. 17 E.....	12745.00
T. 13 S. R. 20 E.....	15360.00	T. 15 S. R. 18 E.....	3730.00
T. 13 S. R. 13 E.....		T. 15 S. R. 19 E.....	4050.00
T. 14 S. R. 14 E.....	4872.00	T. 16 S. R. 15 E.....	150.00
T. 14 S. R. 15 E.....	13618.45	T. 16 S. R. 16 E.....	8360.00
T. 14 S. R. 16 E.....	14462.00	T. 16 S. R. 17 E.....	15045.00
T. 14 S. R. 17 E.....	17160.24	T. 16 S. R. 18 E.....	1920.00
F'w'd.....	270996.17	Total.....	384941.17

Total area parish of Plaquemines.....	148,171.69
" " " " St. Bernard.....	384,941.17
Grand total actual estimated area.....	533,112.86

I, John S. Lanier, register of the State land office, do hereby certify the above and foregoing descriptive list of swamp lands, embracing actual and estimated areas, lying, situate and being in the parishes of Plaquemines and St. Bernard, and embraced in the Lake Borgne Basin Levee district as contemplated by act No. 14 of 1892, are hereby transferred to "the Board of Commissioners for Lake Borgne Basin Levee District," under and by virtue of said act, approved June 21, 1892.

Witness my official signature and seal of office, at Baton Rouge, La., this 2nd day of April, 1895.

(Signed) JOHN S. LANIER, Register.

Interlined before signing.

(Signed) JOHN S. LANIER, Register.

1224 Folio 303 *et seq.*

STATE OF LOUISIANA, }
Parish of St. Bernard. }

The undersigned clerk, *ex officio* recorder of mortgages & register of conveyances, in and for the parish of St. Bernard, duly qualified, does hereby certify that the foregoing list of swamp lands, situated in the parish of St. Bernard, transferred by the State of Louisiana, to the Board of Commissioners for the Lake Borgne Basin Levee District, and herein described from page No. 10 to page No.

32, both inclusive, was duly registered at the parish of St. Bernard, on the 20th day of May A. D. 1898, in Conveyance Book No. 18, fo. 303 *et seq.* clerk's office May 20th 1895

(Signed) JAS. D. ST. ALEXANDRE,
Cl'k, *ex Officio* Recorder.

STATE OF LOUISIANA,
Parish of Plaquemines.

I the undersigned clerk and *ex officio* recorder of mortgages and register of conveyances in and for the parish of Plaquemines, duly qualified do hereby certify that the foregoing list of swamp lands situated in the parish of Plaquemines transferred by the State of Louisiana to the Board of Commissioners for the Lake Borgne Basin Levee District and herein described from page 1 to page No. 9 both inclusive was duly registered at the parish of Plaquemines on the 24th day of May A. D. 1895 in Conveyance Book 31 No. 8915 folio 269 clerk's office May 24th 1895.

(Signed) O. BUTLER, Cl'k of C.

1225 I, James D. St. Alexandre, clerk of the 29th judicial district court, parish of St. Bernard, State of Louisiana and *ex officio* register of conveyances of the parish of St. Bernard, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original deed on file and of record in my office.

In faith whereof witness my signature and seal of office, affixed at St. Bernard, parish of St. Bernard, State of Louisiana, this 30th day of March, 1904.

[SEAL.]

JAS. D. ST. ALEXANDRE,
Clerk of Court and *ex Officio* Register of Conveyances of the Parish of St. Bernard, State of Louisiana.

1226 DOCUMENT No. 56.

NEW ORLEANS, October 10th, 1894.

For valuable consideration, I hereby sell, transfer, assign convey, set over and deliver unto the Louisiana Navigation Company, Limited the land hereinafter described, and all my right, title and interest in and to the same, as the said land now exists and stands, as evidenced by the various titles and patents for the said respective piece, and portion respectively, either as a part or as a whole viz:

The following described property to wit:

Certain lands situated in the south eastern land district of Louisiana, in the parish of St. Bernard, embracing the island known as "Isle au Pitre" and other lands, viz:

1. The fractional sections Nos. 23, 24, 25 and 26 in township No 10, S. R. No. 20 E. containing 468 78/100 acres.

2. The fractional section- 33 and 34 in township No. 10, S. of R. No. 20, east, containing 569 72 / 100 acres.

3. The fractional sections Nos. 27, 28, and 32, in township No. 10, S. of R. No. 20, east, containing 380 & 40 / 100 acres.

Three islands in sections 20, 21, 28 and 29 in township No. 10, S. of R. No. 20, east, in the south eastern, east of river, land district containing 51 & 40 / 100 acres.

The fractional west ½ of fractional west ½ of section 4, and fractional north east ¼ of section No. 5 in township No. 11, S. of R. No. 20 E. in the south eastern, east of river land district, containing 276 & no / 100 acres.

The fractional section- 5, 6, 7, 8; south west ¼ of section 18; north east ¼ of north west ¼ of section 19, and west ½ of section No. 31, in township No. 11, S. R. No. 20 east, in the south eastern, east of river land district, containing 990 acres.

All of fractional section No. 13, in township No. 11, S. R. No. 19, east in the south eastern, east of river land district, containing 320 acres.

The east fractional ½ of north west fractional ¼ of section No. 4, in township No. 11, S. of R. No. 20, east, in the south eastern, east of river land district containing 33 & 00 / 100 acres.

The south ½ and northwest ¼ of section 5, east ½ of east ½, and south west ¼ of south east ¼ of section 6; north east ¼, north ½ of south east ¼ of section 7; and north west ¼ of section 8, in township No. 12, S. R. No. 20 E. in the south eastern, east of river land district, containing 1,080 00 / 100 acres.

The west ½ of north east ¼, and east ½ of north west ¼ of section No. 6, in township No. 12, S. R. No. 20 east, in the south eastern east of river land district, containing 160 & no / 100 acres.

All of section No. 20 in township No. 11, S. R. No. 20 E. in the south eastern, east of river land district containing 640 acres.

The west ½ of south west ¼ section 17;—south east ¼ of section 18; east ½ of section 19; west ½ of section 29; east ½ of section 30; east ½ of section 31, and west ½ of section 32, in township No. 11, S. R. No. 20 east, in the south eastern, east of river land district containing 1,840 acres.

1227 Together with all rights of accretion, rights ways, privileges, advantages and appurtenances thereunto belonging or in anywise appertaining.

(Original signed) JOSEPH C. GILMORE.

Above transfer accepted for and on behalf of the Louisiana Navigation Company Limited.

(Original signed) W. V. GILMORE, President.

Duly registered at the parish of St. Bernard on the 8th day of February A. D. 1895.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

STATE OF LOUISIANA, }
Parish of St. Bernard. }

The undersigned clerk of the 29th judicial district court of Louisiana, in and for the parish of St. Bernard, *ex officio* recorder of mortgages & register of conveyances, duly commissioned and qualified, does hereby certify the foregoing to be a true copy of the deed of sale by Joseph C. Gilmore to the Louisiana Navigation Company Limited, as it appears registered in Conveyance Book No. 18 folio 270 *et seq.*; and that it was there registered on the 8th day of February A. D. 1895.

Clerk's office, parish of St. Bernard, April 2d 1904.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed:) Document No. 56 Offered by State of Louisiana, April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1228 DOCUMENT No. 57.

STATE OF LOUISIANA, }
Parish of Orleans. }

Know all men by these presents, that the Board of Commissioners for the Lake Borgne Basin Levee District, domiciled at New Orleans La. herein represented by John Dymond, president of said board, pursuant to a resolution adopted August 19th, 1898, & September 16th, 1898, hereto attached and made part hereof, do hereby transfer, sell, assign and convey unto Charles Sanger, a resident of Bay St. Louis, Mississippi, the following described lands, situated in the parish of St. Bernard, State of Louisiana to wit:

Fractional south ½ of section 15.

East ½ fractional southwest ¼, and fractional east ½ of northwest ¼ of section 21. All of sections 22, 27 and 28; north ½ of section 33; north ½ of section 34; containing 3,440 acres, and the south ½ of the north west ¼, and south west ¼ of section 23; west ½ of north east ¼ and west ½ of section 26; west ½ of north east ¼, and north west ¼ of section 35, containing 880 acres.

All situated in township No. eleven S. of R. No. 19, east in the south eastern land district, east of Mississippi river, and aggregating 4,320 acres; according to the plats of United States surveyor general on file in this office of said board of commissioners. All said lands were acquired from the State of Louisiana under act 14, approved June 21st 1892, and deeds of J. S. Lanier, register of the State land office, dated 2d April 1895, registered in Conveyance Book 19 fo. 307.

The consideration of this sale is the sum of five hundred and forty dollars ($540.00) cash in hand paid, the receipt whereof is hereby acknowledged.

It is understood that only such title is hereby conveyed, as was acquired by the aforesaid act of 1892, and the deeds thereunder referred to.

In testimony whereof, I have, together with the undersigned legal and competent witnesses, signed my name on this 16th day of September 1898.

(Signed) JOHN DYMOND,
President Board of Commissioners for the
Lake Borgne Basin Levee District.
" CHARLES SANGER.
" [SEAL.] N. H. NUNEZ, Secretary.

(Witnesses:)
(Signed) JOS. R. BRES.
" JOHN DYMOND, JR.

STATE OF LOUISIANA, }
Parish of Orleans. }

Be it known that before me the undersigned authority, on this day, came and appeared: Joseph R. Bres, one of the subscribing witnesses to the foregoing act, who after being by me duly sworn, declared that said act was duly executed and signed in his presence and in the presence of the other subscribing witnesses, on the day and year and for all the uses and purposes therein expressed.

(Signed) JOS. R. BRES.

1229 Sworn to and subscribed before me this 16th day of September A. D. 1898.
(Signed) CHAS. B. UPTON, Not. Pub.

Duly registered at the parish of St. Bernard on the 8th day of December A. D. 1898.
(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

STATE OF LOUISIANA, }
Parish of St. Bernard. }

The undersigned clerk of the 29th judicial district court of Louisiana, in and for the parish of St. Bernard, *ex officio* recorder of mortgages and register of conveyances duly commissioned and qualified, does hereby certify the foregoing to be a true copy of the act of sale by the Board of Commissioners for the Lake Borgne, Basin Levee District to Charles Sanger, as it appears registered in Conveyance

Book Number 19 folio 349 *et seq.*; and that it was there registered on the 8th day of December A. D. 1898.

Clerk's office, parish of St. Bernard, April 2d, 1904.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed:) Document No. 57. Offered by State of Louisiana. April 26th, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1230 DOCUMENT NO. 58.

STATE OF LOUISIANA, }
Parish of Orleans. }

Know all men by these presents: That the Board of Commissioners for the Lake Borgne Basin Levee District, domiciled in the city of New Orleans, State of Louisiana, herein represented by John Dymond, president, pursuant to a resolution adopted 16th day of June 1898, a copy whereof is hereto attached & made part hereof, does hereby transfer, sell and convey unto Mr. George H. Dunbar, of New Orleans, the following described lands situated in the parish of St. Bernard, State of Louisiana, to wit:—South east ¼ of north east ¼, south east ¼ of south west ¼, and south east ¼ of section eleven; 240 acres.

North east ¼ section; north east ¼ of north west ¼ south ½ of north-west ¼ and south ½ of section twelve; 600 acres.

All of section 14; 640 acres.

North ½ of north west ¼ and east ½ of section twenty three; 400 acres.

All of section twenty four; 640 acres.

All of section twenty five; 640 acres.

East ½ of north east ¼ and south east ¼ of section 26; 240 acres. East ½ of north east ¼ section 35; 80 acres; north ½ of south ½ and south ½ and north ½ of section 36; 480 acres, in township eleven, S. R. 19 east, and the

North west ¼ of north west ¼; south ½ of north west ¼ and south west ¼ of section nineteen, 280 acres; west ½ of section 30; 320 acres; in township eleven, S. of R. 20 east.

Also all and entire the island designated as "Preacher's island," embracing all of fractional section (13) thirteen, 8.20 / 100 acres; all of fractional section fourteen; 141 12 / 100 acres. All of fractional section fifteen, 113.86 / 100 acres, All of fractional section twenty two, 53.93 / 100 acres, All of fractional section twenty three 114.06 / 100 acres, and the fractional west half of section twenty four, 151.07 / 100 acres; in township 12 S. R. 18 east, in the south eastern land district, east of the Mississippi river, and containing in the

aggregate 5122.21/100 acres, according to the plat of the Unit States surveyor general of La. on file in the office of said board commissioners; being the same lands acquired from the State Louisiana under section 11 of act 14 approved June 21st, 1892 deeds of J. S. Lanier, register of the State land office, dated respe ively April 2d, 1895, and May 25th, 1898, registered in C. O. B. fo. 303 & Book 19, folio 307, of parish of St. Bernard.

The consideration of this sale is six hundred and forty one 53/1 dollars. ($641.53/—) cash in hand paid, receipt whereof is here acknowledged. It is understood that the board of commission transfer only such title as it acquired from the State of Louisia under the charter, and the aforesaid deeds of transfer.

Thus done and signed this 17th day of June A. D. 1899, in t presence of the undersigned legal and competent witnesses, at N Orleans, State of Louisiana.

(Signed) JOHN DYMOND,
President Board of Commissioners for the
Lake Borgne Basin Levee District
" (Attest:) N. H. NUNEZ.
" J. R. BRES.

1231 Duly registered at the parish of St. Bernard on the 2 day of June, A. D. 1899.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder

Before me the undersigned authority commissioned and qualifi for the parish of Orleans, State of Louisiana personally came a appeared John Dymond, president of the Board of Commission for the Lake Borgne Basin Levee District, who signed the forego deed for the purpose therein set forth in my presence and in t presence of Jos. R. Bres, and N. H. Nunez, competent witnes whose names were thereunto subscribed by them in the sa presence.

Witness my hand and seal this 17th day of June A. D. 1899.

(Signed) JOHN DYMOND,
President Board of Commissioners for the
Lake Borgne Basin Levee District

Int. rev. stamp $1.00.

CHAS. B. UPTON, Not. Pul

Duly registered at the parish of St. Bernard, on the 21st day June A. D. 1899.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder

STATE OF LOUISIANA, }
Parish of St. Bernard. }

The undersigned clerk of the 29th judicial district court of Lou ana in and for the parish of St. Bernard *ex officio* recorder of m

gages & register of conveyances, duly commissioned and qual
does hereby certify the foregoing act of sale by the Board of Com
sioners for the Lake Borgne Basin Levee District to Georg
Dunbar, to be a true copy of the said act as it appears register
Conveyance Book No. 19, fo. 382 *et seq.*; and that it was there
istered on the 21st day of June A. D. 1899.

Clerk's office, parish of St. Bernard, April 2d, 1904.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Record

(Endorsed:) Document No. 58 Offered by State of Louis
April 26, 1904. Frank H. Mortimer commissioner. Office Sup
Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk

1232 DOCUMENT No. 59.

STATE OF LOUISIANA,
Parish of St. Bernard.

Cash Sale of Lands by Board of Commissioners for the Lake B
Basin Levee District to George Ruppel.

Be it known that on this 7th day of March A. D. 1902, befo
James D. St. Alexandre a notary public in and for the parish
Bernard, State of Louisiana, duly commissioned and qualified
sworn personally came and appeared: Mr. John Dymond pres
of the Board of Commissioners for the Lake Borgne Basin Leve
trict a corporation created by act No. 14 of the General Asse
of the State of Louisiana approved June 21st, 1892, domiciled i
city of New Orleans; the said appearer acting in his afo
capacity by virtue of a resolution adopted by the said Board of
missioners for the Lake Borgne Basin District, at their sitti
Friday February 21st 1902, a certified copy whereof is hereun
nexed and made a part hereof.

Which said appear-s, acting in his aforesaid capacity, in the
and on behalf of the said Board of Commissioners for the Lake B
Basin Levee District, declared that for the consideration and
terms and conditions hereinafter expressed, he does by these
cuts grant, bargain, sell, convey, transfer, assign and set over,
out any warranty whatsoever, unto: Mr. George Ruppel,
present, accepting and purchasing for himself, his heirs and as
and acknowledging delivery and possession thereof, the follo
described lands, to wit:

The east half of section thirty three (33) containing abou
hundred acres, and the west half of section thirty four, conta
about two hundred acres, in township (11) eleven, south of ra
east.

The north west quarter of section three (3) containing seventy acres, more or less, and

The north east quarter of section four (4) containing one hundred and fifty acres, more or less, in township twelve (12) south range twenty east.

All of the above lands are in the south eastern land district east of river, and contain six hundred and twenty acres, more or less. The whole according to the map filed in the office of the Board of Commissioners for the Lake Borgne Basin Levee District.

It is distinctly understood by the parties hereto that the Board of Commissioners for the Lake Borgne Basin Levee District, through their said president transfer, assign and set over, only those rights and interests which the said board now have in and to the aforesaid lands, giving hereby simply a quit claim, and making and giving no warranty whatsoever; and further, that should the said title be subsequently declared void, the said board shall not reimburse to the purchaser any sum whatever. It is further distinctly agreed and understood between the parties hereto that this sale is made and accepted subject to all the existing and necessary rights of drainage of property holders, which shall not be injured in any way, shape or form, that is to say, the purchaser does hereby accept the sale of the above described lands subject to the servitudes of drainage from the river and Terre aux Boufs Ridge edge, and that the survey of said lands shall be made at the expense of the purchaser, by a surveyor who must be acceptable to the vendor, and in the absence of any survey, any error in location, quantity, or description, shall be at the risk of the purchaser.

1233 This sale is made and accepted for and in consideration of the price and sum of seventy seven & 50 100 dollars ($77.50) cash, which the purchaser has presently paid in ready and current money, unto the said John Dymond, president who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

By reference to the certificate of the clerk and recorder of the parish of St. Bernard, it appears that the herein above described lands were not alienated by the State of Louisiana, except by a sale thereof to the Lake Borgne Basin Levee District Commissioners; and by the same certificate it does not appear that the Lake Borgne Basin Levee District Commissioners have alienated the same from the time of their acquisition thereof.

The taxes of the current year 1902 are assumed by the purchaser. To have and to hold the said above described lands his heirs and assigns forever.

Thus done and passed at the parish of St. Bernard on the day, month and year first above written in the presence of Messrs. Nemours H. Nunez, and Esteve E. Nunez, competent witnesses of lawful age, residing in this parish, who have signed their names hereto,

ith the said appearers and me notary after due reading of the hole.

(Original signed) JOHN DYMOND, President.
" " GEO. RUPPEL.
" " N. H. NUNEZ.
" " E. E. NUNEZ.
" " JAS. D. ST. ALEXANDRE.
Not. Pub.

I hereby certify the foregoing to be a true copy of the original act record in my notarial archives.

In testimony whereof, I affix hereto my hand and the impress of y seal of office, at the parish of St. Bernard, State of Louisiana, on is second day of April A. D. 1904.

(Seal of James D. St. Alexandre, Notary Public, Parish of St. Bernard, State of Louisiana.)

JAS. D. ST. ALEXANDRE, Not. Pub.

The original of this act was duly registered at the parish of St. ernard, on the 8th day of March A. D. 1902, in Conveyance Book o. 20 folio 71 *et seq.*

Clerk's office, parish of St. Bernard, April 2d, 1904.

(Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.)

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed:) Document No. 59. Offered by State of Louisiana pril 26, 1904. Frank H. Mortimer, commissioner. Office Su-reme Court U. S. Filed Mar. 13, 1905. James H. McKenney, erk.

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CARD 13

1234 DOCUMENT No. 60.

Office of Police Jury of the Parish of St. Bernard.

1st ward, Sebastien Roy.
2nd " Gustave Jaques.
3rd " Lovinski Nunez, president.
4th " Adam Estopinal.
5th " Henry Verret.
6th " Nick Fernandez.
7th " A. C. Ruiz.
Alcide Gutierrez, secretary.
J. C. Bourg, treasurer.

ST. BERNARD P. O., LA., ——, 190–.

Mr. Ruiz submitted the following budget of expenses for the year 1896, which was adopted:

School funds	$1500.00
Printing	400.00
Police jury & reviewing board	150.00
Cemetery fund	75.00
Sheriff in criminal matters	500.00
Maintenance of prisoners	1800.00
District att'y	450.00
Secretary police jury	450.00
Assessor	350.00
Coroner	450.00
Parish treasurer	450.00
Sergeant at arms	150.00
Grand and petit jurors	350.00
Justices of the peace & constables	200.00
Stationery clerk's office	200.00
Paupers' funds	25.00
Parish map	500.00
Sanitary officer	258.00
Police officers	2040.00
Road funds	2000.00
Election expenses	500.00
Court house repairs & furniture	200.00
Contingent expenses	500.00
	13498.00

I hereby certify the above to be a true and correct copy of *of* the budget of expenses for the parish of St. Bernard, as adopted by the police jury of the parish of St. Bernard, La., on August 3d, 1896.

ALCIDE GUTIERREZ,
Secretary of the Police Jury, Parish of St. Bernard, La.

(Endorsed:) Document No. 60 Offered by the State of Louisiana, April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1235 DOCUMENT No. 61.

Extract from the Minutes of the Police Jury of the Parish of Plaquemines, La., Meeting Held January 7th, 1901.

By Mr. PEREZ: Resolved that the chair appoints a committee of three to confer with a like committee from St. Bernard parish as to some means of preventing the depredation of oyster beds by parties from the State of Mississippi, Adopted.

The chair appointed the following committee, viz: Messrs. J. B. Fasterling, Thomas Brophy and Roselius Perez.

I hereby certify that the above extract is true and correct from the minute book of the police jury of the parish of Plaquemines La., April 6th, 1904.

JOS. SAVOIE,
Secretary Police Jury, Parish of Plaquemines, La.

(Endorsed:) Document No. 61 Offered by State of Louisiana. April 26, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1236 DOCUMENT No. 62.

List of swamp and overflowed lands unfit for cultivation selected, as enuring to the State of Louisiana, under the act of Congress approved March 2nd, 1849, in the south eastern district, Louisiana, to the approval of which no objections appear on the tract books (except that there is no survey).

(All East of the Mississippi River.)

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section	26	10	17 E.	640	00	Estimated.
"	36	"	"	640	00	
"	29	"	18 E.	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	23	"	20 E.	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	

GENERAL LAND OFFICE, May 7th, 1852.

I, John Wilson, acting Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of the list of swamp and overflowed lands, selected for the State of Louisiana, under the act of Congress approved March 2nd, 1849, entitled "An act" to aid the State of Louisiana in draining the swamp "lands therein" in the district of lands subject to sale at New Orleans, Louisiana, taken from the original list on file in this office, which original list was submitted to the Secretary of the Interior, on the 4th, day of May 1852, for his action and decision thereon, and was by him returned on the 6th, day of the same month, with a letter and an endorsement thereon, advising this office, that he had approved the same in accordance with the provisions of the second section of the act aforesaid, and which list now remains on the files of this office.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the General Land Office, at the city of Washington the day and year above written.

[SEAL.] (Signed) JOHN WILSON,
Acting Commissioner.

STATE OF LOUISIANA,
State Land Office, Baton Rouge.

I, James M. Smith, register of the State land office of the State of Louisiana, do hereby certify the within and foregoing to be a true and correct extract from volume one (1) showing swamp land approvals and rejections in south eastern district of Louisiana.

1237 Given under my hand and seal of office at the city of Baton Rouge, on this 11th, day of April, A. D. 1904.

JAS. M. SMITH,
Register State Land Office.

[Seal of Land Office, State of Louisiana.]

(Endorsed:) Document No. 62 Offered by the State of Louisiana April 28, 1904 Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1238 DOCUMENT No. 63.

New Orleans District.

List of swamp and overflowed lands unfit for cultivation selected, as enuring to the State of Louisiana, under act of Congress approved March 2nd, 1849, in the southeastern district, Louisiana, to the approval of which no objections appear on the tract books.

(All East of the Mississippi River.)

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section.....	1	11	17 E.	640	00	
"	2	"	"	640	00	
"	11	"	"	640	00	
"	14	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	5	"	18 E.	640	00	
"	6	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	All estimated
"	1	"	19 E.	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section	15	11	19 E.	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
Section	36	"	"	640	00	
1239 "	4	11	20 E.	640	00	
"	5	"	"	640	00	
Section	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	All estimated
"	19	"	"	640	00	
"	20	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section	13	12	16 E.	640	00	
"	14	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	1	"	17 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	All estimated
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
1240 Section.....	30	12	17 E..	640	00	
"	31	"	"	640	00	
Section.....	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	1	"	18 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	
"	5	"	"	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	All estimated
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section.....	36	12	18 E.	640	00	
"	1	"	19 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	
"	5	"	"	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	All estimated
"	10	"	"	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
Section.....	22	"	"	640	00	
1241 "	23	12	19 E.	640	00	
"	24	"	"	640	00	
Section.....	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	1	"	20 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section.....	5	12	20 E.	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	All estimated
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	1	13	16 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	All estimated
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
1242 Section.....	1	13	17 E.	640	00	
"	2	"	"	640	00	
Section.....	3	"	"	640	00	
"	4	"	"	640	00	
"	5	"	"	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	25	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	All estimated
Whole section.....	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	1	"	18 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Whole section.....	4	13	18 E.	640	00	
"	5	"	"	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
1243 Section.....	25	13	18 E.	640	00	
"	26	"	"	640	00	
Section.....	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	1	"	19 E.	640	00	
"	2	"	"	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	
"	5	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
Section	6	13	19 E.	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	
"	12	"	"	640	00	
"	13	"	"	640	00	
"	14	"	"	640	00	
"	15	"	"	640	00	
"	17	"	"	640	00	
"	18	"	"	640	00	
"	19	"	"	640	00	
"	20	"	"	640	00	
"	21	"	"	640	00	
"	22	"	"	640	00	
"	25	"	"	640	00	All estimated
"	26	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	
"	32	"	"	640	00	
"	33	"	"	640	00	
"	34	"	"	640	00	
"	35	"	"	640	00	
"	36	"	"	640	00	
"	2	"	20 E.	640	00	
"	3	"	"	640	00	
"	4	"	"	640	00	
"	5	"	"	640	00	
"	6	"	"	640	00	
"	7	"	"	640	00	
"	8	"	"	640	00	
"	9	"	"	640	00	
"	10	"	"	640	00	
"	11	"	"	640	00	

DOCUMENT No. 63—Continued.

Description of the tract.	No. of section.	No. of township.	No. of range.	Area.		Remarks.
				Acres.	*Hdths.*	
1244 Section.....	14	13	20 E.	640	00	
"	17	"	"	640	00	
Section.....	18	"	"	640	00	
"	22	"	"	640	00	
"	23	"	"	640	00	
"	24	"	"	640	00	
"	26	"	"	640	00	
"	27	"	"	640	00	
"	28	"	"	640	00	
"	29	"	"	640	00	
"	30	"	"	640	00	
"	31	"	"	640	00	All estimated
"	32	"	"	640	00	
"	33	"	"	640	00	

GENERAL LAND OFFICE, May 7th, 1852.

I, John Wilson, acting Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of the list of swamp and overflowed lands, selected for the State of Louisiana, under the act of Congress approved March 2nd, 1849, entitled "An act to aid the State of Louisiana, in draining the swamp lands therein"—in the district of lands subject to sale at New Orleans, Louisiana, taken from the original list on file in this office, which original list was submitted to the Secretary of the Interior, on the 4th day of May, 1852, for his action and decision thereon, and was by him returned on the 6th day of the same month, with a letter and an endorsement thereon, advising this office that he had approved the same in accordance with the provisions of the second section of the act aforesaid, and which list now remains on the files of this office.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the General Land Office, at the city of Washington the day and year above written.

[SEAL.] (Signed) JOHN WILSON,
Acting Commissioner.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, Jas M. Smith, register of the State land office, do hereby certify that the annexed twelve pages *is* a true and correct extract, showing the approval, under the swamp land grant of 1849, of lands in T. 11 S., rgs. 17, 18, 19 & 20 E.; T. 12 S., rgs. 16, 17, 18, 19 &
20 E.; and T. 13 S., rgs. 16, 17, 18, 19 & 20 E., as appearing
1245 in record of "Swamp Lands, Approvals and Rejections, South Eastern District, Louisiana, vol. 1," on file in this office.

Given under my hand and seal of office, this 26th day of April, A. D. 1904.

[Seal of the Land Office, State of Louisiana.]

JAS. M. SMITH,
Register of the State Land Office.

(Endorsed:) Document No. 63 Offered by the State of Louisiana. April 28, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

(Here follow Documents Nos. 64 and 65, marked pp. 1246–1277, endorsed as follows:)

1257 (Endorsed.)

DOCUMENT No. 64.
Offered by the State of Louisiana April 28, 1904.
Frank H. Mortimer, Commissioner.

1278 (Endorsed.)

DOCUMENT No. 65.
Offered by State of Louisiana April 28, 1904.
Frank H. Mortimer, Commissioner.

DOCUMENT NO. 64

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — PATENT	VOL.	PAGE
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	1	11S	17E	640.00	Act 320	14	1892	
" " " "	" " "	"	" "	2	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	11	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	14	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	22	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	23	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	25	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	26	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	27	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	28	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	33	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	34	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	36	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	5	"	18E	640.00	" "	"	"	
" " " "	" " "	"	" "	6	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	30	"	"	640.00	" "	"	"	
" " " "	" " "	"	S½ of Tract S.E. ¼ of S.W. ¼ of Tract S.E. ¼ and W½	31	"	"	440.00	" "	"	"	
Henry Florence	Nov 18-1859	7785 Pat.	all of fol	32							
			Tract 1½ of Tract S.E. ¼ and N.E. ¼ of fol	31	"	"	113.66	28.75			
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	34	"	"	640.00	Act 320	14	1892	
" " " "	" " "	"	" "	33	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	36	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	1	"	19E	640.00	" "	"	"	
" " " "	" " "	"	" "	11	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	12	"	"	640.00	" "	"	"	
J. D. Gilmore	Nov 7-1887	770 Pat.	All of fol	13	"	"	320.00	40.00	1039	24	78
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	14	Abd 320		14	1892			
" " " "	" " "	"	" "	15	"	"	"	"			
" " " "	" " "	"	" "	20	"	"	"	"			
" " " "	" " "	"	" "	21	"	"	"	"			
" " " "	" " "	"	" "	22	"	"	"	"			
" " " "	" " "	"	" "	23	"	"	"	"			
" " " "	" " "	"	" "	24	"	"	"	"			
" " " "	" " "	"	" "	25	"	"	"	"			
" " " "	" " "	"	" "	26	"	"	"	"			
" " " "	" " "	"	" "	27	"	"	"	"			

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — PATENT	VOL.	PAGE
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	28	11 S	12 E	640.00	Act. Mar. 14-1892			
" " " "	" " "	"	"	30	"	"	640.00	" "	"	"	
" " " "	" " "	"	S½ of	29	"	"	320.00	" "	"	"	
" " " "	" " "	"	All of	31	"	"	640.00	" "	"	"	
S. Meloche	April 27-1894	2805 N.S.	A²	32							
			Frl SW¼	29	"	"	220.00	27.50	2294	28	210
Lake Borgne Levee Dist	April 2-1895	Transfer	Tract S½ of	32	"	"	320.00	Act Mar. 14-1892			
" " " "	" " "	"	All of	33	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	34	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	" "	"	"	
" " " "	" " "	"	" "	36	"	"	650.00	" "	"	"	
Joseph C. Gilmore	April 27-1894	2804 N.S.	E½ of E½ of NW¼	4	"	20 E	33.00	4.12	3093	28	209
J. C. Gilmore	March 15-1887	571 N.S.	Frl. W½ of E½ of W²	4							
			and Frl NE¼	5	"	"	276.00	34.50	3706	23	225
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	9	"	"	640.00	Act Mar. 14-1892			
" " " "	" " "	"	NE¼ of	17	"	"	160.00	" "	"	"	
" " " "	" " "	"	NE¼ of	18	"	"	160.00	" "	"	"	
" " " "	" " "	"	NW¼ of NW¼ S½ of NE¼ & N½ of SE¼	19	"	"	280.00	" "	"	"	
W. V. Gilmore	April 11-1887	601 N.S.	All of	20	"	"	640.00	80.00	761	23	253
Lake Borgne Levee Dist	April 2-1895	Transfer	All of	27	"	"	640.00	Act Mar. 14-1892			
" " " "	" " "	"	S½ E¼ of	28	"	"	160.00	" "	"	"	
" " " "	" " "	"	NE¼ of	29	"	"	160.00	" "	"	"	
" " " "	" " "	"	N½ of	30	"	"	320.00	" "	"	"	
J. C. Gilmore	Mar. 7-1887	769 N.S.	Frl Sec 6 7 & 8 W¼	18							
			NE¼ of NW¼	19	"	"	990.00	123.70	1038	24	78
			and W²	31							
W. V. Gilmore	June 23-1887	659 N.S.	W½ of NW¼	17							
			SE¼ of	18							
			E½ of	19							
			W½ of	29	"	"	1840.00	230.00	870	23	307
			E½ of	30							
			E½ of	31							
			and W½ of	32							
J. C. Gilmore	April 7-1887	594 N.S.	W½ of NE¼	28							
			SE¼	29							
			E½ of	32	"	"	640.00	80.00	790	23	247
			W½ of NW¼	33							
Lake Borgne Levee Dist	April 2-1895	Transfer	All of, Except W½ of Tract NW¼	33	"	"	560.00	Act Mar. 14-1892			

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT				AREA	AMOUNT	RECORD		
			PART OF SECTION	SEC.	TOWN	RANGE			PATENT	VOL.	PAGE
Sarah Borgne Levee Bd	April 2-1895	Transfer	All of	34	11 S	20 E	640.00	Act Aug 14-1892			
S. Mlacak	April 29-1895	2106	Fractl	35	"	"	170.00	2.12.5995	35	210	
Sarah Borgne Levee Bd	April 2-1895	Transfer	All of	36	"	"	640.00	Act Aug 14-1892			
" " " "	" " "	"	"	13	12 S	16 E	640.00	" " "	"	"	
" " " "	" " "	"	"	14	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	22	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	23	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	24	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	25	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	26	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	27	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	34	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	35	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	36	"	"	640.00	" " "	"	"	
Sarah Borgne Levee Bd	April 2-1895	Transfer	All of	1	"	17 E	640.00	Act Aug 14-1892			
" " " "	" " "	"	"	2	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	9	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	11	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	7	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	8	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	9	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	10	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	11	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	12	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	13	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	14	"	"	640.00	" " "	"	"	
Sarah Borgne Levee Bd	April 2-1895	Transfer	All of	15	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	17	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	18	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	19	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	20	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	21	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	22	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	23	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	24	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	25	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	26	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	27	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	28	"	"	640.00	" " "	"	"	
" " " "	" " "	"	"	29	"	"	640.00	" " "	"	"	

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT				AREA	AMOUNT	RECORD		
			PART OF SECTION	SEC.	TOWN	RANGE			PATENT	VOL.	PAGE
Jose Borgne Levee Bd	April 2 1895	Transfer	All of	30	12 S	17 E	640.00	Act March 14-1892			
" " " "	" " "	"	" "	31	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	32	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	33	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	34	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	36	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	1	"	18 E	640.00	" " "	"	"	
" " " "	" " "	"	" "	2	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	3	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	4	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" " East of Bayou	5	"	"	316.36	" " "	"	"	
Mrs Ann Gordan	April 28-1897	696	All of Lot	5							
			All of Lot West of Bayou	8	"	"	229.06	68.72			
Jose Borgne Levee Bd	April 2-1895	Transfer	All of	6	"	"	640.00	Act March 14-1892			
" " " "	" " "	"	"	7	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" " East of Bayou	8	"	"	193.94	" " "	"	"	
" " " "	" " "	"	" "	9	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	10	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	11	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	13	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	14	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	15	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	17	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	18	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	19	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	20	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	21	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	22	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	23	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	24	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	25	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	26	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	29	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	30	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	31	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	32	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	33	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	34	"	"	640.00	" " "	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	" " "	"	"	

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — Patent	Vol.	Page
Jane Boyd & Lou Boyd	June 2 1891	Transfer	All of	36	12 S	1 E	640.00	800.00	14 1892		
" " " "	" " "	"	" "	1	"	1 E	640.00	"	"	"	
" " " "	" " "	"	" "	2	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	3	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	4	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	5	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	6	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	7	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	8	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	9	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	10	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	11	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	12	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	13	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	14	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	15	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	19	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	20	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	21	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	22	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	23	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	24	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	25	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	26	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	27	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	28	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	29	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	30	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	31	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	32	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	33	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	34	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	35	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	36	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	1	"	2 E	640.00	"	"	"	
" " " "	" " "	"	" "	2	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	3	"	"	640.00	"	"	"	
" " " "	" " "	"	" "	4	"	"	640.00	"	"	"	
" " " "	" " "	"	S ½ NE ¼	5	"	"	80.00	"	"	"	
J. C. Gilmore	April 1 1891	182	SW ¼ NE ¼	5	"	"	80.00	10.00	207	29	247

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — PATENT	VOL.	PAGE
J. C. Gilmore	Nov 7-1857	7711 Ark	W½ NE¼ E of Ark	6	12 S	2 E	160 00	20 00	10420	24	39
Samuel L. Gilmore	Sept 12-1857	7719 Ark	S½ and NW¼	5							
			S½ of E½ and NE¼ of SE¼	6	"	"	1010 00	125 00	961	24	39
			NE¼ N½ of SE¼	7							
			and NW¼	8							
Lands Bought Low Co.	April 2-1852	Transfer	NE¼ of SE¼ W½ of NW¼								
			and SW¼ of	6	"	"	210 00	262 50	10-14-1892		
" " " "	" " "	"	All of	9	"	"	640 00	"	"	"	"
" " " "	" " "	"	S½ of SE¼ of	7	"	1	400 00	"	"	"	"
" " " "	" " "	"	SW¼ and SE¼ of	8	"	"	480 00	"	"	"	"
" " " "	" " "	"	All of	10	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	11	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	17	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	18	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	19	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	20	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	21	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	28	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	29	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	30	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	31	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	32	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	1	12 S	16 E	640 00	"	"	"	"
" " " "	" " "	"	" "	2	"	"	640 00	"	"	"	"
" " " "	" " "	"	E½ of E½ of	3	"	"	160 00	"	"	"	"
Stephen Meloche	August 1-1853	5818 Ark	SW¼ of NW¼ W½ of SE¼								
			and E½ of SW¼	3	"	"					
			E½ of NW¼	10							
Lands Bought Low Co.	April 2-1852	Transfer	NE¼ and S½ of	10	12 S	16 E	480 00	262 50	10-14-1892		
" " " "	" " "	"	all of	11	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	12	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	13	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	14	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	15	"	"	640 00	"	"	"	"
" " " "	" " "	"	All of 1, 2, 3, 4, 7, 14, 15								
			and W½ of E½ and W½ of W½	22	"	"	294 64	"	"	"	"
" " " "	" " "	"	all of	21	"	"	640 00	"	"	"	"

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — PATENT	VOL.	PAGE
Louis Talmus	May 30, 1861	3485	Lots 5, 6, 10, 11, 12, 13, 16, 17, 18, 19 & 20 N½ of NE¼								
			SE¼ of NE¼	23							
			All of fml (NE of Bayou)		18S	16E	836 24	214 06	1939	11	260
			S.L. maule	24							
			SW¼ of NW¼	23							
			All of fml	28							
Lasle Bogne Levee Bd	April 2-1895	Transfer	Lot 1, E½ of NW¼, NE¼	23	"	"	379 72	acct	220	14	1892
" " " "	" " "	"	All of	24	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	25	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	26	"	"	640 00	"	"	"	"
Louis Talmus	Feby 28-1861	1950	All of fml	27	"	"	602 44	150 61			
Lasle Bogne Levee Bd	April 2-1895	Transfer	All of	32	"	"	640 00	acct	220	14	1892
Mary C. Gordon	Jany 12-1853	" "	All SE¼ N of Bayou								
			SE¼ male except SE¼								
			of SE¼ and W½ of SW¼ of fml	33	"	"	278 62	348 27	726	1	251
W. A. Gordon	July 5-1854	772	Bal. Except 2 acres in SE¼ of SE¼ and SW¼ of NE¼	33	Decided Wrong						
			That portion of E½ of W of Bayou SE maule	34	"	"	306 90	383 62	7852	33	114
Bernard Bermudez	July 24-1854	801	Lot 1 of	33	"	"	46 08	57 60			
Lasle Bogne Levee Bd	April 2-1895	Transfer	All of	35	"	"	640 00	acct	220	14	1892
" " " "	" " "	"	" "	36	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	1	"	17E	640 00	"	"	"	"
" " " "	" " "	"	" "	2	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	3	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	4	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	5	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	6	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	7	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	8	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	9	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	10	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	11	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	12	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	13	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	14	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	15	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	17	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	18	"	"	640 00	"	"	"	"
" " " "	" " "	"	" "	19	"	"	640 00	"	"	"	"

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — Patent	Vol.	Page
Lake Bayou Levee Bd	April 2-1895	Transfer	All of	20	19 S	17 E	640.00	Act Aug. 14-1892			
" " "	" " "	"	" "	21	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	22	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	23	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	24	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	25	"	"	640.00				
" " "	" " "	"	" "	26	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	27	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	28	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	29	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	30	"	"	640.00	" " "	"	"	
Annie Duncan	Aug 28-1869	255	SW¼ of	31	"	"	160.00	40.00			
Alexander Duncan	" " "	339	SE¼	31	"	"	160.00	40.00			
J. M. Stevens	Nov 29-1854	55-189	NE¼	31							
			NW¼	32	"	"	320	80.00	44	15	69
Lake Bayou Levee Bd	April 2-1895	Transfer	NW¼ of	31	"	"	160.00	Act Aug. 14-1892			
A. H. Morse	Nov 20-1854	52-104	S½ of	32	"	"	320	80.00	143	15	68
Peter and Phinigan	Jany 7-1865	92	NE¼	32	"	"	160	40.00			
Henry McGuinness	Jany 9-1865	106-189	NW¼ SW¼ of 16 S. R.	33	"	"	320	120.00	117	15	55
Lake Bayou Levee Bd	April 2-1895	Transfer	W½ of NW¼ and SE¼ of NE¼ of	33	"	"	120.00	Act Aug. 14-1892			
" " "	" " "	"	All of	34	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	35	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	36	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	1	"	18 E	640.00	" " "	"	"	
" " "	" " "	"	" "	2	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	3	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	4	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	5	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	6	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	7	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	8	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	9	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	10	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	11	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	12	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	13	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	14	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	15	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	17	"	"	640.00	" " "	"	"	
" " "	" " "	"	" "	18	"	"	640.00	" " "	"	"	

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT				AREA	AMOUNT	RECORD		
			PART OF SECTION	SEC.	TOWN	RANGE			PATENT	VOL.	PAGE
Jose Borrego Lewis Bl	Aug 3-1875	Transf.	All of	19	18 S	18 E	640.00	acK	10-14-1879	2	
" " " "	" " "	"	" "	20	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	21	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	22	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	23	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	24	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	25	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	26	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	27	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	28	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	29	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	30	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	31	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	32	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	33	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	34	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	35	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	36	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	1	"	19 E	640.00	"	"	4	
" " " "	" " "	"	" "	2	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	3	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	4	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	5	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	6	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	7	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	8	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	9	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	10	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	11	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	12	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	13	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	14	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	15	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	17	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	18	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	19	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	20	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	21	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	22	"	"	640.00	"	"	4	
" " " "	" " "	"	" "	23	"	"	640.00	"	"	4	

ABSTRACT OF ENTRIES

NAME OF PURCHASER	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT — PART OF SECTION	SEC.	TOWN	RANGE	AREA	AMOUNT	RECORD — Patent	Vol.	Page
Louis Bergue Louisville Ohio	Nov 19 95	Trans.	All of	26	19S	19E	640.00	Dec 30-94-1892			
" " " "	" "	"	" "	28	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	29	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	30	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	31	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	32	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	33	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	34	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	35	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	36	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	2	"	20E	640.00		"	"	"
" " " "	" "	"	" "	3	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	4	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	5	"	"	640.00		"	"	"
" " " "	" "	"	" "	6	"	"	640.00	"	"	"	
" " " "	" "	"	" "	7	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	8	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	9	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	10	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	11	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	14	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	17	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	18	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	22	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	23	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	24	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	26	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	27	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	28	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	29	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	30	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	31	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	32	"	"	640.00	"	"	"	"
" " " "	" "	"	" "	33	"	"	640.00	"	"	"	"

ABSTRACT OF ENTRIES

NAME OF PURCHASERS	DATE OF ENTRY	NUMBER OF CERTIFICATE	DESCRIPTION OF TRACT				AREA	AMOUNT	RECORD		
			PART OF SECTION	SEC.	TOWN	RANGE			PATENT	VOL.	PAGE
State of Louisiana State Land Office Baton Rouge											

I, Jas. M. Smith, Register of the State Land Office, do hereby Certify the within and foregoing to be a true and correct abstract of the Entries in the above Townships and Ranges, as shown by the Official Tract Record on file in this office.

Given under my hand and Seal of office at the City of Baton Rouge, on this the 26th day of April A. D. 1902.

Jas. M. Smith
Register of the State Land Office

Non Residents Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1	2	3	4		5	6	7	
	Gilmore H. V.		1		7		Prairie Lands on Gulf of Mexico		50								
	Gilmore H. V.				7		Prairie Lands on Gulf of Mexico		50								
	Gilmore J. C.				7		Prairie Lands on Gulf of Mexico		50								
	Gilmore J. C.				7		Prairie Lands on Gulf of Mexico		50								

Parish of St Bernard 1889 1904.

OF TAXATION.

									TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	LEVEE TAX	TOTAL TAX
									WHITE	COLORED						
									60		50	40		50		150
									50		50	50		50		150
									50		50	50		50		150
									50		50	50		50		150

I Certify the above and foregoing to be a true and Correct List of Assessments and Taxes of the Parish of St Bernard, State of Louisiana, for the year 1889 as shown from the Assessment Rolls on file and of record in my Office.

C. Schmidt
Assessor

Parish of St Bernard
April 1st 1889.

Parish of St Bernard

Non Residents.

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2 Cash value in lots, manner or parcels of ground, in incorporated or unincorporated Cities, Towns or Villages, with residences or other improvements thereon	3 Cash value of Horses, Mares, Mules, Geldings, Colts, Sheep, Goats, Hogs, and all other Live Animals.	4 Cash value of all Wagons, Carts, Buggies, Carriages and all other Vehicles.	5 Cash value of all Merchandise on Hand in Trade.	6 Cash value to be listed on actual market value of capital stock, shares, etc. of all persons, associations of persons, business firms, companies and banks less that real estate
	Gilmore W. V.				6		Swamp Lands on Gulf of Mexico		50					
	Gilmore W. V.				6		Swamp Lands on Gulf of Mexico		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					
	Gilmore J. C.				6		"		50					

Parish of St. Bernard 1890 ~~1894~~.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
Cash value to be listed on actual market value of capital stock, shares, etc., of all persons, associations of persons, business firms, corporations and posts less than real estate.	Cash value of Household Goods, Silverplate, Jewelry, etc. not exempt from taxation.	All Moneys loaned or in possession.	Cash value of all bonds liable to taxation. Notes, Judgments and other credits.	Cash value of all Steamboats, Steamships, Barges and other watercraft	Cash value of Annuities, Salaries, Incomes, etc., of all persons, associations of persons, of business firms and corporations not subject to license.	Cash value of all property and things employed in the matter of display.	Cash value of all other property subject to taxation	Actual cash value of Land or lots and improvements, machinery and implements thereon, not especially for purposes of taxation as required by latter part of Sec. 17, Act 130 of 1890	WHITE	COLORED						
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130

I Certify the above and foregoing Tables or Lists of Property to stand & for the assessment Rolls of the Parish of St. Bernard, State of Louisiana, for the year 1890 as taxable & from the Original Rolls on file and of record in my Office

A. Bienvenu
Assessor
Parish of St. Bernard

Parish of St. Bernard
Oct. 1st 1890.

Non Residents.

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4		8 Cash value of all Merchandise or Stock in Trade.	9	
	Gilmore W. V.				6		Swamp Lands on the Gulf of Mexico		50							
	Gilmore W. V.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							
	Gilmore J. C.				6		"		50							

Parish of St Bernard 1891. [redacted].

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
	Cash value of Household Goods, Silverplate, Jewelry, etc. not exempt from taxation.	All Moneys loaned or in possession.	Cash value of all bonds liable to taxation, Notes, Judgments and other credits.	Cash value of all Steamboats, Steamships, Steamboilers and watercraft.	Cash value of all persons, associations, Societies, Insurance, etc., of all persons, associations or persons from and corporations not subject to license.	Cash value of all property belonging or employed in the parish (as assessed).	Cash value of all other property subject to taxation	Actual cash value of Land or town lots in improvements, machinery and implements thereon, not especially for purposes of taxation as required by under part of sec. 12, Act 170 of 1890	WHITE	COLORED						
									60		2.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0
									50		3.0	5.0		5.0		13.0

I Certify the above and foregoing to be a true & correct extract from the assessment Rolls of the Parish of St Bernard, State of Louisiana, for the year 1891 as taken from the original Rolls on file in my Office.

Assessor

Parish of St Bernard.
April 22nd 1892

Parish of St Bernard.

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5 Cash value of all Materials other than Stock in Trade.	6	7
	Gilmore W. F.		.		6		Swamp Lands on Gulf of Mexico		50						
	Gilmore W. F.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.		.		6		" " " " " "		50						
	Gilmore J. C.				6		" " " " " "		50						

Parish of St Bernard 1892.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT	
									WHITE	COLORED
									52	
									52	
									52	
									52	
									52	
									52	
									52	
									52	
									52	
									52	

I [illegible] do
[illegible] Assessment Roll of the Parish of St Bernard for the year 1892 as the original is now in my office

Parish of St Bernard
Office [illegible] 1892

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6	7	8
	Gilmore W. V.		.		6		Swamp Lands on Gulf of Mexico		$0							
	Gilmore W. V.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6		" " " " "		$0							
	Gilmore J. C.		.		6	18 3/4	S Eastern Lands District containing the Whole of Sec on Peter and other Islands: 1st Fract Sec Nos 23 24 25 & 26. T 12 S of R 20 East Containing 106 3/4 Acres 2d Fract Sec 34 & 35 T 12 S of R 20 East Containing 86 3/4 Acres 3d Fractional Sec Nos 27 28 & 33 T 12 S of R 20 East Containing 318 3/4 Acres.		$0							
	Gilmore J. C.		.		6	22 3/4	S Eastern Lands Dist of La adjacent to Sec on Peter Bay Islands in Sec 20. 21. 28 & 29. T 12 S of R 20 East South Eastern Dist of Florida Meridian Containing 22 3/4 Acres.		$0							

Parish of St Bernard 1893. ~~1904~~.

1129

OF TAXATION.

6 Cash value to be based on 20% of market value of capital stock, shares, etc. of all persons, associations of persons, business firms, corporations and public less than full value.	7 Cash value of Household Goods, Silverplate, Jewelry, etc not exempt from taxation.	8 All Moneys loaned or in possession.	9 Cash value of all bonds liable to taxation, Notes, Judgments and other credits.	10 Cash value of all Mortgages, Privileges, Rights and other Securities.	11 Cash value of Annuities, Salaries, Incomes, etc., of all persons, associations of persons or business firms and corporations not subject to taxation.	12 Cash value of All property and things not herein enumerated in the order in which.	13 Cash value of all other property subject to taxation	14 Actual cash value of Land or lots and improvements, machinery and appurtenances thereto, and especially the property assessed for taxation as required by Section 3 of Act No. 17, Act No. of 1898	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									50		20	50		50		120
									50		30	60		60		150
									50		30	60		60		150
									50		30	60		60		150
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	50		50		130
									50		30	60		60		150
									50		30	50		50		130

I Certify the above and foregoing to be a true & correct extract from the Assessment Rolls of the Parish of St Bernard State of Louisiana for the year 1893 as taken from the Original Rolls on file and of record in my Office.

W. O. Gonzales
Assessor
Parish of St Bernard

Parish of St Bernard
April 6th 1904

Non Residents.

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	Objects 1	2	3	4	5	6
	Gilmore W. W.				6		Swamps & Lands on Gulf of Mexico		37					
	Gilmore W. W.				6		"		37					
	Gilmore J. C.				6		"		37					
	Gilmore J. C.				6		"		37					
	Gilmore J. C.				6		"		37					
	Gilmore J. C.				6		"		37					
	Gilmore J. C.				6		"		38					
	Gilmore J. C.				6		"		38					
	Gilmore J. C.				6		"		38					
	Gilmore J. C.				6	1411/28	S. Eastern Land District embracing the Whole of Sec 20 Petit & other Lands 1st Fract Sect 23. 24. 25. & 26. T.S.10. S. of R. 20 East. Containing 460 3/4 Acres. 2nd Fract Sect 33 & 34. T.S.10. S. of R. 20 East Containing 509 3/4 Acres. 3rd Fract Sect 27. 28. & 32. T.S.10. S.R 20 East Containing 380 7/28 Acres		38					
	Gilmore J. C.				6	50 7/28	S. Eastern Dist of Louisiana adjacent to Sec 20 Petit Orig. Islands in Sect 20. 21. 28. & 29. T.S.10. S. of R. 20. East South Eastern End of River Land District Containing 50 7/28 Acres		38					

Parish of St Bernard 1894 ~~1893~~.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									37		22	37		37		96
									37		22	37		37		96
									37		22	37		37		96
									37		22	37		37		96
									37		22	37		37		96
									37		22	37		37		96
									38		22	38		38		98
									38		22	38		38		98
									38		22	38		38		98
									38		22	38		38		98
									38		22	38		38		98

I certify the above and foregoing to be a true and correct extract from the Assessment Rolls of the Parish of St Bernard, State of Louisiana, for the Year 1894. as taken from the Original Rolls on file & of record in my Office.

A. V. Bergeby
Assessor
Parish of St Bernard.

Parish of St Bernard
April 8th 1894

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1	2	3	4
	Louisiana Navigation Co. Ltd		.		6	642½	Acres Situated in S. E. Land District of Louisiana, embracing the Islands known as Isle au Pitre and other lands.		100			

Parish of St Bernard 1895 [illegible]

1192

OF TAXATION.

TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
WHITE	COLORED						
100		60	100		100		260

I certify the above and foregoing to be a true and correct extract from the Assessment Rolls of the Parish of St Bernard, State of Louisiana, for the year 1895, as returned from the Original Rolls and filed and of record in my office.

A. A. Chmyabs
Assessor
Parish of St Bernard

Parish of St Bernard
April 22nd 1895

Non Residents

Assessment Roll for the

No	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Taxed	OBJECTS 1	2	3	4	5	6	7
1	Louisiana Navigation Co Limited				6	[illegible]	Situated — do A & Land District of La. containing the Islands known as Lake Pelto and other lands		2.00						

Parish of St Bernard 1896 1904. 1123

OF TAXATION.

									TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	SCHOOL TAX	TOTAL TAX
									400		240	400		400		1040

Parish of St Bernard
October 1st 1904

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2 Cash value in lots, squares or parcels of ground, in incorporated or unincorporated Cities, Towns or Villages, with residences, or other improvements thereon.	3 Cash value of Horses, Mules, Neat Cattle, Sheep, Goats, Hogs, and all other Live Animals.	4 Cash value of all Wagons, Carts, Buggies, Carriages and all other Vehicles.	5 Cash value of Merchandise and Stock in Trade.	6 Cash value to be based on actual market value of capital stock, shares, etc., of all persons, associations of persons, business firms, corporations and gains less than real estate.	7 Cash value of Household Furniture, Gold and Silver Plate, Watches, Jewelry, and all other personal property not herein enumerated.
	Louisiana Navigation Co. Ltd				6	63 12/100	Situated in the S. E. land District of La, embracing the Island known as the Isle au Pitre and other lands		400						

Parish of St Bernard 1897 ~~1904~~. 1124

OF TAXATION.

7 Cash value of Household Goods, Silverplate, Jewelry, etc., not exempt from taxation.	8 All Moneys loaned or in possession.	9 Cash value of all bonds taxable by taxation, Notes, Judgments and other credits.	10 Cash value of all Steamboats, Steamships, barges and other watercraft.	11 Cash value of Annuities, Salaries, Incomes, etc., of all persons, associations of persons or business firms and corporations not subject to license.	12 Cash value of all property and things embraced in the 9 prior to deduction.	13 Cash value of all other property subject to taxation	14 Actual cash value of Land or lots and improvements, machinery and implements thereon not especially for purposes of taxation as required by latter part of Sec. 17, Act 170 of 1898	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
								400		240	400		400		1040

I Certify the above and foregoing to be a true and correct extract from the assessment Rolls of the Parish of St Bernard State of Louisiana for the year 1897 as taken from the Original Rolls now filed of record in my Office

Parish of St Bernard
April 6th 1904

Parish of St Bernard

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6	7
	Louisiana Navigation Co Ltd		-		6	63/100	Situated on the S.E. bank of Bush's Lake, embracing the Island known as the Isle au Pitre and other lands.		1.00						

Parish of St. Bernard 1898 ~~1904~~.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									400		240	400		400		1040

I certify the above and foregoing to be a true and Correct extract from the Assessment Rolls of the Parish of St Bernard, State of Louisiana, for the year 1898. as taken from the Original Rolls on file and of record in my Office

A. P. Gonzales
Assessor.

Parish of St Bernard.
April 2nd 1904

Parish of St Bernard.

5	6	7

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6
	Louisiana Navigation Co. Limited				6	1012 39/100	Situated in the S. E. Land Distt of La. embracing the Islands known as Isle au Pitre and other lands.		400					
	Sawyer Charles				7	1132 0	Fract South ½ of Sec. 15. East ½ fract S. W. ¼ and Fract East ½ of N.W. ¼ of Sec. 21. All of Sec. 22. 27. & 28. North ½ of Sec. 33. N.½ of Sec. 34. Containing (1440) acres and the S.½ of N.W.¼ & S.W.¼ of Sec. 28. W.½ of N.E.¼ & W.½ of Sec. 26. W.½ of N.E.¼ & N.W.¼ of Sec. 35. Containing 480 acres. All situated in T.S. 11. S.R. 19. East, in the South Eastern Land Distt East of Miss River and aggregating (1132 0. acres)		540					

Parish of St Bernard 1899 1904.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									400		240	400		400		1040
									560		336	560		560		1456

I certify the above and foregoing to be a true and correct Assessment of the Property of the Parish of St Bernard State of Louisiana for the year 1899. as taken from the Original Roll on file in my office.

W C Gonzales
Assessor

Parish of St Bernard
June 5th 1900

Parish of St Bernard

New Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Wool	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	Value of Real Estate	OBJECTS 1	2	3	4	5	6
	Louisiana Navigation Co													
							Situated in the S. to Land Dist of La containing the Islands, Towns &c &c in Rock & other Lands		2 00					
	Simon Charles													
	Alfred L. Reed													
	Chas F. Forsyth &													
	John M. Brown				7	322	Grad S 1/2 of Sec 15 East 1/2 fr. S of N 1/4 & Grad East 1/2 of N W 1/4 of Sec 21 All of Lots 1, 2, 3, & all North 1/2 of Sec 28 N 1/2 of Sec 26 Containing (322 acres) more or less the S 1/2 of N W 1/4 & S W 1/4 of Sec 23 N 1/2 of N E 1/4 & N W 1/4 of Sec 26 N 1/2 of N E 1/4 & S W 1/4 of Sec 25 Containing (160 acres) All situated in Tp No 11 N of R 12 East in the South Eastern Land Dist West of Miss River and Containing 482 acres		5 00					

Parish of St Bernard. 1900 ~~1904~~.

OF TAXATION.

1127

7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
								WHITE	COLORED						
								200		120	200		200		620
								640		324	540		540		1404

I certify the above and foregoing to be a true & correct extract from the assessment Rolls of the Parish of St Bernard State of Louisiana, for the year 1900 - as taken from the original Rolls on file and of record in my Office.

A B Gonzales
Assessor

Parish of St Bernard
April 2nd 1904.

Parish of St Bernard

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6	7
	Dunbar Sec 24		"		19	2132.76	S.E¼ of N.E¼. S.E¼. of S.W.¼ & S.E¼ of Sec. 11. 240 acres, N.E¼. Sec. N.E¼ of N.W.¼. S.½ of N.W¼ & S.½ of Sec. 12. 600 acres. All of Sec. 13. 640. acres. N.½ of N.W.¼ & E½ of Sec. 23. 400. acres. All of Sec. 24. 640. acres. All of Sec. 25. 640. acres. E½ of N.E.¼ & S.E¼ of Sec. 26. 240 Acres. West ½ of N.E¼ & Sec. 35. 80. acres. North ½ of South ½ and South ½ of N.½ of Sec. Sec. 480. acres in T.S. 11. S. of R. 19 East. Also the N.W.¼. of N.W.¼ & South ½ of N.W.¼ & S.W.¼. of Sec. 19. 280 acres. East ½ of Sec. 30 326. acres. in T.S. 12 S. of R. 20 East. Also All and entire the Islands designated as Preacher's Islands embracing all of Frac. Sec. 13. 8.32 acres. All Frac. Sec. 14. 141.52 Acres. All of Frac. Sec. 15. 108.84 acres. All of Fractional Sec. 22. 53.20 All of Frac. Sec. 23. 144.24 acres. and the West ½ of Sec. 24. 151.28 acres. T.S. 12. S. of R. 19 East. in the South Eastern Land Dist. East of the Three Rivers and Containing in the aggregate (5152.76 Acres)		644						

Parish of St Bernard 1900 — 1904. Continued

OF TAXATION.

1	6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
										6.-		18.-	6.-		6.-		1666

I certify the above & foregoing to be a true & correct abstract from the assessment Rolls of the Parish of St Bernard for State & Parish purposes for the year 1904 as taken from the original Rolls on file in my Office.

Parish of St Bernard.
April 22nd 1904.

O K Gernaby
Assessor
Parish of St Bernard

Non Residents.

Assessment Roll for the

Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6
Dunbar Geo W.		.		7	532 22/100	S.E. 1/4 of N.E. 1/4. S.E. 1/4. of S.W. 1/4. & S.E. 1/4. of Sec. 11. 240. acres. N.E. 1/4. Sec. N.E. 1/4. of N.W. 1/4. S. 1/2. of N.W. 1/4. & S. 1/2. of Sec. 12, 480. acres. All of Sec. 13. 640. acres. N. 1/2. of N.W. 1/4. & E. 1/2. of Sec. 23. 400 acres. All of Sec. 24. 640. acres. All of Sec. 25. 640. acres. East 1/2. of N.E. 1/4. & S.E. 1/4. of Sec. 26. 240. acres. East 1/2. of N.E. 1/4. of Sec. 35. 80 acres. N. 1/2. of S. 1/2. & S. 1/2. & N. 1/2. of Sec. 36. 480. — T.S. 11 S. of R. 19. E. & All N.W. 1/4. of N.W. 1/4. Sec. W. 1/2. of N.W. 1/4. & S.W. 1/4. of Sec. 19. 280. acres. West 1/2. of Sec. 30. 320. acres in T.S. 11. S. of R. 20 East. Also all & singular the Islands designated as Pinckney Island, embracing all of Fract. Sec. 13. 8 3/10 acres. All of Fract. Sec. 14. 141. 7/10 Acres. All of Fract. Sec. 15. 183 7/10 acres. All & Fract. Sec. 22. 533 3/10 acres. All of Fract. Sec 23. 114. 9/10 acres. and the Fract. West 1/2. of Sec. 24. 151 2/10 Acres. T.S. 12. S. of R. 19. E. in the South Eastern Land District East of Miss River. & Containing in the Aggregate (5132 22/100 Acres)		641					
Louisiana Navigation Co. Prop'r		.		6	632	Situated in the S. Eastern Land Dist of La embracing the Islands known as Polk and Pelican & other Lands		200					
Sanger Charles. All of L. Hunt Chas F. Forsyth Rep'r John McBrand		.		7	1120	Fract South 1/2. of Sec. 15. East 1/2. fract S.W. 1/4 & fract East 1/2. of N.W. 1/4. of Sec. 21. All of Sec 22. 27. 28. N. 1/2. of Sec. 33. N. 1/2. of Sec 34. Containing 3480 Acres & the E. 1/2 of N.W. 1/4. & S.W. 1/4. of Sec. 23. W. 1/2. of N.E. 1/4. & W. 1/2. of Sec. 26. W. 1/2. of N.E. 1/4. & N.W. 1/4. of Sec. 35. Containing 960 acres. All Situated in T.S. No. 11. S. R. 19. East in the South Eastern Dist. East of Miss River. & aggregating (4320. Acres)		640					

Parish of St Bernard 1901. 1904.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									641		38 46	641		641		1646
									200		120	200		200		520
									520		312	520		520		1352

I certify the above & foregoing to be a true and Correct Extract from the assessment Rolls of the Parish of St Bernard & State of Louisiana for the year 1901 as taken from the original Abstract on file and of record in my Office

Parish of St Bernard
1901 Dec 2nd 1901

Parish of St Bernard

Non Residents

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	Whole	Quarter	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation	When Paid	OBJECTS 1	2	3	4	5	6
	Dunbar Sec 11					0112½	S½ of S.E¼ S½ of S.W¼ & S½ of Sec 11 & 200 acres N½ by Sec No 14 of W½ S.E¼ of S.E¼ & South ½ of Sec 12 & 320 Acres All of Sec 14 & 640 acres N.½ of W.½ & East ½ of Sec 23 & 160 acres All of Sec 24 & 640 acres All of Sec 25 & 640 Acres East ½ of N.E¼ & S.E¼ of Sec 26 & 640 acres East ½ of N.E¼ of Sec 35 & 80 acres North ½ of South ½ & S.½ & N.½ of Sec 36 & 480 acres in P.S. 11 S of R. 1 East & the N.W¼ of N.W¼ S.½ of N.W¼ & S.W¼ of Sec 19 & 280 acres S.½ of Sec 30 320 acres in P.S. 11 S of R. 2 E Also all & entire the Islands designated as Peaceless Island embracing all of Frac Sec 11 & 80 Acres All of Frac Sec 12 & 161.20 Acres All of Frac Sec 13 & 103.20 Acres All of Fractional Sec 22 & 32.20 Acres All of Fractional Sec 23 & 11.20 Acres and the Frac West ½ of Sec 24 & 161.20 Acres P.S. 12 S of R. 1 East in the S. Eastern Land Dist Bank of Athens River and Containing in the (aggregate) 4112.20 Acres)		641					
	Horn John S					0160	Sec. 20. Containing 640 Acres more or less " 28 " 640 " " " " 34 " 640 " " " " 36 " 640 " " " 2560 All of the above Sections being in P.S. 12 S of R. 2 in the South Eastern District Dist of Wisc Terry & Containing more or less (2560 acres)		103					

Parish of St. Bernard 1903 ~~1904~~.

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
Cash value to be based on true & actual market value of capital stock, assessed value of real estate, personal property, franchises, etc., of persons, bodies corporate incorporated under laws filed 1902.	Cash value of household goods, furniture, jewelry, etc., not exempt from 1902 tax.	All kinds of personal property.	Cash value of all bonds, bank stocks, shares of stock, and all other credits.	Cash value of all securities, bonds, stocks, joint stock companies & mortgages.	Cash value of franchises, telephone, telegraph, express, sleeping car companies & all corporations not subject to license.	Cash value of all property not enumerated in this act.	Cash value of all other property not subject to taxation.	Actual cash value of Land or lots and improvements, machinery and implements thereon, not especially for purposes of taxation as required by latter part of Sec. 11, Act 170 of 1898.	WHITE	COLORED						
									644		234	644		644		1666
									183		109	183		183		675

I Certify the above and foregoing to be a true & correct extract from the Assessment Rolls of the Parish of St Bernard & State of Louisiana for the year 1903 as taken from the Rolls on file & of record in my Office.

W. E. Gonzales
Assessor
Parish of St Bernard.

Parish of St Bernard
April 2nd 1904

Residents.

Assessment Roll for the

NAMES OF TAXABLE PERSONS	POST OFFICE ADDRESS	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5
Brown John B.				7	632.70	S. fract. portion of Sec 17. Containing 498.70 Acres. more or less. N.E. 1/4 of S.E. 1/4 & S. 1/2. of N.W. 1/4. N.W. 1/4. & S.W. 1/4. the fract. E. 1/2 of Sec 19. Containing 519.10 Acres. more or less. All of Sec 21 except fract. S.E. Cor. Containing 582.30 Acres. more or less. Fractional S.W. Cor of Sec 21. Containing 92 Acres. more or less. All of Sec 30. except the Strip P.R. Lacoste. Containing 487.70 more or less. N.W. fract. Cor of Sec. 31. Containing 157.80 more or less. all the above lands being in T.S. 12. S.R. 13. in S.E. Land Dist of La. East of River. Containing all together (2 632.70 Acres)		316				
Isaacs Navigation Co. Ltd				6	632.70	All Certain lands at Isle au Pitre Viz. 3. Islands in Sect 20. 21. 28. & 29. T.10. S.R. 20. East. in S.E. East of River Land Dist. Containing 57.10 Acres. Also Certain Lands Situated in the S.E. Land Dist of La. embracing the whole of the Island Known as Isle au Pitre and other lands Viz. 1st The fract Sect Nos. 23. 24. 25. & 26 in T.S. No. 10. S. of R. 20. East. Containing 468.70 acres. 2nd The fract Sect 33 & 34. in T.S. No. 10. S. of R. 20. East Containing 69.30 Acres 3rd The fract Sect Nos. 27. 28 & 32. in T.S. 10. S. of R. 20. East Containing 310.70 Acres East fract Sec 1/2 of N.W. fract 1/4. Sec No. 5. in T.S. 11. S. of R. 20 East in the S. Eastern East of River Land District, Parish of St Bernard. Containing 33 acres.		200				

Parish of St Bernard 1903 ~~1904~~. Continued

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
									316		189	316		316		721
									200		120	200		200		520

I certify the above and foregoing to be a true and correct transcript from the Assessment Rolls of the Parish of St Bernard for the year 1903 of Colored lands, as taken from the original Rolls on file of record in my office

A Gonzales
Assessor
Parish of St Bernard

Parish of St Bernard
April 1st 1904.

Assessment Roll for the

Rancheros

Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	Value Paid	OBJECTS 1	2	3	4	5	6
Jay Lazare and Jos. M. Duncan					640	All of Sec. 24 & 25 also beginning N. W. Cor. Sec. 19 T. 12. S. R. 11 East in the Eastern Dist. of La. 640 Acres more or less		42					
Ruppel George					620	The East ½ of Sec. 23 Containing about 200 acres. The West ½ of Sec. 24 Containing about 200 acres. in T. 5. 11 S. R. 20 E. The N. W. ¼ Sec. 3 Containing 158 acres more or less in T. 12. S. R. 20 E. East. All of the above lands are in the Eastern Land District East of River and Containing 620 Acres more or less.		77					
Saenger Theatres Gilbert L. Heuck Chas. F. Forsythe and John M. Sloan					4320	Fract. S ½ of Sec. 15. East ½ fract. S. W. ¼ & fract. East ½ of N. W. ¼ of Sec. 20. All of Sec. 22 & ½ of N. W. ¼ of Sec. 30. W. ½ of Sec. 31. Containing (320 Acres) & the E. ½ of N. W. ¼ & S. W. ¼ of Sec. 25. W. ½ of N. E. ¼ & W. ½ of Sec. 26. W. ½ of N. E. ¼ & N. W. ¼ of Sec. 35. Containing (1280 acres) All Situated in T. 5. No. 11 S. of R. 19. East. in the South Eastern Dist. East of Miss. River & aggregating 4320 acres		540					

Parish of St. Bernard 1902 1904. Continued

1132

OF TAXATION.

7	8	9	10	11	12	13	14	TOTAL ASSESSMENT WHITE	TOTAL ASSESSMENT COLORED	STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
								60		87	63		63		1.63
								77		616	77		77		2.00
								540		324	540		540		14.04

I certify the above and foregoing to be a true and correct abstract from the assessment Rolls of the Parish of St Bernard, State of Louisiana for the year 1902 as taken from the Parish Assessment Rolls on file & of record in my office

C. H. Kenaday
Recorder

Parish of St Bernard.
April 27th 1902.

Parish of St Bernard

Sierra Plaintiff

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Sex	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	Value of Real Property	OBJECTS 1	2	3	4
	Dunbar Geo W				M	1102	S½ of NE¼, SE¼ of NW¼ & E½ of SW¼ of Sec 11 T20 R22 containing 162½ acres. Sec 12 T20 R22 containing 640 acres. All of Sec 13 T20 R22 containing 640 acres. N½ of NW¼ & NE¼ of Sec 24 T20 R22 containing 480 acres. All of Sec 25 T20 R22 containing 640 acres. All of Sec 26 T20 R22 containing 640 acres. W½ of NW¼ & SW¼ of Sec 27 T20 R22 containing 480 acres. W½ of NE¼ of Sec 34 T20 R22 containing 80 acres. E½ of SW¼ & W½ of SE¼ of Sec 36 T20 R22 containing 160 acres. Lots 1, 2, 3, 4 & E½ of W½ & W½ of NW¼ of Sec 19 T20 R23 containing 320 acres. All in Tp 11 S R 22 E Mdm. Also all & entire the Island designated as Paradise Island containing all of fractional Sec 18 T20 R23 containing 1102 acres. All of Govt Lot 1 Sec 14 T20 R22 containing 111 acres. All Govt Lot 2 Sec 14 T20 R22 containing 98½ acres. All Govt Lot 3 Sec 14 T20 R22 containing 132½ acres. All of Govt Lot 4 Sec 14 T20 R22 containing 111½ acres. And the Govt Lot 1 of Sec 24 T20 R22 containing 107½ acres. All in T 20 S R 19 East in the Mt Diablo Land District, State of California and containing in the aggregate 6182½ acres		641			
	Honor John S				M	1120	Sec 20 Containing 640 acres more or less " 26 " 60 " " " " 34 " 80 " " " " 35 " 300 " " " " 36 " 40 " " " 1120 All the above land being in T 20 S R 18 E in the South Eastern District East of River and containing in all 1120 acres		80			

Parish of St Bernard. 1903. 1904.

OF TAXATION.

8	7	8	9	10	11	12	13	14	Voters registered: White	Voters registered: Colored	State Tax	Parish Tax	Poll Tax	District Levee Tax	Acreage Tax	Total Tax
									Unof		3 Mill	Unof		Unof		1666
									183		149	183		183		675

I certify the above and foregoing to be a true & correct extract from the Assessment Rolls of the Parish of St Bernard, State of Louisiana, for the Year 1903 as taken from the Original Rolls on file and of record in my Office.

C. [illegible]
Assessor
Parish of St Bernard.

Parish of St Bernard.
Opened 2nd week.

Assessment Roll for the

Residents

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2 Cash value in lots, square or parcels of ground, in incorporated or main or unincorporated Cities, Towns or Villages, with residences, or other improvements thereon	3 Cash value of Horses, Mules, Geldings, Cattle, Sheep, Goats, Hogs, and all other Live Animals.	4 Cash value of all Wagons, Carts, Buggies, Carriages and all other Vehicles.	5 Cash value of Merchandise, Stock in Trade,
	Konon John P.				7	245	South Frac. portion of Sec. 17 Containing 159.70/100 Acres more or less N. E. of S. E. 1/4 & S. 1/2 of N. W 1/4, N. W. 1/4 & S. W. 1/4 & the Frac. East 1/2 of Sec. 19 Containing 319.1/2 Acres more or less. All of Sec. 20 except Frac. S. E. Corner Containing 302.50/100 Acres more or less. Frac. N. W. Cor. of Sec. 21 Containing 96. Acres more or less. Frac. N. W. Cor. of Sec. 29 Containing 183.50/100 more or less. All of Sec. 30 except the Strip of R. R. Land etc. Containing 487.40/100 Acres more or less. N. W. Frac. Cor. of Sec. 13 Containing 181.60/100 Acres more or less. all the above lands being in T. S. 12 S. R. 13 E. in the S. E. Land Distr. East of River Containing & More than 245 32.50/100 Acres		316				
	Louisiana Navigation Co of Lands				6	6332	A Certain lands at Isle au Pitre Viz: Islands in Sec. 20. 21. 28. & 29. T. S. 10. S. R. 20 East. in the S. Eastern East of River Land Distr. Containing 57.50/100 Acres Also Certain Lands Situated in the S. E. Land Distr. of La. embracing the Whole of the Island known as Isle au Pitre, and other Islands Viz: 1st The Frac. Secs Nos. 23. 24. 25. & 26. in T. S. 10. S. R. 20. East. Containing 468.70/100 Acres. 2nd The Frac. Secs 33. & 34. in T. S. 10. S. R. 20 East. Containing 569.70/100 acres. 3rd The Frac. Secs Nos 27. 28. & 32. in T. S. 10. S. R. 20. East. Containing 380.70/100 Acres. East Frac. 1/2 of N. W. Frac. Sec. No. 4. in T. S. 11. S. R. 20. East. in the S. E. East of River Land District Parish of St Bernard & Containing 33. acres.		200				

Parish of St Bernard 1903 1904. Continued

1134

OF TAXATION.

6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
Cash value to be based on actual market value of capital stock, shares, etc., of all persons, associations of persons, business firms, corporations and pools over those assessed.	Cash value of Household Goods, Silverplate, Jewelry, etc., not exempt from taxation.	All Money owned or in possession.	Cash value of all bonds liable to taxation, Notes, Judgments and other credits.	Cash value of all Steamboats, Steamships, Barges and other watercraft.	Cash value of Annuities, Salaries, Incomes, etc., of all persons, associations of persons or business firms and corporations not subject to license.	Cash value of all property and things enjoyed or the privilege of industry.	Cash value of all other property subject to taxation	Actual cash value of Land or lots and improvements, machinery and implements thereon, not especially enumerated above, as fixed by, required by latter part of Sec. 17, Act 136 of 1898	WHITE	COLORED						
									316		189	316		316		821
									200		120	200		200		520

I certify the above and foregoing to be a true & Correct extract from the assessment Rolls of the Parish of St Bernard State of Louisiana for the year 1903 as taken from the Original Rolls on file & of record in my Office.

A Chongalez
Assessor
Parish of St Bernard

Parish of St Bernard
April 2nd 1904

Non Residents.

Assessment Roll for the

No.	Names of Taxable Persons	Post Office Address	White	Colored	Ward	No. of Acres	Description of Lands, Lots, Live Animals, Machinery, Vehicles, Credits, Franchises, Building Material and other Property subject to Taxation.	When Paid	OBJECTS 1 Cash value of Lands	2	3	4	5	6
									1 Cash value of Lands	2 Cash value in lots, occupation of parcels of ground, in incorporated or unincorporated Cities, Towns or Villages, with erections on, or other improvements thereon	3 Cash value of Horses, Mares, Mules, Geldings, Colts, Neat Cattle, Sheep, Goats, Hogs, and all other Live Animals.	4 Cash value of all Wagons, Carts, Dray, Carriages and all other Vehicles.	5 Cash value of all Merchandise or Stock in Trade.	6 Cash value of all [illegible]
	Lopez Lazarro and Wm. K. M. Ducate.		"			570	All of Sec 26 & 27. also Island N. W. of L. & K. in T.S. 12. S.R. 18. East in the Eastern Dist of La. 570. Square acres more or less.		68					
	Ruppel Georgs.		"			620	The East 1/2 of Sec 33. Containing about 200 acres. The W. 1/2 of Sec 34. Containing about 200 acres. T.S. 11. S.R 20. East. The N.W. 1/4 Sec No. 3. Containing more or less 70 acres. The N.E. 1/4 Sec. No 4. Containing 150 acres. in T.S. 12. S.R. 20. East. All of the described lands are in the South Eastern Land Dist. East of Miss River. and Containing 620 acres more or less		77					
	Saugn Charles Albert L. Hunt Chas F. Forsythe & John M. Grace		"		7	1320	Fractional S 1/2 of Sec. 15. East 1/2. Fract. S.W. 1/4. & Fract East 1/2 of N.W. 1/4. of Sec. 20. All of Sec 22. 27. & 28. N. 1/2. of Sec. 33. N 1/2. of Sec. 34. Containing (1340 acres) and the S 1/2. of N.W. 1/4. & S.W. 1/4. of Sec. 23. W. 1/2. of N.E. 1/4. & W. 1/2. of Sec. 26. W. 1/2. of N.E. 1/4. & N.W. 1/4. of Sec. 35. Containing (880. acres) all situated in T.S. 11. S.R. 19. East. in the South Eastern Dist. East of Miss River and aggregating 1320. Acres.		540					

Parish of St Bernard 1903. ~~1904~~. Continued

OF TAXATION.

5	6	7	8	9	10	11	12	13	14	TOTAL ASSESSMENT		STATE TAX	PARISH TAX	POLL TAX	DISTRICT LEVEE TAX	ACREAGE TAX	TOTAL TAX
										WHITE	COLORED						
										63		57	63		63		183
										77		46	77		77		200
										540		324	540		540		1404

I certify the above and foregoing to be a true and Correct extract from the Assessment Rolls of the Parish of St Bernard State of Louisiana, for the year 1903 as taken from the Original Rolls on file and of record in my Office.

A Ortego Parish
Assessor

Parish of St Bernard
April 2nd 1904.

Parish of St Bernard

1279 DOCUMENT No. 66.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans, City of New Orleans.

Be it known, that on this sixteenth day of the month of January, in the year of our Lord, one thousand nine hundred and of the Independence of the United States of America, the one hundred and twenty-fourth,

Before me, William F. Brewer, a notary public, duly commissioned and qualified, in and for the parish of Orleans, State of Louisiana aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned: Personally came and appeared: Charles Sanger, a resident of Bay St. Louis, Mississippi,, temporarily in this city of New Orleans, La., of full age of majority who declared, that he does, by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which he has or may have against all preceding owners and vendors unto Albert L. Hunt, of Richmond, Va. Charles F. Forsythe and John McGraw, both residents of this city, here present, accepting and purchasing for themselves, their heirs and assigns, and acknowledging due delivery and possession thereof, all and singular *one undivided one-fourth (1/4) to each* of the following described property or lands situated in the parish of St. Bernard, Louisiana, *to-wit:* Fractional south half of north east quarter and fractional south half of section fifteen, east half; fractional southwest quarter and fractional east half of north west quarter of section twenty-one; all of sections twenty-two, twenty-seven and twenty-eight. north half of section thirty-three, north half of section thirty-four, containing three thousand, four hundred and forty acres, and the south half of north west quarter and south west quarter of section twenty-three; west half of north east quarter and west half of section twenty-six; west half of north east quarter and north west quarter of section thirty-five, containing eight hundred and eighty acres. All situated in township No. eleven south of range No. nineteen east in the south eastern land district east of Mississippi river and aggregating four thousand, three hundred and twenty acres according to the plats of U. S. surveyor general on file in the office of the Board of Commissioners for the Lake Borgne Basin Levee District.

Being the same property which was acquired by the present vendor by purchase from the Board of Commissioners for the Lake Borgne Basin Levee District, by act under private signature, of date September 16, 1898, and on same date, before Chas. B. Upton notary public in New Orleans, the signature- of the subscribing parties were sworn to by Jos. R. Bres, one of the witnesses in said act; registered

in the parish of St. Bernard, La., on December 8, 1898, in Conveyance Book, No. 19, folios 349 *et seq.*

To have and to hold the above described property unto the said purchasers, their heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of *four hundred and five dollars* (*the sum of one hundred and thirty-five dollars being paid by each of* the purchasers herein) cash, which the said purchasers have well and truly paid, in ready and current money, to the said Chas. Sanger who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

The said *Chas. Sanger* here declared, that he has been 1280 married but once and his said wife is alive and residing with him in Bay St. Louis, Miss.

All State and city taxes up to and including the taxes due and exigible are paid as per declarations of the parties hereto.

The mortgage, conveyance, and tax certificates are waived by the parties hereto, who exonerate me, notary, from all responsibility for their non-production.

Thus done and passed, in my office, in the city of New Orleans on the day, month and year herein first above written, in the presence of Messieurs *James H. Nobles* and Oliver T. Nobles, competent witnesses, who hereunto signed their names with the said appearers, and me, notary, after reading of the whole.

(*Original signed*) CHS. SANGER.
JOHN McGRAW.

JAS. H. NOBLES.
O. T. NOBLES.

A. L. HUNT,
By W. S. PARKERSON, Att'y.
CHAS. F. FORSYTHE,
By W. S. PARKERSON, Att'y.

{ Seal William F. Brewer, Notary Public, Parish of Orleans, State of Louisiana. }

W. F. BREWER,
Notary Public.

A true copy of the original on file and of record in my office.
W. F. BREWER, Not. Pub.

[U. S. inter. revenue stamp.]

Duly registered at the parish of St. Bernard on the 23d day of January A. D. 1900 in Conveyance Book No. 19 folio 415 *et seq.*

{ The Seal of the Clerk of the Parish of St. Bernard, State of Louisiana. }

JAS. D. ST. ALEXANDRE,
Clerk, *ex Officio* Recorder.

(Endorsed:) Copy. January 16, 1900 Sale Chas. Sanger to Albert L. Huntt Chas. F. Forsythe and Jno. McGraw. W. F. Brewer, notary public 137 Carondelet St. New Orleans La. Document No. 66 offered by State of Louisiana April 28 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1281 DOCUMENT No. 67.

Extract from Appleton's Cyclopedia of Biography, 1856.

Page 229.

Darby, William, author of various geographical works from 1816 to 1821—now superseded by others adapted to the advancement of the country, and also editor in 1823 of Brook's Gazetteer. He was an able engineer and was employed in surveying the boundary between the United States and Canada. He also served in the army under General Jackson in Louisiana.

(Endorsed:) Extract from Appleton's Cyclopedia of Biography 1856. Document No. 67 offered by State of Louisiana, May 30, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1282 DOCUMENT No. 68.

Extracts from a Geographical Description of the State of Louisiana, the Southern Part of the State of Mississippi, and Territory of Alabama, &c.,

Together with

A Map

From Actual Survey and Observations, Projected on a Scale of Ten Miles to an Inch, of the State of Louisiana and Adjacent Countries.

Second Edition, Enlarged and Improved.

By William Darby.

New York, 1817.

Preface to First Edition.

* * * * * * *

Page IX.

A period of near eleven years has now elapsed since this work was first undertaken. Most of that time has been employed in the collection of materials, &c.

Page 52.

To the left of the Mississippi river, and right of Lakes Maurepas, Pontchartrain and Borgne, the country, except upon the margin of the streams, where timber is alone found, presents one vast grassy marsh, interspersed with lakes.

1283 Page 71.

(Under the head of "Parish of Plaquemines," which included the present parish of St. Bernard.)

The settlements are confined to the banks of the Mississippi, above Fort St. Philip, and those of Terre au Bœuf, above its confluence with Lake Lery. Some lands fit for culture exist on Bayou Bastien; but not of great extent, and remain mostly unoccupied. The border of the Mississippi and Terre au Bœuf are similar in soil and timber. When receding but a short distance from either, the surface of the earth sinks to a level with high tide; and is devoid of wood, is covered with grass, and is an irreclaimable morass.

Page 72.

Fort Darby, at the confluence of Terre au Bœuf, and the discharge of Lake Lery, was built during the campaign of 1815, under the direction of the author of this work, by order of General Jackson, to prevent the advance of the enemy through the Terre au Bœuf, or Riviere aux Chenes.

Page 308.

The islands of Malheureux, Marianne, and Cat-island, are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possessions of each State.

The islands are in themselves of no great consequence, they are mere banks of sand, decorated with sea myrtle and a few pine trees. There are two good harbours contiguous to Cat-island, but its position will render them in a great measure useless to navigation, except as a temporary shelter to vessels approaching the coast.

On the map accompanying the book is the following entry on the peninsula which is part of the present parish of St. Bernard: "This peninsula has never been surveyed N. E. of Bayou Terre au Bœuf; the coast and interior remain but imperfectly known. The surface is flat, and but little elevated above the level of the sea.

Page 357.

Explanation of the Map.

The principles upon which the large map of Louisiana and adjacent regions has been framed, demand a more explicit development than will be found in the body of the work.

The points upon the 31° N. latitude, were laid down from Ellicott's survey. The same *like* was subsequently to Ellicott's survey, extended to the Sabine river by the authority of the United States Government. From the line of 31° N. lat. was made the general survey of the State of Louisiana, the State of Mississippi, and
1284 the south part of Alabama territory, &*ct.* * * *

I was myself one of the surveyors employed in the work from 1806 to 1814, &*ct.* * * *

I was obliged, however, to make very expensive admeasurements beyond the work performed in virtue of the laws of the General Government. The State of Louisiana south of Red river, and west of the meridian of Nachitoches, has never been surveyed except by myself. The waters of the Sabine, the mouth and western branches of the Calcasiu river, were surveyed by me in 1812 and 1813; and at my sole expense. The same process I was obliged to perform with many other parts of the country; particularly West Florida, Mobile bay, *the islands between Mobile bay and the mouth of the Mississippi*, and the numerous outlets of the latter stream. The parish of Orleans, and the coast of the gulf of Mexico from the mouth of Lafourche to Baritaria inclusive, was laid down from a survey made by Mr. B. Lafon, in virtue of an order of the supreme court of the then Territory of Orleans, &*ct.* * * *

(Signed) WILLIAM DARBY.

New York, August 25th 1817.

(Endorsed:) Extracts from Wm. Darby's Geographical Description of the State of Louisiana, &*ct.* and accompanying map. Document No. 68 offered by State of Louisiana May 30 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1285 DOCUMENT No. 69.

Extracts from Emigrant's Guide, by William Darby, 1818.

Page 19.

The inside passage from New Orleans to Mobile and Blakely, and of consequence to all the country upon the waters of Mobile, Alabama and Tombigby rivers, is perfectly safe and commodious for small vessels. The depth of water in the passes of Christian and Heron is not sufficient in ordinary times for vessels of more than six feet draught. The force of the sea is broken by the long peninsula that bounds Lake Borgne on the south-east, and by a chain of islands consisting of Malheureux islands, Marianne islands, Cat-island, Ship island, Isle aux Petit Bois and Dauphin island. The bottom of this strait is soft sand.

A singular circumstance communicated to the author by an intelligent commander of a vessel respecting the nature of the component parts of the banks upon the islands and main shores, may be of some use to persons navigating in this place. The person who made the communication had navigated frequently between New Orleans and Mobile; and observed that in the darkest night he could always determine on which side of the strait the vessel was; as along the islands there were no shells mixed with the sand, whilst broken shells were invariably brought up by the lead when on the main shore. This information is introduced here with the more confidence, because perfectly corresponding with the observations of the author.

The southern shore of Lake Pontchartrain is low land, scarcely rising above common tides, with very little timber. There are two passages from Lake Pontchartrain into Lake Borgne, the pass of the Rigolets and that of Chefmenteur. The latter is of little consequence, not having more than four feet of water at its respective bars. The Rigolets are properly the mouths of Pearl river, and afford nine feet water at each extremity. This pass either in a commercial, naval or military view, is of great consequence; it is in fact, after the Mississippi the most important inlet of Louisiana, and ought to be strongly fortified.

Lake Borgne is a prolongation of the strait reaching from the Rigolets to Mobile. It is thirty five miles in length from Cat island to the mouth of Bayou Bienvenu, with a medial width of twelve miles. Lake Borgne is checkered with two groups of small islands, Malheureux and Marianne islands. It is extremely shoal; excepting a narrow channel running along its north-western border, there is not more than two feet of water to be found in the whole expanse of the lake. Lake Borgne is terminated on N. E. by the beautiful Bay St. Louis; on the east by Cat island, and S. E. by a long flat peninsula already noticed.

There are three passes from the east extremity of Lake Borgne the pass of Christian, the pass of Marianne, and that of the south-east. The former is generally used in navigating between Mobile and New Orleans. There is excellent anchorage on the south-west and north of Cat island. The island itself is a mere bank of sand, but might be rendered of importance by its position. It was to the south of this island that the British ships of the line lay during the campaign of 1814–15 in Louisiana; their smaller vessels took shelter on the north side of the island.

1286 Page 16.

From the mouth of the Mississippi river a strong current sets westwardly along the shores of the Mexican gulf, carrying with it timber brought by that stream. That this current is uniform is proved by the fact that none of the debris thrown into the Gulf by the Mississippi is found to the north-east of the mouth of that river,

whilst to the west the whole coast is strewed with cottonwood, cypress and other trees, with rails, planks, pieces of flat-bottom boats, and in fact wood in all its forms into which it is generally wrought and left exposed to be swept away by the flood.

Page 16.

It would appear from an inspection of a map of the gulf of Mexico and Carribean sea, that the current flows from the latter into the former between Cape St. Antoine, and assuming a northern direction, reaches the shore of Florida between Apalachicola and Mobile rivers, and there divides; one part traversing the western shore of East Florida, encounters and is carried away by the Gulf stream between Florida point and the island of Cuba; but much the largest mass turns to the west, passes along West Florida, Alabama Territory, the State of Mississippi, Louisiana, and the province of Texas, until reaching the bay of St. Joseph, it winds with the coast to the south along the shore of the vice-royalty of Mexico, and finally sweeping the bay of Campeachy and the western and northern shores of Yucatan, meets the current from which it originated. This current is the parent of the Gulf stream, and divides the gulf of Mexico into two immense, but unequal, whirlpools.

(Endorsed:) Extracts from Emigrant's Guide by William Darby. 1818. Document No. 69 Offered by State of Louisiana May 30 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1287 DOCUMENT No. 70.

Extracts from Emigrant's Guide, by William Darby.

Page 16.

The settlements continue in descending the Mississippi, from New Orleans compactly on both banks of the river to Point lè Hache. Terre aux Bœuffs is a settlement, which is connected with those on the Mississippi, and winds along both banks of a small ancient outlet. The lands upon the Terre aux Bœuffs are excellent. Sugar, cotton, and cattle are the staples of the settlement, and some fine sugar houses are established. The adjacent country towards Lake Borgne and Chandeleur bay is an open grassy morass.

Page 41.

As to families, the provision of musqueto curtains is absolutely indispensible. * * *

The author was one who learned, from dear bought experience, this useful addition to his traveling equipments. During a resi-

dence of nearly sixteen years. in the region near and in the delta of the Mississippi, the only indisposition of any great consequence he ever experienced, was in first descending the Mississippi to Natchez; and his sickness was then occasioned by the pain and venom of the sting of the musquito.

(Endorsed:) Extracts from Emigrant's Guide by William Darby. Document No. 70 offered by State of Louisiana, May 30, 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1288 DOCUMENT No. 71.

Treaty between the United States and Spain, February 22d, 1819.

Article III.

The boundary line between the two countries west of the Mississippi shall begin on the gulf of Mexico at the mouth of the River Sabine in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches or Red river; then following the course of the Rio Roxo westward to the degree of longitude 100 west of London and 23 from Washington; then crossing the said Red river and running thence by a line due north to the River Arkansas, then following the course of the southern bank of the Arkansas to its source in latitude 42; and thence by that parallel to the South sea. The whole being as laid down in Melish's map of the United States published at Philadelphia improved to the first of January 1818, &c.

* * * * * * *

(Endorsed:) Treaty between the United States and Spain February 22d 1819. Document No. 71. Offered by State of Louisiana May 30 1904. Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

1289 DOCUMENT No. 72.

Extract from Report upon the Physics and Hydraulics of the Mississippi River, &c., &c., by Capt. A. A. Humphreys and Lieut. W. L. Abbot.

Page 482.

As already explained in chapter 2, the tides of the Gulf at the mouths of the Mississippi are of the diurnal, or single day type, being when the moon's declination is least, scarcely perceptible, and when greatest, about 1.5 feet.

The investigations of the Coast Survey have also shown that the tidal wave approaches the mouths of the Mississippi from a south-easterly direction. With this tidal wave there is near the coast a tidal current in the same general direction. The tidal wave lifts up the river current in the Gulf, and the tidal current passes under it, though checking it to some extent in so doing. The direction of this current, is modified by its contact with the river current, and to a greater degree, by its contact with the outer slope of the bar deposit. In the case of the South-west pass, a flood tide brings a current from the south-east, which is changed to a south-westerly direction, more westerly than that of the river current, by the bar deposit along the eastern side of the mouth of the pass. The ebb tide is accompanied by a current from the opposite direction, which is similarly diverted by the deposit on the western side of the mouth of the pass, the direction being more southerly than the current of the river. Winds may change the direction and force of these currents, which in mid-river current, at a depth of 40 feet, are shown by observations to vary from 0.3 to 2.5 ft. per second, the mean being about 0.5. As a velocity of 0.5 of a foot per second is sufficient to transport the material of which the bar is formed, the action of Gulf currents in carrying into deep water the material pushed by the river into the Gulf, is apparent.

(Endorsed:) Extract from Report upon the Physics and Hydraulics of the Mississippi River, by Capt. A. A. Humphreys & Lt. W. L. Abbot. Document No. 72. Offered by State of Louisiana, May 30 1904 Frank H. Mortimer, commissioner Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

1290 DOCUMENT No. 73, Offered by the State of Louisiana. Wm. D. Bullard, Commissioner.

Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, Clerk.

26TH CONGRESS, 1st *Session.* (SENATE.) (163.)

Document Relating to a Survey of the Coast of the State of Mississippi.

February 10, 1840.

Presented by Mr. Walker, Referred to the Committee on Commerce, and Ordered to be Printed.

Report of John Wheeler, Esq., of His Surveys of the Mississippi Seacoast.

December 13, 1839.

The undersigned, having been commissioned by your excellency engineer to survey the coast and harbors of Mississippi, by author-

ity of the act of the legislature, entitled "An act to provide for a survey of the Mississippi coast," begs leave to report that he has performed that duty, and herewith presents a chart, representing the result of his survey.

The language of the act, and the limited means provided for this work, do not justify the opinion that a very minute survey was designed, and only such a one as would enable the legislature to determine whether the State has within her limits any harbor or harbors suitable for and adapted to commercial purposes. With this view of the subject, the undersigned, at an early day after his appointment, proceeded to the task assigned him, and has made a survey sufficiently accurate to solve the question involved in the act of the legislature.

The State possesses a seashore of seventy miles on a direct line from east to west, and more than one hundred including the meanderings of the coast. In the main, this shore presents a high, healthy, and well timbered bluff, free in a great measure from the low and marshy swamps peculiar to southern latitudes.

1291 It is protected in its whole extent by a chain of islands extending from Dauphin island on the east to Cat island on the west. These, by their position to the coast, furnish many and various harbors, all more or less suitable for the anchorage of vessels, according to the depth of water found in them, which depth is clearly designated on the chart.

It will be perceived, on an examination of the chart, that the State has within her limits three bays of some magnitude—the bay of Pascagoula, the bay of Biloxi, and the bay of St. Louis: to these may be added that portion of Lake Borgne near the mouth of Pearl river. These, of themselves, without the aid of the islands off their junction with the Gulf, form safe and convenient harbors for the reception and anchorage of steamboats and other vessels of a minor class; but the depth of water through the channels communicating with them is not sufficient for the safe ingress and egress of vessels drawing more than ten feet of water; and hence they cannot be used to the extent necessary for the important purposes of commerce but they will always furnish important auxiliaries to the main harbor, and yield, through themselves and their tributaries, an extensive trade in timber—a trade which promises to be of vast importance to the commercial interest of the State.

The most important and available harbor on our coast is that formed more particularly by Ship and Cat islands. It will be perceived that these islands lie parallel with the shore, and at the mean distance of ten miles from the mainland, and are so situated with regard to the harbor, that they form a complete and ample protection for vessels at anchor. Ships may ride in perfect safety immediately under the lee of either of these islands, and within fifteen fathoms of the shore, being in this position amply protected from all seaward storms. The bottom of this harbor is peculiarly formed for safe anchorage, being composed mainly of soft mud, mixed with

sand and clay, which is the most permanent and safe for the mooring of ships; nor is its excellency in this respect impaired by sand-bars or rocks, always the most dangerous obstruction to navigation.

1292 The greatest danger to which a ship at anchor is subject is that arising from the height and consequent swelling of the sea, which, in an unsafe harbor, is often sufficient to drive her from her moorings, and cause her loss, either from the effect of the breakers, or the being cast upon a lee shore; but these difficulties are not to be apprehended in the Mississippi City harbor, because it is so completely land-locked, and protected on all sides, that no heavy sea will ever accumulate, and, consequently, no danger is to be apprehended from this cause.

The harbor is conveniently situated to the main land, which forms one of its boundaries; and the ordinary class of merchant ships can approach with safety to within one mile of the shore, for the purpose of receiving or discharging their cargoes. This distance, when we consider the favorable character of the bottom for the construction of wharves, is inconsiderable, and may, at a comparatively light expense in the construction of those wharves, be overcome, so as to save the expense of lighterage—a very considerable tax imposed upon the neighboring ports of New Orleans and Mobile.

The main entrance into the harbor is found at the west end of Ship island, and at medium tide has not less than twenty-three feet of water throughout the channel of one and a half mile in width, through which ships of war and other vessels can sail into and out of the harbor in perfect safety.

This channel can be well protected by the erection of naval forts—one on the western extremity of Ship island; and one on the bar or middle ground, west of the channel, as designated on the chart.

Besides this, there are two other channels, both between Dog island and Horn island, through which vessels can enter; but these, by reason of their narrowness and uneven bottom, are inferior to the one first mentioned, and would not be used except in good weather, and by experienced pilots. Also, by a reference to the chart it will be perceived that there are two other channels—one between Horn island and Petit Bois island, of the depth of 15 feet, leading into Horn Island sound, where there is good anchorage; the other

1293 between Cat island and the Louisiana marsh, leading *though* the south pass, towards Lake Borgne; but owing to their situation, they probably will not be much used.

With regard to the practicability of erecting a city or commercial depot on our coast, there cannot be a doubt; the whole coast presents one bold front, elevated some sixteen feet above the tides, and commanding a handsome and picturesque view of the islands, bays, and distant deep, and richly timbered with forests of valuable timber. Hence, at almost any point a city could be founded; but the precise location is a subject of some importance.

The city should be located near the most important harbor, for the sake of convenience, as well as its defence. Any point within the ranges ten and eleven are equally distant from the main anchorage, and near the line dividing these ranges the Mississippi City is situated.

The improvements made by the proprietors of this infant city have already given it some claims to a commercial character; in reference to the harbor, and the bay of Biloxi in the rear, it is certainly susceptible of being made a most important commercial point. An inconsiderable expense, compared with the importance of the object, would be sufficient to connect, by a canal of two miles in extent, the waters of the harbor with those of the bay in the rear of the city; and thus form a water communication through the heart of the city, and furnish at the same time an unquestionable retreat for steamboats and small vessels during the heaviest weather.

The Pearl and Pascagoula rivers, with their tributaries, extending as they do to the interior of the State, will afford, with a moderate improvement of their navigation, channels for the transportation of a considerable portion of the produce of the State.

The entrance of these rivers into the Gulf is about equidistant from the Mississippi City harbor, and the navigation thence for steamboats is much safer than to New Orleans.

Nor should we omit the restoration of Pass Manchac to its former navigable character, which was during the last war obstructed for purposes of national defence. Mississippi certainly has the
1294 clear right to demand its re-opening, and so make our own harbor accessible to steamboats descending the Mississippi river, and thus place the whole commerce of the State directly within our own reach.

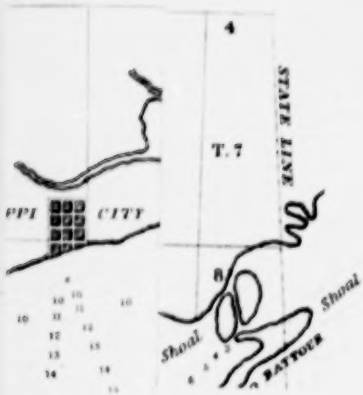
Thus it is the opinion of the undersigned that the State of Mississippi possesses within her own limits a harbor amply sufficient for her purposes, and which holds out the bright prospect of commercial independence, with the aid it deserves, and which the interest of the State demands.

All of which is most respectfully submitted.

JOHN WHEELER, Engineer.

To his excellency A. G. McNutt, governor of the State of Mississippi.

(Here follows map marked page 1295.)



FOLD OUT IS TOO LARGE TO BE FILMED

1296 DOCUMENT No. 74.

Louisiana Land Office.

Patent No. 726. Dec. 27th, 1853.

Mary C. Gordon, Patentee, of the Parish of Orleans.

Description of Land Patented.

Parts of sections.	Section.	Township.	Range.	Quantity.	District.
All south & west of Bayou St. Malo, except	33				
S. E. ¼ of S. E. ¼ and N. W. frac'l ¼...	33	13	16		
Total	.....	.....	.....	.....	S. E. dist.

Certificate No. 449.
Action had by the Secretary of the Treasury.

1297 STATE OF LOUISIANA, }
City of Baton Rouge. }

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 726, as appearing in volume No. 1, page 251, of record at this office.

Given under my hand and seal of office this 8th day June A. D. 1904.

A. W. CRANDELL,
[SEAL.] Register of the State Land Office.

(Endorsed:) Document No. 74 offered by State of Louisiana, August 25, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

1298 DOCUMENT No. 75.

THE STATE (Vignette) OF LOUISIANA.

Patent No. 7850.

To all to whom these presents shall come, Greeting:

Whereas, W. A. Gordon of the parish of St. Bernard in the State of Louisiana, purchased per certificate No. 772 N. S. dated, July 5th, 1854 all of fractional section thirty two and the south east quarter of the south east quarter and the south west quarter of the south west quarter thirty three and that portion south and west of Bayou St. Malo in section No. thirty-four in township No. thirteen south range No. sixteen east in the Southeastern East of R. land district, parish of St. Bernard containing three hundred and six 90/-00 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give grant and sell unto the said W. A. Gordon and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges, thereunto belonging, unto the said W. A. Gordon and to his heirs and assigns forever.

In testimony whereof, I, William Wright Heard, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge, on the twenty second day of May in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and 25.

By the governor.

W. W. HEARD.
JAS. M. SMITH,
Register State Land Office.

Record of patent vol. 33 page 114.

STATE OF LOUISIANA,
City of Baton Rouge.

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 7850, as appearing in volume No. 33, page 114, of record at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 75. Offered by State of Louisiana, August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1299 DOCUMENT No. 76.

Louisiana Land Office.

Patent No. 10331. July 31st, 1861.

Louis Palms, Patentee, of the Parish of Orleans.

Description of Land Patented.

Parts of sections.	Section.	Township.	Range	Quantity.	District.
Lots 5, 6, 10, 11, 12, 13, 16, 17, 18, 19, 20 S. E. ¼ of S. E. ¼ & S. E. ¼ of N. E. ¼..	22				
All of N. & E. of Bayou St. Malo.....	34				
S. W. ¼ of N. W. ¼ of.....	23				
All of frac'l.....	28	13 S.	16 E.		
Total	.....	.....	.....	856.24	S. Eastern.

Certificate No. 3485

1300 STATE OF LOUISIANA, }
Baton Rouge. }

I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 10,331; as recorded in Patent Record No. 11, page 269, on file in this office.

Given under my hand and seal of office, on this the 7th day of June A. D. 1904.

A. W. CRANDELL,
Register of the State Land Office.

[SEAL.]

(JUMEL, C.)

(Endorsed:) Document No. 76. Offered by State of Louisiana, August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1301 DOCUMENT No. 77.

STATE OF LOUISIANA.

Patent. (Vignette.) No. 144.

To all to whom these presents shall come, Greeting:

Whereas, A. W. Morse, assignee F. M. Stevens of the parish of Orleans in the State of Louisiana, purchased per certificate No. 3 N. S. L. G. dated 28th Nov. 1864, the following described swamp land subject to tidal overflow to wit:—The N. E. 4 of section 31 and the N. W. 4 of section No. 32, in township 13 S. of R. 17 E., in southeastern land district of Louisiana east of the Mississippi river, containing three hundred and twenty acres 2 320,00 / 100 according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided has given, granted and sold, and by these presents does give, grant and sell, unto the said A. W. Morse of Orleans and to his heirs the above described land to have and to hold to the same together with all the rights, titles and privileges thereunto belonging, unto the said A. W. Morse and to his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twenty second day of December in the year of our Lord, one thousand eight hundred and sixty six and of the Independence of the United States the ninety first.

By the governor
(Signed) J. MADISON WELLS.
AD. DUPRE, Register.

Record of patent, vol. 15, page 69.

True record of the original this day delivered to patentee.
AD. DUPRÉ, Register.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 144, as appearing in volume No. 15, page 69, of records at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[SEAL.] A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 77. Offered by State of Louisiana. August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1302 DOCUMENT No. 78.

STATE OF LOUISIANA.

Patent No. 143. (Vignette.)

To all to whom these presents shall come, Greeting:

Whereas, A. W. Morse of the parish of Orleans in the State of Louisiana, purchased per warrant No. 52, dated 8th December 1864 the following described swamp lands subject to tidal overflow to wit:—All of south half of section 32 in T.-13-S.-of-R.-No. 17 east in the south eastern land district of La.—East of the Mississippi river parish of St. Bernard, containing three hundred and twenty 00/— acres 320 according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has given, granted and sold and by these presents does give, grant and sell unto the said A. W. Morse and to his heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging, unto the said A. W. Morse and to his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of New Orleans, on the twenty second day of December in the year of our Lord, one thousand eight hundred and sixty six and of the Independence of the United States the ninety first.

By the governor:

(Signed) J. MADISON WELLS.
AD. DUPRÉ, Register.

Record of patent, vol. 15 page 68.

True record of the original, this day delivered to patentee.

AD. DUPRÉ, Register.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 143, as appearing in volume No. 15, page 68, of record at this office.

Given under my hand and seal of office, this 8th day June, A. D. 1904.

[Seal of the Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 78. Offered by State of Louisiana Aug. 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

1303 DOCUMENT NO. 79.

STATE OF LOUISIANA.

Patent No. 117. (Vignette.)

To all to whom these presents shall come, Greeting:

Whereas, Henry McGuinn of the parish of Orleans, in the State of Louisiana, purchased per warrant No. 106 dated 9th January 1865 the following described swamp lands subject to tidal overflow to wit: The N. W. 4 sec. the S. W. 4 of N. E. 4 section and south half of section No. thirty three in township thirteen south of range seventeen east in the south eastern land district of La. in the parish of St. Bernard east of the Mississippi river containing five hundred and twenty acres 520, according to the official plat of the survey of said lands in the State land office. 520

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has given, granted and sold and by these presents does give, grant and sell unto the said Henry McGuinn of Orleans and to his heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Henry McGuinn and to his heirs and assigns forever.

In testimony whereof, I, J. Madison Wells, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of New Orleans, on the twenty sixth day of September in the year of our Lord, one thousand eight hundred and sixty six and of the Independence of the United States the ninety first.

By the governor:

(Signed) J. MADISON WELLS.

AD. DUPRÉ, Register.

Record of patent, vol. 15 page 55.

True record of the original this day delivered to patentee.

AD. DUPRÉ, Register.

STATE OF LOUISIANA,
City of Baton Rouge.

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 117, as appearing in volume No. 15, page 55, of record at this office.

Given under my hand and seal of office, this 8th day June, A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 79. Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

1304 DOCUMENT NO. 80.

STATE OF LOUISIANA.

Patent 193. (Vignette.)

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell of the parish of Orleans in the State of Louisiana, purchased per warrant No. 139 dated 20th March, 1867, the following described swamp lands subject to tidal overflow to wit: The N. W. 4 of section fifteen in township 14 S. of range 16 E., in the southeastern land district of Louisiana St. Bernard parish containing one hundred and sixty acres according to the official plat of the survey of said lands in the State land office. 160.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Richard Pindell of Orleans and to his heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Richard Pindell and to his heirs and assigns forever.

In testimony whereof I, J. Madison Wells governor of the State of Louisiana have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of New Orleans on the 20th day of March in the year of our Lord one thousand eight hundred and sixty seven and of the Independence of the United States the ninety first.

By the governor:
(Signed) J. MADISON WELLS.
AD DUPRE, Register.

Record of patent, vol. 15 page 93.

True record of the original this day delivered to patentee
AD DUPRÉ, Register.

STATE OF LOUISIANA,
City of Baton Rouge.

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 193, as appearing in volume No. 15, page 93, of record at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 80 Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

1305 DOCUMENT No. 81.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 706.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 571, N. S. L., March 15th 1887, the fr'l W. 2 of fr'l W. 2 sec. 4 and fr'l N. E. 4 of *of* section No. 5 in township No. 11 S. range No. 20 E. in the S. E. E. of River land district, parish of St. Bernard, containing 276.00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs, the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 15th day of March in the year of our Lord, one thousand eight hundred and

eighty 7 and of the Independence of the United States the one hundred and 11th.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent vol. 23 page 225.

STATE OF LOUISIANA, }
Baton Rouge. }

I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 706, as recorded in patent record No. 23—page No. 225, on file in this office.

Given under my hand and seal of office on this the 7th day of June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 81. Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1306 DOCUMENT No. 82.

The State of Louisiana.

Patent (Vignette) No. 750.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the parish of St. Bernard in the State of Louisiana, purchased per certificate No. 594 N. S. L. April 7th 1887,

E.$\frac{1}{2}$ sec. 32 S. E.$\frac{1}{4}$ sec. 29 W.$\frac{1}{2}$ of N. W.$\frac{1}{4}$ sec. 33 and W.$\frac{1}{2}$ of S. W.$\frac{1}{4}$ sec. 28, of section No. 28 in township No. 11 south range No. 20 east in the S. E. E. of R. land district, parish of St. Bernard, containing 640 00/100 acres according to the official plat of the survey of said lands in the State land office.

1307 Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto be-

longing unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

1308 Given under my hand at the city of Baton Rouge on the 7th day of April in the year of our Lord one thousand eight hundred and eighty 7 and of the Independence of the United States the one hundred and 11th.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent, vol. 23, page 247.

STATE OF LOUISIANA, }
Baton Rouge. }

1309 I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 750; as recorded in Patent Record No. 23, page No. 247, on file in this office.

Given under my hand and seal of office on this the 7th day of June, A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(JUMEL, C.)

(Endorsed:) Document No. 82 Offered by State of Louisiana. August 25, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

1310 DOCUMENT No. 83.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 751.

To all to whom these presents shall come, Greeting:

Whereas J. C. Gilmore of the parish of St. Bernard in the State of Louisiana purchased per certificate No. 595 N. S. L. April 7th, 1887, N. 2 of N. E. 4 of *of* section No. 5 in township No. 12 south range No. 20 east in the S. E. E. of River land district, parish of St. Bernard containing 80 00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, had given granted and sold and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 7th day of April in the year of our Lord, one thousand eight hundred and eighty 7, and of the Independence of the United States the one hundred and 11th.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent, vol. 23 page 247.

STATE OF LOUISIANA, }
Baton Rouge. }

I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 751, as recorded in Patent Record No. 23, page No. 247, on file in this office.

Given under my hand and seal of office, on this the 7th day of June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(JUMEL, C.)

(Endorsed:) Document No. 83. Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

1311 DOCUMENT No. 84.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 761.

To all to whom these presents shall come, Greeting:

Whereas W. V. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 601 N. S. L. April 11th 1887, all of *of* section No. 20 in township No. 11 S. range No. 20 E. in the

S. W. land district parish of St. Bernard containing 640, 00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said W. V. Gilmore and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said W. V. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 11th day of April in the year of our Lord, one thousand eight hundred and eighty 7, and of the Independence of the United States the one hundred and 11th.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent, vol. 23 page 252.

STATE OF LOUISIANA, }
Baton Rouge. }

I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 761, as recorded in Patent Record No. 23—page 252, on file in this office.

Given under my hand and seal of office, on this the 7th day of June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(JUMEL, C.)

(Endorsed:) Document No. 84. Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1312 DOCUMENT No. 85.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 870.

To all to whom these presents shall come, Greeting :

Whereas, W. V. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 659 N. S. L. June 22, 1887, W.^{2} of S. W.^{4} sec. 17 S. E.^{4} sec. 18; E.^{2} of sec. 19; W.^{2} of sec. 29; E.^{2} of sec. 30; E.^{2} of sec. 31; and W.^{2} of *of* section No. 32—in township No. 11 S. range No. 20 E. in the S. E. E. of R. land district, parish of St. Bernard containing 1840 00/100 acres according to the official plat of the survey of said lands in the State land office.

1313 Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said W. V. Gilmore and to his heirs, the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said W. V. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

1314 Given under my hand at the city of Baton Rouge, on the 22 day of June in the year of our Lord, one thousand eight hundred and eighty 7 and of the Independence of the United States the one hundred and 11th

By the governor

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent, vol. 23, page 307.

STATE OF LOUISIANA, }
Baton Rouge. }

1315 I, A. W. Crandell, register of the State land office do hereby certify the within and foregoing to be a true and correct copy of the record of patent No 870; as recorded in Patent Record No. 23 page No. 307, on file in this office.

Given under my hand and seal of office, on this the 7th day of June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(JUMEL, C.)

(Endorsed:) Document No. 85. Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1316 DOCUMENT NO. 86.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 961.

To all to whom the sepresents shall come, Greeting:

Whereas, Samuel L. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 719 N. S. L. sec. 11 act 75 of 1880 September 12th, 1887, S. 2 and N. W. 4 of sec. 5, E. 2 of E. 2 and S. W. 4 of S. E. 4 sec. 6, N. E. 4 and N. 2 of S. E. 4 sec. 7 and N. W. 4 of *of* section No. 8 in township No. 12 south range No. 20, east in the S. E. E. of Miss. River land district parish of St. Bernard, containing 1080 00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Samuel L. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Samuel L. Gilmore and to his heirs and assigns forever.

In testimony whereof I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand, at the city of Baton Rouge, on the 12 day of Sept. in the year of our Lord, one thousand eight hundred and eighty 7 and of the Independence of the United States the one hundred and 12.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent, vol. 24, page 39.

STATE OF LOUISIANA,
City of Baton Rouge.

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing *a* is a true and correct copy of record of patent No. 961, as appearing in volume No. 24, page 39, of record at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 86. Offered by the State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1317 DOCUMENT NO. 87.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 1039.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 770 N. S. L. sec. 11 act 75 of 1880, Nov. 7, 1887 all of fr'l of section No. 13 in township No. 11 S. range No. 19 E. in the S. E. E. of R. land district, parish of St. Bernard containing 320 00/100 acres according to the official plat of the survey of said lands in the State land office.

1318 Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above described land to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I Samuel Douglas McEnery, gov-
1319 ernor of the State of Louisiana, have caused these letters to be made patent and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge, on the 7 day of Nov. in the year of our Lord, one thousand eight hundred and eighty 7—and of the Independence of the United States the one hundred and 12.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent vol. 24 page 78.

STATE OF LOUISIANA,
City of Baton Rouge.

1320 I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct

copy of record of patent No. 1039 as appearing in volume No. 24 page 78, of record at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 87 Offered by State of Louisiana August 25, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

1321 DOCUMENT No. 88.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 1038.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 769 N. S. L. sec. 11 act 75 of 1880, Nov. 7, 1887, frl, secs. 5, 6, 7 & 8, S. W. 4 sec. 18; N. E. 4 of N. W. 4 sec. 19 and W. 2 of *of* section No. 31 in township No. 11 S. range No. 20 E. in the S. E. E. of R. land district, parish of St. Bernard containing 990.00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge, on the 7th day of Nov. in the year of our Lord one thousand eight hundred and eighty 7, and of the Independence of the United States the one hundred and 12.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of State Land Office.

Record of patent vol. 24 page 78.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, A. W. Crandell, register of State land office, do hereby certify that the within and foregoing is a true and correct copy of record of patent No. 193, as appearing in volume No. 15, page 93, of record at this office.

Given under my hand and seal of office, this 8th day June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(Endorsed:) Document No. 88 Offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar 13, 1905, James H. McKenney, clerk.

1322 DOCUMENT No. 89.

THE STATE OF LOUISIANA.

Patent (Vignette) No. 1040.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the parish of Orleans in the State of Louisiana, purchased per certificate No. 771 N. S. L. sec. 11, act 75 of 1880, Nov. 7, 1887 W. 2 of N. E. 4 & E. 2 of N. W. 4 of *of* section No. 6 in township No. 12 S. range No. 20 E. in the S. E. E. of R. land district, parish of St. Bernard containing 160,00/100 acres according to the official plat of the survey of said lands in the State land office.

Now know ye, that the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In testimony whereof, I, Samuel Douglas McEnery, governor of the State of Louisiana, have caused these letters to be made patent, and the seal of the State land office to be hereunto affixed.

Given under my hand at the city of Baton Rouge on the 7 day of Nov. in the year of our Lord, one thousand eight hundred and eighty 7, and of the Independence of the United States the one hundred and 12.

By the governor:

S. D. McENERY.
JAMES L. LOBDELL,
Register of the State Land Office.

Record of patent, vol. 24, page 79.

STATE OF LOUISIANA, }
Baton Rouge. }

I, A. W. Crandell, register of the State land office, do hereby certify the within and foregoing to be a true and correct copy of the record of patent No. 1040; as recorded in Patent Record No. 24—page No. 79, on file in this office.

Given under my hand and seal of office, on this the 7th day of June A. D. 1904.

[Seal of Land Office, State of Louisiana.]

A. W. CRANDELL,
Register of the State Land Office.

(JUMEL, C.)

(Endorsed:) Document No. 89 offered by State of Louisiana August 25, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

1323 DOCUMENT No. 90.

(Bill Head.) 1145 (in pencil).

THREE MILE, LA., 11/1901.

BOUGHT OF AHERN & WENTZELL.

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Review Print, Biloxi, Miss.)

(Endorsed:) Document 90 offered by State of Louisiana Aug. 26, 1904. Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1324 DOCUMENT No. 91.

(Bill Head.)

E. Ahern.
E. Wentzell.

THREE MILE, LA., April 15, 1902.

Mr. Narcis Lanius.

BOUGHT OF AHERN & WENTZELL.

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Biloxi Review Print, Biloxi, Miss.)

Dear friend Narcis I write you these few lines to tell you that the sand flies is Pretty Bad out here Sunday and Monday all day. Tell my mother that I am well. And I don't know when I come home I might go with Mst Wentzell Narcis tell Anna Ahern that Eugene caught to red birds in the house and he is going to send them home by the fraters when they come out Tell Maud Baker that the next time I will send her the letter It will be in Thomilson box. Narcis answer this letter I am wood gathered today

OSCAR JOHNSON.

1325 (Endorsed:) Document 91 offered by State of Louisiana, Aug. 26, 1904 Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

1326 DOCUMENT No. 92.

(Bill Head.)

E. Ahern.
E. Wentzell.

THREE MILE, LA., 11/23 DYS., 1901.

M-. Barge Maud.

BOUGHT OF AHERN & WENTZELL

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Biloxi Review Print, Biloxi, Miss.)

Oil 20	Potatoes 25.....	280
		225
		2

Paid Eugene Ahern
GROS.

Balance due barge Maud 1835..... 1610

Paid Eugene Ahern in full.

1327 (On back :)

250	50
20	30
20	20
290	100
	75
1680	40
525	15
1175	
525	
90	

(Endorsed :) Document 92 offered by State of Louisiana August 26, 1904 Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1328 DOCUMENT No. 93.

(Bill Head.)

E. Ahern.
E. Wentzell.

THREE MILE, LA., ——, 190–.

M—— ——

BOUGHT OF AHERN AND WENTZELL.

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Biloxi Review Print, Biloxi, Miss.)

445	445	660	445
150	295	115	115
—	—	—	—
295	80		560
150	14		
—	40	560	
445	—	115	
	5) 560	—	
	—	445	
	1.12		

(On back of bill head:)

5) 560	560	445
—	115	150
112	—	—
	445	295
	150	
	—	
	295	

1329 (Endorsed:) Document No. 93 offered by State of Louisiana Aug. 26, 1904. Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1330 DOCUMENT No. 94.

(Bill Head.)

E. Ahern.
E. Wentzell.

THREE MILE, LA., ——, 190–.

M——

BOUGHT OF AHERN & WENTZELL.

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Biloxi Review Print, Biloxi, Miss.)

(Endorsed:) Document No. 94 offered by State of Louisiana Aug. 26, 1904 Frank H. Mortimer comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1331 DOCUMENT No. 95.

(Bill Head.)

E. Ahern.
E. Wentzell.

THREE MILE, LA., ——, 190–.

M——

BOUGHT OF AHERN & WENTZELL.

THE THREE MILE GROCERY AND BARROOM.

DEALERS IN STAPLE AND FANCY GROCERIES, WINES, LIQUORS AND CIGARS.

(Biloxi Review Print, Biloxi, Miss.)

			97½	
			40	
	Edw. Wade	200		
		2303	800	7800
			46	33720
		97¹ | 270		41420
10 65 10 | 85		4 |	2900	5090
		398		88030
		20000		
	Ed Wentzell	230		
	Sallie W.			
		2000		10351½
		230		4¢
		1770		41400
30 45 10 20 | 105 80 | 85		270		
		2000		

14500

(Other marks illegible.)

1332 (Endorsed:) Document No. 95 offered by State of Louisiana, Aug. 26, 1904 Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1333 DOCUMENT No. 96.

(Envelope.)

(Postmark:)

New Orleans, La.,
Oct. 30,
3.30 p. m.,
1901.

(Penalty stamp:)

Treasury Department,
Office of Collector of Internal Revenue,
New Orleans, La.
Official Business.
Penalty for Private Use, $300.

(Address:)

AHRENS & WENTZELL,
Biloxi,
Miss.

1334 (On back of envelope:)

Capt. J. D. Raley. Masters had U. S. license at Three Mile 1901 & 1902. (Postmark:) Biloxi Miss. Oct. 31 6 a. m. 1901 rec'd.

Day sales.....	50
	1 00
	1 00
	2.50
	1 00
	1 00
	50
	25
	2 05
	10
	4 15
	50
	50
	3 80
	45
	2.20
	10
	3 60
	25 00

(Endorsed:) Document 96 Offered by State of Louisiana Aug. 26, 1904 Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

1335 DOCUMENT No. 97.

H. M. Folkes, M. D., President and Manager. M. L. Talbot, M. D., Superintendent.

Biloxi Sanatorium.

(Vignette.)

Biloxi Sanatorium.

Biloxi, Miss.

BILOXI, MISS., Aug. 23, 1904.

This certifies that I now have under treatment, Mr. Ed. Wentzell who is suffering from a wound of the left foot made by an old nail deeply penetrating the ball of the foot and causing much pain and swelling.

In my opinion, it might prove injurious to him to have to do any considerable amount of moving around on it.

Respt., H. M. FOLKES, M. D.

H-HMF.

(Endorsed:) Document No. 97 Offered by State of Louisiana, August 26, 1904. F. H. Mortimer comm'r. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

1336 DOCUMENT No. 98.

BILOXI, MISS.

DEAR SIR: I am sorry but will be unable to attend court on said Friday Aug. 26th.

Yours truly, EDDIE WENTZELL,
Biloxi, Miss.

(Endorsed:) Document No. 98 Offered by State of Louisiana Aug. 26, 1904. Frank H. Mortimer, comm'r. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

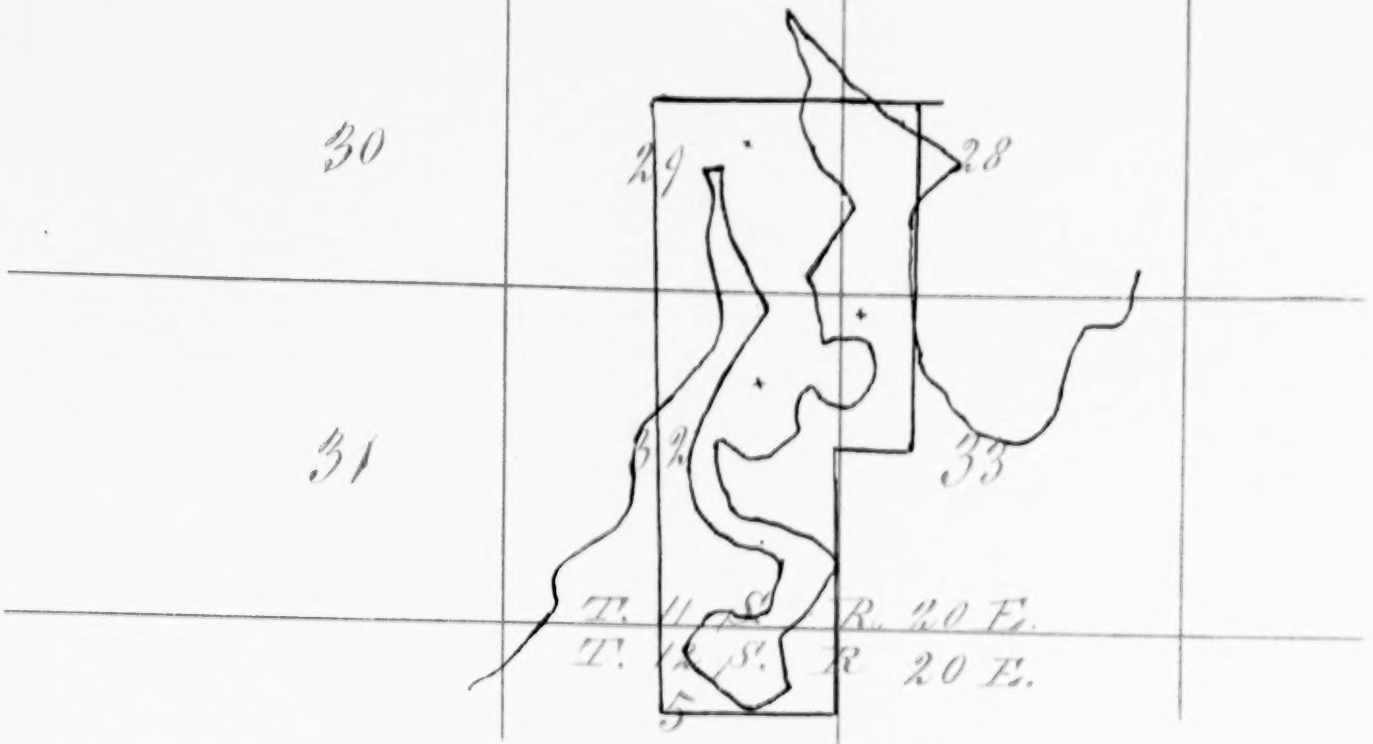
1337 DOCUMENT No. 99.

STATE OF LOUISIANA,
Office of Secretary of State, City of Baton Rouge.

I hereby certify that the annexed and following page is a true and correct transcript of the original of act No. 26 of 1904, on file in this office, as is shown by comparing the same.

Witness my hand and seal of office this 1st day of September, 1904.

[SEAL.] EUGENE J. McGIVNEY,
Ass't Secretary of State.



New Orleans
Nov. 10th 1890.

I certify the above is true & correct copy taken from the official records on

New Orleans
Nov. 10th 1890.

I certify the above is true & correct
copy taken from the official records on
file in the Surveyor Gen'l. office in
the custom House N. O. La.

J. N. Burke C. E.
Deputy U. S. Surveyor, &
Surveyor of St Bernard.

Act No. 26.

Senate Concurrent Resolution.

Be it resolved by the senate of the State of Louisiana, the house of representatives concurring, That the action of his excellency, William W. Heard, governor, in instituting in the Supreme Court of the United States, on the part of the State of Louisiana, a suit against the State of Mississippi to determine the water boundary between the two States, be approved, ratified and confirmed.

(Signed) R. H. SNYDER,
Speaker of the House of Representatives.

(Signed) J. Y. SANDERS,
Lieutenant Governor and President of the Senate.

Approved, June 17, A. D. 1904.

(Signed) NEWTON C. BLANCHARD,
Governor of the State of Louisiana.

(Endorsed:) Document No. 99 Offered by the State of Louisiana Sept. 6, 1904 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

(Here follows map marked page 1338, endorsed as follows:)

1339 (Endorsed.)
DOCUMENT 100.
Offered by the State of Louisiana September 15, 1904.
Wm. D. Bullard, Commissioner.
Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, Clerk.

1340 DOCUMENT No. 101.

State Land Office.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, Chas. E. Bauer, clerk of the State land office do hereby certi
that the annexed page is a true and correct copy of warrant N
5696, sold to Mrs. Ann B. Gordon, on file in this office.

Given under my hand and seal of office, this 5th. day of Septem
ber, A. D., 1904.

[Seal of Land Office, State of Louisiana.]

CHAS. E. BAUER,
Clerk of the State Land Office.

Land Office of the State of Louisiana.

Swamp and Overflowed Lands.

Warrant No. 5696.

To all whom it may concern:

Be it known, and made manifest, that in pursuance of act N
197 of the General Assembly of the State of Louisiana, approve
March 17th., 1859, B. Haralson, register of the land office, and R. A
Hunter, treasurer of the State and receiver of the land office, di
cause to be sold at the city of Baton Rouge, on the 28th. day
April, 1859, a warrant, No. 5696 for two hundred and seventy-thr
36/— acres of land, donated as swamp and overflowed land, by ac
of Congress of the 2nd March, 1849, and 25th September, 1850, an
to be disposed of under the provisions of said act of the Gener
Assembly, when Mrs. Ann B. Gordon became the purchaser there
for sixty-eight 34/100 dollars, which were paid to the receiv
aforesaid.

Now therefore, we do hereby sell and warrant to the said Ann
Gordon and hereby authorize her, her heirs and assigns, to locat
said warrant upon any of the swamp lands within the State of Louis
ana, subject to location and sale under the act aforesaid.

In faith whereof, we have hereunto subscribed our names an
affixed the seals of our respective offices, at the city of Baton Roug
the 28th day of April, 1859.

[SEAL.]

(Signed) ——— ———,
Register of the Land Office.
R. A. HUNTER,
Treasurer and Receiver of the Land Office.

(Endorsed:) Document No. 101. Offered by the State of Louis
ana September 15, 1904. Wm. D. Bullard commissioner. Offic
Supreme Court U. S. Filed Mar. 13 1905 James H. McKenne
clerk.

1341 DOCUMENT No. 102.

State Land Office.

STATE OF LOUISIANA, }
City of Baton Rouge. }

I, Chas. E. Bauer, clerk of the State land office, do hereby certify that the annexed page is a true and correct copy of warrant No. 7785, sold to Henry Florence, on file in this office.

Given under my hand and seal of office, this 5th, day of September, A. D. 1904.

[Seal of Land Office, State of Louisiana.]

CHAS. E. BAUER,
Clerk of the State Land Office.

Land Office of the State of Louisiana.

Swamp and Overflow Lands.

Warrant No. 7785.

To all whom it may concern:

Be it known and made manifest, that in pursuance to act No. 197 of the General Assembly of the State of Louisiana, approved March 17, 1859, B. Haralson, register of the land office, and R. A. Hunter, treasurer of the State and receiver of the land office, did cause to be sold at the city of Baton Rouge, on the 22nd November, 1859, a warrant, No. 7785 for 115 tidal overflowed acres of land, donated as swamp and overflowed land, by acts of Congress of the 2nd March, 1849, and 25th September, 1850, and to be disposed of under the provisions of said act of the General Assembly, when Henry Florence became the purchaser thereof for twenty-eight 75/100 dollars, which were paid to the receiver aforesaid.

Now therefore, we do hereby sell and warrant to the said Henry Florence and hereby authorize him, his heirs and assigns, to locate said warrant upon any of the swamp lands within the State of Louisiana, subject to location and sale under the act aforesaid.

In faith whereof, we have hereunto subscribed our names and affixed the seals of our respective offices, at the city of Baton Rouge, the 22nd day of November, 1859.

——— ———,
Register of the Land Office.

[SEAL.]
(Signed) R. A. HUNTER,
Treasurer and Receiver of the Land Office.

(Endorsed:) Document No. 102. Offered by the State of Louisiana September 15, 1904. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1906, James H. McKenney, clerk.

1342 DOCUMENT No. 103.

STATE OF LOUISIANA.

Act 65 of 1884.

An Act to Empower the Attorney General to Institute and Prosecute Suits Without Security or Advanced Costs and Without Bond.

Be it enacted by the General Assembly of the State of Louisiana, That the attorney general be, and he is hereby authorized and empowered to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State; and no court of this State nor officer thereof shall demand of the State or the attorney general any security for costs, or any advanced costs but the costs for which the State may become liable shall be paid by the attorney general out of the proper appropriation therefor. That in any and all cases where bond is required by law in legal proceedings, the State and the attorney general shall be dispensed from giving such bond.

SEC. 2. Be it further enacted &c. That the defendant shall not be required to give security for costs or to advance costs in any case in which suit is brought by the State.

(Signed) H. W. OGDEN,
Speaker of the House of Representatives.
CLAY KNOBLOCK,
Lieut. Governor and President of the Senate.

Approved July 9th 1884.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy from the original.

OSCAR AROYO,
Secretary of State.

(Endorsed:) Document No. 103 offered by the State of Louisiana. Filed Sept. 22. 1904 Wm. D. Bullard, commissioner for the State of Mississippi. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1343 DOCUMENT No. 104.

U. S. Act of Congress Annexing Part of West Florida to the Territory of Mississippi, &c.

"All that portion or territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, shall be, and the same is hereby, annexed to the Mississippi territory; to be gov-

erned by the laws now in force therein, or which may hereafter be enacted, and the laws and ordinances of the United States relative thereto, in like manner, as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of said district hereby annexed to the Mississippi territory shall be entitled to one representative in the General Assembly."

Act of Congress, May 14th, 1812, vol. XI, p. 175.

Jackson, Hancock, and Harrison Counties, in the Territory and State of Mississippi.

Act of Dec. 16, 1812 (Stat., p. 36).

SEC. II. All that tract of country within the following boundaries, to-wit: South of the thirty-first degree of north latitude and west of the dividing ridge between the Mobile and Pascagoula, and east of a line running due north from the middle of the bay of Biloxi to the thirty-first degree of north latitude, shall compose a county which shall be called "Jackson."

SEC. III. All that tract of country lying south of the thirty-first degree of north latitude and west of the line running due north from the middle of the bay of Biloxi to the thirty-first degree of north latitude and east of Pearl river, shall compose the county, and shall be known by the name of "Hancock."

Digest of Miss. Territorial Statutes 1816, digested by authority of the Gen. Ass., art. 63, p. 108.

U. S. act of Congress March 1, 1817, 2d sec., defines the boundaries of Mississippi, "including all islands within six leagues of the shore."

The constitution of Mississippi, August 15, 1817, in its preamble contains these words: "thence westwardly, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne."

The 2nd constitution of Mississippi, adopted Oct. 26th, 1832, contains no discription of boundaries of the State.

1344 Chapter 36, Laws of Mississippi, 1839, p. 56.

"An Act to Provide for a Survey of the Mississippi Coast Section.

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That an engineer shall be appointed by the governor of the State whose duty it shall be to make, as early as practicable, a survey of the whole of the sea coast upon the southern boundary of this State, who shall lay the same before the legislature at its next session.

SEC. 2. And be it further enacted, That this act shall be enforced from and after its passage.

Approved Feb. 14, 1839.

An Act to Establish a New County in this State, to be Called the County of "Harrison."

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That a new county shall be, and the same is hereby created in this State, to be bounded as follows: Beginning at the point where the line dividing ranges thirteen and fourteen strikes the bay of St. Louis, then with said line due north to the northern boundary of township three south, thence due east to the center of range nine, thence south to the bay of Biloxi, thence southeast to the Point Caddi, thence westwardly with the sea shore, and the shore of the bay of St. Louis to the beginning, which county now includes a portion of the county of Hancock, and a portion of the county of Jackson.

Chap. 35, Laws of Miss. p. 145 approved Feb. 5, 1841.

An Act to Extend the Jurisdiction of the County of Harrison and for Other Purposes.

SECTION I. Be it enacted by the legislature of the State of Mississippi That the county of Harrison shall be bounded on the south by the southern boundary of the State of Mississippi."

Laws of Miss. chap. 52, p. 174, approved Feb. 22, 1842.

All the foregoing acts are cited and quoted from, giving the texts, in Hutchinson's Code of Mississippi of 1848, adopted by an act of the legislature approved March 2, 1848, under caption of "Counties and their Boundaries" p. 70 *et seq.*

Also in Revised Code of Miss. adopted and approved Feb. 2, 1857.

1345 An Act to Provide a New Code of Laws for the State of Mississippi and for Other Purposes.

SEC. 1. Be it enacted by the Legislature of the State of Mississippi, That it shall be the duty of the judges of the high court of errors and appeals, or a majority of them, to appoint three commissioners to revise, digest, and codify the laws of this State, and to propose such alterations or amendments thereof and such new laws as they may deem expedient."

Chap. 50, p. 154 Laws of Miss. Approved March 1, 1857.
Code approved Feb. 2, 1857.

"In defining the boundaries by the act of first of March 1817, which authorized the people of the territory to form a State government, the territory east of the eastern branch of Pearl river, and south of the thirty-first degree of north latitude, being the country bordering on the gulf of Mexico, including the islands within six leagues of the shore, was added to, or included in the State of Mississippi."

Introductory remarks, Code 1857 p. 49.

Limits and Divisions of Boundaries of the State of Mississippi.

ART. 2. * * * and the counties bordering on the gulf of Mexico, to-wit: Jackson, Harrison and Hancock, shall respectively have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike the gulf of Mexico or the inlets thereto, on a continuous direct course to the southern boundary of the State, including all islands that may lie within the limi-s thus defined."

Introductory remarks, Code of 1857 p. 80.

"The western boundary of this section was only defined as being within the United States and the southern boundary of this cession was defined by reference to the dividing line between Spain and the United States. It becomes necessary therefore, to ascertain the true western boundary, and also the southern boundary of the United States.

Miss. Code of 1857, p. 47.

Art. 88 of the Code of Miss. of 1857 leaves the boundaries of Harrison county as provided for by acts of 1841 and 1842, without mentioning anything about the islands. There are no mentions of southern boundary of Hancock county in the Code of 1857, except what is contained in introductory remarks.

(Pp. 49, 50, 51, already quoted.)

Hardee's Map.

A State Map.

"I deem the publication and distribution of a State map to
1346 the various State and county officers whose business requires the possession of one, a matter of sufficient importance to call your attention to it. It should contain a correct delineation of everything of importance and information, that it can embody and be a reference not only to our officials, but to all persons entrusted in the affairs of the State, whose correctness should settle all doubts upon any points or subjects it embodied."

Extract from Gov. Humphrey's message to Mississippi legislature, Oct. 16th, 1866, p. 17 Miss. Journal of House, 1866–1867.

Chapter XVII, Laws of Mississippi, 1866 & 1867, p. 27, Approved Oct. 26, 1866.

'An Act to Create the Office of State Engineer for the Purpose of Compiling a New State Map under Certain Conditions.

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That the governor is hereby authorized to appoint a State engineer

whose duty it shall be, under his direction, to compile a geographical, historical and statistical map of the State; said map to be not less than five feet by three feet in size, to contain such information as the governor in his judgment may deem necessary, and before publication to receive his sanction and approval.

* * * * * * *

SEC. 3. * * * But the said engineer shall be required to enter into a good and acceptable bond and security in the full sum to be received for the delivery to the State, without further compensation than that which is hereinbefore provided, of such a number of the copies of said map for the use and benefit of the State as will carry out the following schedule for distribution, viz; the secretary of state, to whom the maps will be delivered, shall cause three copies to be furnished to each county in the State, to become the property of said counties and for use respectively in the offices of the sheriffs, and the circuit and probate clerks, at each county in the State. He shall also supply the different State officers at the capitol each with a copy, and six copies for the State university, and besides these, shall have delivered to him such additional copies as will enable the governor to exchange maps of other States and Territories, and the maps so received in exchange shall become a part of the property of the State library.

SEC. 4. Be it further enacted, That it shall be the duty of the different county officers throughout the State to afford the State engineer every facility for obtaining such information as he may require in the compilation of said work."

Report on Governor's Message.

* * * * * * *

"State map—to a select committee of three."

Miss. House Journal, 1866, p. 27.

"On motion of Mr. Webb of Amite, the report of the committee was received and agreed to."

1347 Miss. House Journal, 1866, p. 27.

"The speaker announced as the select committee of three on State map, Messrs. Hunter, Liddell and Williams."

Ibid. p. 29.

Map Bill Reported with Amendments.

Ibid., p. 98.

Amendments to 3d section were:

1st amendment: Three maps to each county and for use respectively in the offices of the sheriff and the circuit and probate clerks at each county *site*."

2nd amendment to 3d section, by adding "and six copies to the University of Mississippi."

"On motion of Mr. Suratt the rule was suspended, the bill was read the third time and passed as amended."

"That portion of the message which refers to a State map was, on motion of Mr. Sevett, referred to a select committee consisting of Messrs. Sevett, Napier and Stephens."

Miss. Senate Journal, 1866 & 1867, p. 25.

Bill reported favorably, p. 72 *ibid.*

Bill finally passed, p. 97 *ibid.*

"Yeas: Mr. President, Messrs. Bonford, Brooks, Brown, Cain, Hawkins, Hooker, Jackson, Lowry, Lyles, Miller, Montgomery, Nosely, Napier, Seal, Stephens, Stone, Sevett, Wisdon, Wolff and Yerger—21.

Nays: Messrs. Anderson, Lyle, Martin, McCargo, Robinson and Taylor."

Constitution of the State of Mississippi, 1869, Article II.

Boundaries of the State.

The limits and boundaries of the State of Mississippi shall remain as now established by law.

The Constitution of Mississippi.

Dec. 1, 1869.

Art. II. Boundaries of the State.

"The limits and boundaries of the State of Mississippi shall remain as so established by law."

Miss. Code of 1871, p. II. State Boundaries, etc.

"Thence westwardly including all islands within six leagues of the shore, to the most eastern junction of Pearl river and Lake Borgne; * * * comprising therein six leagues from the shore of the Gulf boundaries, except the jurisdiction ceded to the United States over Ship island and one mile adjacent thereto."

Revised Civil Code of Mississippi, 1871, by Amos Johnson.

Act Approved May 12th, 1871, p. 17, # 40.

"*Hancock county* (established Dec. 14, 1812) is bounded by beginning at that point on Pearl river where the lines between townships two and three south intersect said river; thence east on said township lines to the line between ranges thirteen and fourteen west; thence south on said range line, to the boundary of the
1348 State on the gulf of Mexico; thence westwardly on said boundary to the eastern junction of Pearl river with Lake Borgne; thence up Pearl river to the beginning.

41. *Harrison county* (established Feb. 5, 1841), is bounded by beginning at the northwest corner of township two, range thirteen west; thence east to the line between ranges nine and ten west; thence south with said range line between townships two and three south; thence east to the center of range nine west; thence south on the section lines, to the southern boundary of the State on the gulf of Mexico; thence westwardly on said boundary line to the line between ranges thirteen and fourteen west; thence north on said range line to the beginnings."

Sec. 8, Code of 1871, p. 8.

"From and after the first day of October A. D. 1871, this revised code shall take effect, and be received in use, as the statutory laws of Mississippi of a general nature, and shall supercede and repeal all pre-existing laws of a general nature, the subjects of which are herein revised and consolidated.

Approved May 12, 1871.

Sec. 44 Rev. Code of 1880, p. 55.

In boundaries of Hancock county includes "thence westwardly, including all the islands within six leagues of the shore of the gulf of Mexico."

The same clause occurs in boundaries of county of Harrison.

(*Ibid.*, sec. 45.)

Revised Code of Mississippi—1880.

44. *Hancock county* (established December 14, 1812), is bounded by beginning at the point in the middle of East Pearl river, where the line between townships two and three, south, in range eighteen, west intersects said river; thence due east, along said township line to the line between ranges fourteen and thirteen, west; thence due south, along said range line, to the middle of the bay of St. Louis; thence along the middle of said bay of St. Louis, southwardly to its entrance; thence due south to the southern boundary of the State of Mississippi in the gulf of Mexico; thence westwardly with said boundary, including all the islands within six leagues of the shores of the Gulf and Lake Borgne, to the most eastern junction of Pearl river and Lake Borgne, and to the east mouth of Pearl river; thence up said river by the middle thereof, to the point of beginning.

45. Harrison county (established February 5th., 1841), is bounded by beginning at the northwest corner of township two south, in range thirteen, west; thence extending due east, along the line between townships one and two, to the line between sections three and four, township two, range nine, west; thence due south, through the middle of said range nine, to the middle of the bay of Biloxi; thence along the middle of said bay of Biloxi to its entrance, at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi, on the gulf of Mexico; thence

westwardly along said boundary to a point from which a line due north strikes the middle of the Bay St. Louis; thence due north to the entrance of said bay, including all the islands within six leagues of the shore of the gulf of Mexico; thence along the middle of said bay of St. Louis, northwardly to a point from whence the point at which the line between ranges fourteen and thirteen comes to said bay bears due north; thence due north to the place of beginning.

1349 # 98. The foregoing sections are intended to define the boundaries of counties as heretofore established by law; and if the boundaries as defined in said sections are not the same as heretofore established by law, the former law on that subject shall not be held to be repealed or affected thereby, but shall remain in force as to said boundaries, notwithstanding the passage of this act.

Revised Miss. Code of 1880, sec. 98, p. 70.

Chapter XVIII, Laws of Mississippi, 1882, p. 26.

SEC. 5. Be it further enacted That it shall be the duty of the said commissioner, under the direction of the said board to cause to be made geographical, geological and typographical maps and charts of this State, showing the various counties, with all their water courses, railroads, lakes, timber belts, classifications of soil."

Chap. XVIII, Laws of Mississippi, p. 45, 1884.

"An Act to Continue the Department of Immigration and Agriculture Established in Pursuance of Art. 12, Sec. 23, of the Constitution, and for Other Purposes."

Constitution of the State of Mississippi, 1890.

Article 2.

Boundaries of the State.

SEC. 3. The limits and boundaries of the State of Mississippi are as follows: to-wit:—Beginning on the Mississippi river (meaning thereby the center of said river or thread of the stream) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and W. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi A. D. 1837, and J. D. Graham and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yellow creek; thence up the said river to the mouth of Bear creek; thence by a direct line to what was formerly the north-west corner of the county of Washington, Alabama thence on a direct line to a point ten miles east of the Pascagoula river on the gulf of Mexico; thence,

westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said Pearl river to the thirty first degree of north latitude; thence west along said degree of latitude to the middle or thread of the stream, of the Mississippi river, thence up the middle of the Mississippi river, to the place of beginning, including all islands lying east of the thread of the stream of said river, and also including all lands which were at any time heretofore a part of this State.

The Constitution of Mississippi of 1890, art. 2, contains the provision including the islands.

1350 Annotated Code of Mississippi, 1892.

§ 368. *Hancock county* (established December 14, 1812) is bounded by beginning at the point in the middle of East Pearl river, where the line between townships four and five, south, in range eighteen, west, intersects said river, thence due east along said township line to the line between ranges fourteen and thirteen, west; thence due south along said range line to the middle of the bay of St. Louis; thence along the middle of said bay of St. Louis southwardly to its entrance; thence due south to the southern boundary of the State of Mississippi in the gulf of Mexico; thence westwardly with said boundary, including all the islands within six leagues of the shores of the gulf of Mexico and Lake Borgne, to the most eastern junction of Pearl river and Lake Borgne, and to the east mouth of Pearl river; thence up said river by the middle thereof to the point of beginning, county site, bay — St. Louis.

§ 369. *Harrison county* (established February 5, 1841) is bounded by beginning at the north-west corner of township two, south in range thirteen, west; thence extending due east along line between township one and two to the line between sections three and four, township two, range nine, west; thence due south through the middle of said range nine to the middle of the bay of Biloxi; thence along the middle of said bay of Biloxi to its entrance at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi on the gulf of Mexico; thence westwardly along said boundary to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay, including all the islands within six leagues of the shore of the gulf of Mexico; thence along the middle of said bay of St. Louis northwardly to a point from whence the point at which the line between ranges fourteen and thirteen comes to said bay bears due north.; thence due north to the place of beginning, county site, Mississippi city.

Mississippi Code of 1892.

In giving boundaries of Hancock and Harrison counties, includes all islands within six leagues of the shore. (Secs. 368 & 369.)

(Endorsed:) Document No. 104 offered by the State of Louisiana. Filed Sept. 22. 1904 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1351 DOCUMENT No. 105.

CHAPTER 1.

An Act Supplementary to an Act Entitled "An Act Providing for the Superior Court Going Circuit for Establishing Courts of Inferior Jurisdiction.

SEC. 1. Be it enacted by the legislative council and house of representatives of the Territory of Orleans in general assembly convened. That for the purpose of carrying into effect the act to which this is a supplement, the Territory shall be, and hereby is divided into five districts, to be called superior court districts, in the manner following, viz.

The parish of the city of New Orleans with its precincts;
The parish of St. Bernard, commonly called La Terre aux Bœufs;
The parish of Plaquemines;
The parish of St. Charles;
And the parish of St. John,
Shall compose the first district.
The parish of St. James;
Of the Ascension;
Of the Assumption;
The settlement of the La Fourche;
The parish of Iberville, including the settlement of Galveztown;
Shall compose the second district.

That part of the Territory known under the name of Baton Rouge, Point Coupee, comprehending the parish of St. Francis, and the county of Concordia,
Shall compose the third district.
The counties of Ouachita, Rapides and Nachitoches,
Shall compose the fourth district,
And the counties of Opelousas,
And Attacapas,
Shall compose the fifth district.

SEC. 2. ——.

SEC. 9. And be it further enacted, That the said Territory shall be and the same is hereby divided into nineteen parishes as follows, to-wit:

The city of New Orleans with its precincts as they formerly stood, shall form the first parish;

The parish of St. Bernard, commonly called the Terre aux Beuf, shall form the second;

The third called the parish of Plaquemines, shall comprehend all that part of the country on both sides of the Mississippi below the Parish St. Bernard as far as the Balize;

The parish of St. Charles shall form the fourth parish;

The parish of St. John Baptist shall form the fifth;

The parish of St. James shall form the sixth;

The parish of Ascension, shall form the seventh.

The settlement of La Fourche shall be divided into two parishes, the nearest of which to the river, shall form the eight- parish, under the name of the parish of the Assumption, and shall include one half of the population;

The ninth parish shall consist of the other settlements in the lower part of La Fourche, and shall be called the Interior parish;

The parish of Iberville, including the settlements of Galveztowns shall form the tenth;

That part of the Territory known by the name of Baton Rouge, from that part which is opposite the bayou of Manchac until the lowest part of the mouth of the Falfe river, shall form the eleventh.

Pointe Coupee shall comprehend the parish of St. Francis and shall form the twelfth.

1352 The county of Concordia, as now established, shall form the thirteenth;

The settlements of Ouchita, shall form the fourteenth;

The settlement of Rapides and its former dependencies, shall form the fifteenth;

The Avoyelles shall form the sixteenth;

The parish of Nachitoches shall comprehend the parish of St. Francis, and shall form the seventeenth;

The parish of St. Landry in the Opelousas, shall form the eighteenth;

And the parish of Attacapas, called the parish of St. Martin, shall form the nineteenth.

And in case of any difficulty relative to the boundaries of the respective parishes above described, it shall be the duty of the person exercising the powers of governor of the territory to declare and establish the boundaries between those parishes in relation to which doubts may have arisen, and to give notice of such declaration and establishment, by public proclamation and otherwise as may be deemed expedient, and to submit the same to the next session of the legislature.

Sec. 32. And be it further enacted, That the division of the Territory into counties shall subsist for the purpose of making the election of the representatives of the territory, and levying the territorial taxes.

Sec. 33. And be it further enacted, That the act entitled "An act

for dividing the Territory of Orleans into counties, and establishing courts of inferior jurisdiction therein." be — the same is hereby repealed, except in what is expressly preserved by this act.

N. C. C. CLAIBORN,
Gov. of the Territory of Orleans.

Approved March 31, 1807.

An Act to Remove Certain Doubts Relative to the Limits of the Parishes of New Orleans, Plaquemine, and St. Bernard.

Be it enacted by the legislative council and house of representatives of the Territory of Orleans in General Assembly convened, That the limit of the parish of Orleans is hereby fixed at Dessales' plantation included on the right shore of the river below the city, and at the plantation of Toutant Beauregard inclusively on the left shore; that the limit of the parish of Plaquemine shall commence on the right shore of the river at the lower line of Dessales' plantation and on the left shore at the lower line of Dessales' plantation; and the limit of the parish of St. Bernard shall commence at Delasise's plantation inclusively, running along the settlements of the bayou of Terre aux Bœufs.

TH. URQUHART,
Speaker of the House of Representatives.
J. D. DEGOUTIN BELLECHASSE,
President of the Legislative Council.

Approved March 20th, 1809.
WILLIAM C. C. CLAIBORNE,
Governor of the Territory of Orleans.

1353 An Act to Amend the Act Entitled "An Act to Remove Certain Doubts Relating to the Limits of the Parishes of New Orleans, Plaquemines, and St. Bernard."

Be it enacted by the legislative council and house of representatives of the Territory of Orleans, in General Assembly convened, That the limit of the parish of New Orleans be, and that the same is hereby fixed at Dessale's plantation inclusively on the right bank of the river down to the city, and at the upper limits of Rinker's plantation on the left bank; that the limits of the parish of Plaquemines shall begin on the right bank at the inferior limits of Dessale's plantation, and on the left bank at the upper limits of Rinker's plantation inclusively; and that the limits of the parish of St. Bernard shall begin at the back lines of Lasise's plantation, including all the settlements on Bayou Terre aux Bœufs.

MAGLOIRE GUICHARD,
Speaker of the House of Representatives.
JEAN NOEL DESTREHAN,
President of the Legislative Council.

Approved, April 10th, 1811.
WILLIAM C. C. CLAIBORNE,
Governor of the Territory of Orleans.

An Act.

An Act Further to Determine the Limits of the Parish of St. Bernard.

Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That from and after the passage hereof, the limits of the parish of St. Bernard shall be and the same are hereby removed, so as to comprehend the tract of country situate on the left bank of the River Mississippi, from Julian Poydras' plantation to the Canal des Pecheurs, and that all acts or parts of acts which may be contrary to the provisions and meaning of this act, shall be and the same are hereby repealed.

MGRE. GUICHARD,
Speaker of the House of Representatives.
N. MERRIAM,
President of the Senate.

Approved, February 22nd., 1817.
JAMES VILLIERE,
Governor of the State of Louisiana.

1354 An Act.

No. 14.

An Act to Determine the Limits between the Parishes of Plaquemines and St. Bernard.

Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That the limits between the parishes of Plaquemines and St. Bernard shall be determined as follows, to wit: Beginning at the already established limits between Morgan and Poydras plantation on the river, and following the same one league from the river, thence running a straight line to the junction of the Bayous Grove and Mandeville thence following the middle of Bayou Mandeville to the Lake Lery thence to the southeast part of Lake Lery, thence running a line to the northeast part of Black bay to the Chandeleur bay.

(Signed) WM. HC. C. CLAIBORNE,
Speaker of the House of Representatives.

(Signed) FELIX GARCIA,
President of the Senate.

Approved January 12, 1842.
(Signed) A. B. ROMAN,
Governor of the State of Louisiana.

An Act to Provide for the Removal of the Seat of Justice of the Parish of St. Bernard and Re-divide said Parish into Wards.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the seat of justice of the parish of St. Bernard be and the same is hereby removed from the site heretofore occupied to such location as may be selected, according to the provisions of this act.

SEC. 2. Be it further enacted, etc., That the governor is hereby authorized and required to appoint three citizens of the parish of St. Bernard as commissioners, whose duty it shall be to select a suitable location for the seat of justice of said parish, at some convenient point not more than half a mile from the Mississippi river, and not below the Mississippi and Mexican Gulf ship canal. The said commissioners are authorized and required to secure a title in the name and on behalf of said parish in and to any suitable lot of ground at the point selected by them as the parish seat of justice, not to exceed five acres in area nor one thousand dollars in cost, upon which lot the said commissioners shall cause to be erected a courthouse and a parish jail, at a cost not to exceed fifteen thousand dollars. Said commissioners are authorized to lease for a term not to exceed two years *in* the necessary buildings for temporary use as a courthouse and jail, which buildings shall be located near the point selected for the seat of justice, and shall be occupied and used by the parish only until the permanent parish buildings shall have been erected.

SEC. 3. Be it further enacted, etc., That the said commissioners shall discharge the duties imposed upon them by this act, and assumed by them in accepting their appointment as such within the period of ninety days from the date of their appointment. At the expiration of ninety days from the date of their appointment, they shall report to the police jury of said parish their action in the premises. Said report shall contain a statement of the amount
1355 of indebtedness contracted by them in the name of and in behalf of said parish, together with an estimate of the cost of removing parish records and the movables belonging to the court house, and other parish offices from their present location to *to* the buildings leased by the commissioners for the temporary use of the parish. They shall also deliver to the police jury the original copies of all contracts and other papers which may have come into their hands pertaining to parish business while in the discharge of their duties as commissioners.

SEC. 4. Be it further enacted, etc., That the police jury for *for* the parish of St. Bernard are hereby authorized and required without delay, after having received the report of the commissioners required by section three of this act, to estimate and levy a tax of all the taxable property of the parish, which shall be sufficient to pay all the costs of grounds, buildings, lease and removal, herein above

stated, and the said tax shall be assessed and collected in curr funds, and in addition and in the same manner and subject to same penalties, as the present parish taxes are assessed and collect The proceeds of said special and additional taxes shall be appli exclusively and without delay to the payment of the debt or de contracted and *and* reported by said commissioners in accorda with the provisions of this act; provided, that no more than one-h of said tax shall be assessed and collected in any one year; and p vided further, that the whole amount shall be collected within th years from the date of letting the contract for the permanent bui ings.

SEC. 5. Be it further enacted, etc., That the parish of St. Bernard hereby divided into five wards, as follows: The first ward shall co mence with the upper line of said parish, and extend to the upp line of the plantation and extend to the lower line of the Merr plantation; the third ward shall commence with the lower line the Merritt plantation and extend to the lower limit of the Milla don plantation and extend to the mouth of Terre aux Bœuf; t fifth ward shall commence with the upper line of G. Proctor's pla tation and extend to Lake Borgne, including all that part of t parish known as Proctorville and La Chincha.

SEC. 6. Be it further enacted, etc., That all acts or parts of acts ordinances in conflict with this act are hereby repealed, and this a shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.
C. C. ANTOINE,
Lieutenant Governor and Pres. of the Senate.

Approved April 14, 1874.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.

1356 No. 23.

An Act to Change the Boundary of the Parish of St. Bernard.

SECTION 1. Be it enacted by the senate and house of representa tives of the State of Louisiana in General Assembly convened, That hereafter the boundary of the parish of St. Bernard shall be from the left bank of the Mississippi river along the lower line of the property known and used as the United States barracks, and the prolongation of said line until it intersects the prolongation of the line of the south side of Florida walk, one of the avenues of the city of New Orleans, thence in an easterly direction to the point where



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the Canal des Pecheurs or Fishermen's canal intersects the Bayou Bienvenue, thence along the south side of said bayou to the Lake Borgne, and thence along the boundaries of said parish as now established to the left bank of said Mississippi river, where the parish of Plaquemines begins.

SEC. 3. Be it further enacted, etc., That this act takes effect from and after its passage, and that all laws in conflict with its provisions be and the same are hereby repealed.

(Signed) MICEAL HAHN,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved April 5, 1875.

(Signed) WILLIAM P. KELLOGG.
Governor of the State of Louisiana.

A true copy;
P. G. DESLONDE,
Secretary of State.

(Endorsed:) Document No. 105. Offered by the State of Louisiana September 22, 1904. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

(Here follows map marked page 1357, endorsed as follows:)

1358

(Endorsed.)

EXHIBIT LOUISIANA 1.
Offered by State of Louisiana Aug. 25, 1904.
Frank H. Mortimer, Commissioner.

1359 EXHIBIT LOUISIANA No. 2.

J. T. S. 4–207. C. A. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., July 21, 1904.

I hereby certify that the annexed copy of letter dated July 9th 1904 to Mr. E. H. Nall, land commissioner, Jackson, Mississippi, is a true and literal exemplification of the letter press copy on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of [SEAL.] Washington, on the day and year above written.

W. A. RICHARDS,
Commissioner of the General Land Office.

1360 (Copy.)

"L."

1904–118,947. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., July 9, 1904.

Address only the Commissioner of the General Land Office.

Mr. E. H. Nall, State land commissioner, Jackson, Mississippi.

SIR: Replying to your letter of the 30th ultimo, you are advised that photolithographic copies and tracings of the following plats showing islands surveyed as lying within the State of Mississippi (except as to Petit Bois island) and reckoned from St. Stephen's meridian can be furnished at the price placed opposite thereto.

1361 T. 8 S., R. 5 W.—Greenwood's island (abandoned military reservation), June 5, 1900, tracing $1.50 uncertified or $1.75 certified with stamp certificate.

T. 9 S., rgs. 3, 4 & 5 W. 10 " " 4 & 5 "	Petit Bois island	On 1 plat approved Feb. 4, 1847—25 cents uncertified or 50 cents with stamp certificate.
9 " " 5, 6 & 7 "	Horn island	

NOTE.—It shows where State line between Alabama and Mississippi crosses Petit Bois island.

T. 9 S., rgs. 4 & 5 W. 10 " " 4 & 5 "	Petit Bois island, all in Mississippi, showing changes on 1 plat approved July 29, 1847—25 cents uncertified or 50 with stamp certificate.

1362

T. 7 S., R. 9 W.	Deer island not subdivided into lots	On 1 plat approved Feb. 4, 1847.
8 " " 8 & 9 "		
9 " " 9 & 10 W.	Ship island	Tracing $2.00 uncertified or $2.25 with stamp certificate.
10 " " 10 "		
9 & 10 S., 11 W.,	Cat island	
8 & 9 " 6 "	Round island	
T. 7 S., R. 9 W.	Deer island subdivided into lots.	On 1 plat approved Aug. 5, 1897. Tracing $1. uncertified or $1.25 with stamp certificate.
8 " 8 & 9 "		

10 " R. 15 " —Showing St. Joseph's island not surveyed, and Grand Island acreage given, plat approved Aug. 14, 1828. 25 cents uncertified, or 50 cents with stamp certificate.

10 & 11 S., R. 17 & 18 E.—St. Helena meridian La., showing outlines of marsh, Half Moon, Petit pass and an unnamed island, approved July 31, 1846, surveyed as within the State of Louisiana and which lie within Lake Borgne and Mississippi sound and within six leagues of the main north shore thereof can be furnished at a cost of 25 cents uncertified or 50 cents with stamp certificate.

1363

By reference to inclosed portion of the map of the State of Louisiana, it will be seen that a line drawn parallel to the north-shore line of Lake Borgne and Mississippi sound and at a distance of six leagues therefrom, would include portions of townships 11, 12 and 13 south, ranges 17, 18 and 19 east; and townships 10, 11 and 12 south, range 20 east, St. Helena meridian, in St. Bernard parish, Louisiana, in which are to be found many tracts of land surrounded by water and which would therefore be denominated as islands, but which are in fact hummocks of land surrounded by the marsh and swamp in said townships. You are requested to state whether you desire copies of the plats showing such lands south of the south shore of Lake Borgne and Mississippi sound, including the islands shown among the bayous and lakes within the townships mentioned, or whether your inquiry relates only to the islands in tps. 10 and 11 south, ranges 17 and 18 E., which are shown on the map as islands within said bodies of water.

1364

1365 This office would be glad to furnish the plats desired gratis, but the statute provides that charges must be made.

Very respectfully, J. H. FIMPLE,
Acting Commissioner.

Inclosure.

(Endorsed:) State of Louisiana *vs.* State of Mississippi. Exhibit Louisiana No. 2 Offered by State of Louisiana Aug. 20, 1904. W. D. Bullard, commissioner. Office Supreme Court, U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1366 EXHIBIT LOUISIANA No. 3.

Memo.

MATTER OF ISLANDS—LOUISIANA & MISSISSIPPI.

LOUISIANA.

Marsh island, sec. 26, tp. 10 S., R. 17 E., S. E. dist. E. of R. Swamp.—Selected by State act M'ch 2/49 & app'd May 6/52.

Tract Book vol. 14 p'ge 36 says:— Sec. 26 Marsh I'd
& " 36 p't of Grand island
(La. plat 1846)

Round island, secs. 2 & 11, tp. 11 S., R. 17 E., S. E. dist. E. of R. Swamp.—Selected by State, act M'ch 2/49 & app'd M'y 6/52

T. B. vol. 14 p. 36 says: Secs. 1, 2, 11, 14, 22, 23, 25, 26, 27, 28, 33, 34, 35 & 36 *selected by State act M'ch 2/49*
& in pencil:—Sec. 1 part of Grand I'd
" 2 & 11 Round I'd
" 14 & 23 Petite Pass I'd

1367 *Louisiana Continued.*

Petite Pass island, secs. 14 & 23, *tp. 11 S., R. 17 E.*, S. E. dist. E. of River *swamp.*—Selected by State act of M'ch 2/49 & app'd May 6/52

(T. B. vol. 14 p. 36)

Grand island, sec. 36, tp. *10 S., R. 17 E.*, S. E. dist. E. of R. *Swamp.*—Sel'd by State act M'ch 2/49 & app'd May 6/52
(T. B. vol. 14 pp. 36 & 108)

Secs. 29, 31, 32 & 33 *tp. 10 S. R. 18 E.* S. E. dist. E. of R.
" *1 tp. 11 S. R. 17 E.* } S. E. dist. E. of R.
" 5 & 6 tp. *11 S. R. 18 E.* }

All swamp—Selected by State act M'ch 2/49 & app'd May 6/52
No areas given in La. plat of July 31/46

Note in La. plat of Grand island.—See plat of Grand I'd in *Miss. Plat Book* 21, tps. 10 & 11 S. rgs. 14 & 15 W.

La. 7 Plat Book 74
Tps. 10 & 11 S.
Rgs. 17 & 18 E.
S. E. dist. E. of R.

1368 *Mississippi.*

Greenwood Island.—Lots 4 & 5 sec. 17 tp. 8 S. R. 5 W.
" 1 & 2 " 18 " 8 S. " 5 W.
Purchased August 2 / 18 for use of medical dept. of army,—ret'd Dec. 18 / 90 for disposal—act July 5, 1884.

Lot 4	sec. 17	C. E.	45322	July 30 / 02	(6.34 acres)
" 5	" 17	"	45323	"	(2.30 ")
" 1	" 18	"	45324	"	(46.28 ")
" 2	" 18	"	45325	"	(28.00 ")

A. U. Jackson entries & to D. W. B. Oct. 3 / 03

DEER ISLAND.—Tract book shows Deer island in tp. 7 S. R. 9 W. & tp. 8 S. rgs. 8 & 9 W. No disposal shown except part appears to be covered by private claims of heirs of J. B. Baudreaux

SHIP ISLAND.—T. B. shows no disposal of Ship island
Tp. 9 S. rgs. 9 & 10 W.
" 10 S. rgs. 10 W.

1369 *Mississippi Continued.*

ST. JOSEPH ISLAND.—Tp. 10 S. R. 15 W. not shown on T. B. Land appears to be all covered by swamp selections & private claims.

Petit Bois Blanc Island.—
Secs. 35 & 36 tp. 9 S. R. 5 W.
" 1, 2 & 3 tp. 10 S. R. 5 W.
(See also secs. 29 & 32 tp. 9 S. R. 3 W. *Alabama*)
Placed under control Interior Dept. by ex. order of Oct. 25, 1895, except certain portions needed for light house purposes for disposal under act July 5 / 84
11190 " E." See " E." [W.]* to Sec'y Jan'y 8 / 96
1896

Fr'l sec. 5 tp. 10 S. R. 5 W. reserved for light house purposes by ex. order Sept. 3 / 00

1370 *Mississippi Continued.*

Round Island.—Same action as above
Tps. 8 & 9 S. R. 6 W.

1884
106795 States

Horn Island.—Sec. 31 tp. 9 S. R. 5 W.
Same action as above

[* Letter enclosed in brackets erased in copy.]

(Endorsed:) State of Louisiana *vs.* State of Mississippi. Exhibit Louisiana No. 3. Offered by State of Louisiana Aug. 26, 1904. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

(Here follow 3 maps marked pp. 1371, 1373 & 1375 endorsed as follows:)

1372

(Endorsed.)

DIAGRAM No. 1.
Offered by State of Louisiana April 5, 1904.
Frank H. Mortimer, commissioner.
Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1374

(Endorsed.)

DIAGRAM No. 3.
Offered by State of Louisiana April 5, 1904
Frank H. Mortimer, commissioner.
Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

1376

(Endorsed.)

DIAGRAM No. 5.
Offered by State of Louisiana April 5, 1904.
Frank H. Mortimer, commissioner.
Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.



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1377 In the Supreme Court of the United States, October Term, 1904.

STATE OF LOUISIANA *versus* STATE OF MISSISSIPPI. } Original Bill Number 11.

I, Frank Hastings Mortimer, commissioner, appointed by the honorable the Supreme Court of the United States in the above entitled and numbered proceeding, do hereby certify that the accompanying four (4) volumes, each identified by my signature on the first and last pages thereof, and paged respectively,

Vol. 1, from p.	1	to p.	484,	inclusive,
Vol. 2, " "	485	"	921,	"
Vol. 3 " "	922	"	1177,	"
Vol. IV " "	1178	"	1477,	"

contain the testimony taken before me in behalf of the State of Louisiana in said proceeding on the several days therein stated:—part of said testimony, as contained in vol. # 4 from pages # 1294 to # 1477, inclusive, having been taken before the Honorable W. D. Bullard, also commissioner in this proceeding, acting in my stead, as per agreement between the parties of record.

I further certify that the several maps offered by the State of Louisiana in connection with said testimony, and enumerated and set out therein, each identified by the commissioner before whom the same was offered, are transmitted herewith; said maps being assembled in atlas form, under my supervision, in obedience to the order of the said Supreme Court heretofore rendered in said proceeding, and numbered as follows, to wit:—

Nos. 6, 7, 8, & 8 A, 9 & 9 A, 10 & 10 A, 11 & 11 A, 12, 13 & 13 A, 14 & 14 A, 15, 16, 17, 18, 19 20 & 20 A. (21—it not having been possible to photograph map # 21 it will be produced before the court in the original from the Library of Congress:) 22, (23—same as to No. 21) 24, 25, (in four sections), 26, (in 4 sections), 27, (in 6 sections), 28, (in 2 sections), 29, 30 (in 6 sections), 31, 32, 33, 34 & 34 A, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, & 57 A, 58 & 58 A, 59, 60 & 60 A, 61 & 61 A, 62, 63, 64, 65, 66 & 66 A.

I further certify that the several documents offered by the State of Louisiana in connection with said testimony taken in its behalf, and enumerated and set out therein, each identified by the commissioner before whom the same was offered, are transmitted herewith, said documents being numbered respectively, as follows:

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, (there being none offered bearing the No. 37) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 & 105.

1378 I further certify that the exhibits marked "Louisiana 1, Louisiana 2, and Louisiana 3," offered by the State of Louisiana in connection with said testimony taken in its behalf, as set forth therein, each identified by the commissioner before whom the same was offered are transmitted herewith.

I further certify that the offerings marked "Diagram No. 1, Diagram No. 3, and Diagram No. 5," made by the State of Louisiana in connection with said testimony taken in its behalf, as set forth therein, are transmitted herewith.

I further certify that the offering marked "Diagram P," offered by the State of Louisiana in connection with the testimony of Major B. M. Harrod, and attached thereto at folio # 11 of vol. # 1 of said testimony, is transmitted herewith.

I further certify that I do not transmit herewith exhibits marked A, B, C, D, E, F, G, H, I, J, K, L, M, and Z, referred to in the testimony herewith forwarded, for the reason that I am informed that the originals of said exhibits are now in the possession of the clerk of this honorable court in Washington D. C., certified copies thereof being used in the proceedings before me.

In testimony whereof, I have signed these presents, at the city of New Orleans, State of Louisiana on this the thirty first day of January, A. D. 1905.

FRANK HASTINGS MORTIMER,
Commissioner.

(Endorsed:) Supreme Court of the United States, October term 1904. Original bill No. 11. State of Louisiana *vs.* State of Mississippi. Certificate of commissioner transmitting testimony, & offerings in connection therewith, taken in behalf of State of Louisiana. Frank Hastings Mortimer, commissioner.

1379 And on the same day, to wit, on the 13th day of March, A. D. 1905, the evidence for the defendant was filed in the words and figures following, viz:

1380

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

United States Supreme Court.

Vol. 1, p. 1 to p. 303, incl.

Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, Clerk.

1381 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

Vol. 1, page 1 to 303, incl.

1382 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI

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1384 THE STATE OF LOUISIANA }
vs. } No. 1.
THE STATE OF MISSISSIPPI. }

1385 In the Supreme Court of the United States, October Term, 1903.

THE STATE OF MISSISSIPPI }
vs. } Original Bill, No. 11.
THE STATE OF LOUISIANA. }

In accordance with the agreement executed between the attorney general of Mississippi, and the attorney general of Louisiana on file in this case stipulating how the testimony should be taken on this the 1st day of June 1904, at the yacht club house in the city of Biloxi Mississippi, pursuant to notice duly given and acknowledged, Hon. William D. Bullard, commissioner appointed by the Supreme Court of the United States to take the testimony in this case on the part of the State of Mississippi, together with Hon. William Williams, attorney general of the State of Mississippi; Hon. Monroe McClurg, appointed by the governor of the State to assist said attorney general, and the Hon. Walter Guion, attorney general for the State of Louisiana, and Hon. F. C. Zacharie, and Hon. John Dymond Jr., in this cause associated as counsel with the attorney general of Louisiana, met and proceeded to take the testimony on behalf of the State of Mississippi.

The notice given by the attorney general of the State of Mississippi is as follows:—

"JACKSON, MISSISSIPPI, May 19th, 1904.

Hon. Walter Guion, attorney general, New Orleans, La.

DEAR SIR: In compliance with the agreement entered into by and between Louisiana and Mississippi in respect to the taking of evidence in the case of Louisiana *versus* Mississippi I beg leave to notify you that Mississippi will begin taking her evidence in the case of Louisiana *vs.* Mississippi before the Hon. William D. Bullard, commissioner appointed for that purpose at the hour of 11 o'clock a. m. on Wednesday, June 1st, 1904, at the yacht club in the city of Biloxi Mississippi, and will continue to take evidence at the said place until and including June 25th, 1904. After which
1386 time we will adjourn to the city of Jackson and take evidence there in the capitol building of the State of Mississippi until and including July 16th, 1904, when we will return to Biloxi and continue to take evidence there until we shall have finished, subject to agreements heretofore made and to be made in this matter by counsel for the States of Louisiana and Mississippi.

Yours truly, WILLIAM WILLIAMS,
Attorney General for the State of Mississippi.

The answer to the above notice being as follows :—

"NEW ORLEANS, LA., May 21st, 1904.

Hon. William Williams, attorney general of Mississippi, Jackson, Mississippi.

DEAR SIR: I am in receipt of your letter of the 19th instant, in which you notify me that on Wednesday June 1st, 1904, at 11 o'clock a. m., at the yacht club in the city of Biloxi, Mississippi you will begin taking the evidence for the State of Mississippi in the boundary suit between Louisiana and Mississippi.

Under the agreement entered into with your associate ex-Attorney General McClurg it was understood that Louisiana's case was not closed at the time we finished the taking of certain evidence here, and that Louisiana would have the right to offer certain evidence during this month on giving you notice. I therefore take this means of notifying you that on Monday 30th of May, 1904 at 11 o'clock a. m. the State of Louisiana will offer the additional evidence which it proposed to introduce before Mr. Frank H. Mortimer, Louisiana's commissioner, at his office in the custom house, New Orleans. This will give you ample time to make your arrangements to go over to Biloxi on the 31st of May, so as to prepare for the taking of evidence on the following day, June 1st. If, however, another day prior to the 1st June 1904 will be more convenient to you I beg to state that counsel for Louisiana hold themselves in readiness to take the evidence on any other day that will best suit your convenience.

Yours truly,

WALTER GUION,
Attorney General of Louisiana.

Thereupon the commissioner on the part of Mississippi Hon. William D. Bullard appointed Frank M. Peyton, official stenographer on the part of Mississippi in this cause, and he was thereupon duly sworn as such.

AGREEMENT.—It is now here agreed in the presence of the commissioner by and between the two States represented by their
1387 respective counsel that it shall be unnecessary for the witnesses to sign their depositions taken by the stenographer on behalf of either State. Said depositions are to be typewritten in triplicate. The original copy to be filed with the commissioner, and a copy to be given to counsel for either State.

By Gen. MCCLURG: In order that the commissioner appointed by the Supreme Court of the United States to take testimony on the part of the State of Mississippi may understand at the outset the general drift of our evidence, I desire to state here: the contention of the State of Louisiana as set forth in her original bill of complaint is that the boundary line dividing these two States in the waters of the gulf of Mexico is "a line beginning at the most southern junc-

tion of the channel of the east branch of Pearl river with Lake Borgne; thence eastward following the deep water channel to the north of Half Moon island; through the Mississippi Sound channel and Cat Island pass, north east of Isle à Pitre into the gulf of Mexico."

This claim of Louisiana to this line, as stated in her bill, is based upon the acts of Congress, one approved April 6th, 1812, admitting that State into the American Union and fixing her boundary about the controverted point as follows. "Thence down said River Iberville, and from thence along the middle of said river to Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence upon said Gulf to the place of beginning. (Sabine river)., including all islands within three leagues of the coast." The other act approved April 14th, 1812, under which we state by moving this boundary line eastward and northward, saying that instead of passing through the lakes mentioned "to the gulf of Mexico," it should run "along the middle of the Iberville and of the River Amite to Lakes Maurepas and Pontchartrain to the mouth of Pearl river; thence by the eastern branch of Pearl river to the 31st, degree of north latitude; thence on the said degree of latitude to the Mississippi river."

To sustain her contention as here stated Louisiana has introduced much testimony and closed her evidence in chief.

On the part of Mississippi, it is denied that there is anything in the acts of Congress fixing the boundaries of Louisiana at the "deep water channel," nor is there any thing in law or in fact to uphold such contention; but by way of cross bill it is contended by Mississippi that the act of Congress of March 1st, 1817, admitting her into the Union leaves no doubt as to the boundary in controversy when it says; "Thence due south" between Mississippi and Alabama to the gulf of Mexico; thence westwardly, including all islands within six leagues of the shore to the most southerly junction of Pearl river with Lake Borgne; thence up said river to the 31st degree of north latitude."

So, you will observe, Mr. Commissioner, that the testimony which we now begin to take on the part of Mississippi will be directed to the establishment of the line designated in our cross bill which
1388 of course will tend to disprove the correctness of the contention on the part of Louisiana.

We begin by offering certain documents being copies of treaties between England, France, Spain and the United States bearing upon the issues here made and certain acts of the territorial and State legislatures of the litigant States, and then we propose to offer testimony to establish certain facts that aid our construction of the laws fixing boundary lines in the waters of the Gulf in support of our contention generally.

Thereupon on the part of the State of Mississippi the following documentary evidence was offered in evidence. The production of the books from which the extracts introduced were taken is waived by the counsel for the State of Louisiana and a copy of the original

filed by the commissioner in each instance is furnished to the counsel for the State of Louisiana, to-wit:—

Mississippi Document No. 1, entitled A definitive treaty of friendship and peace between His Brittan-ic Majesty and Most Christian King, and the King of Spain. Concluded at Paris on the 10th day of February 1763, to which the King of Portugal acceded on the same day.

Mississippi Document No. 2, entitled A definitive treaty of peace and friendship between His Brittan-ic Majesty, and the Most Catholic King. Signed at Versailles on the 3rd, day of September 1783 as published by authority.

Mississippi Document No. 3, being chapter 22, volume 2 of the United States Statutes at Large, entitled An act for the disposal of certain tracts of land in the Mississippi territory claimed under Spanish grants, reported by land commissioner as ante-dated, and to confirm the claims of Abraham Ellis and Daniel Harregal.

Mississippi Document No. 4, entitled Sections No. 1 and No. 2 of chapter 100 and volume 3, of the United States Statutes at Large. An act for adjusting the claims to lands and establishing land offices in the districts east of the island of New Orleans.

Mississippi Document No. 5, being An act concerning an act to enable the President of the United States under certain contingencies to take possession of the country lying on the east of the River Perdido and south of the State of Georgia and the Mississippi territory and for other purposes, approved January 15th 1811, page 471, volume 2 of the United States Statutes at Large.

Mississippi Document No. 6, entitled An act to enable the President of the United States under certain contingencies to take possession of that country lying east of the River Perdido and south of the State of Georgia and the Mississippi territory and for
1389 other purposes. Approved January 15th, 1811. Page 471, volume 2 of the United States Statutes at Large.

Mississippi Document No. 7. Resolutions of the Congress of the United States. Approved January 15th 1811, relative to the occupation of the Floridas by the United States of America. Page 47, volume 2. United States Statutes at large.

Mississippi Document No. 8, being the 1st, paragraph of section 1, chapter 50, volume 2, of the United States Statutes at Large. An act for the admission of the State of Louisiana into the Union and to extend the laws of the United States to the said State.

Mississippi Document No. 9, being chapter 57, volume 2, of the United States Statutes at Large. An act to enlarge the limits of the State of Louisiana, approved April 14th, 1812.

Mississippi Document No. 10, being chapter 84, volume 2 of the United States Statutes at Large. An act to enlarge the boundaries of the Mississippi Territory, approved May 14th 1812.

Mississippi Document No. 11. An act authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory, west of the River Perdido. Ap-

proved February 12th, 1813. Page 472, volume 3 of the United States Statutes at Large.

Mississippi Document No. 12, sections No. 1, and No. 2, chapter 23, volume 3 of the United States Statutes at Large. An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such into the Union, on an equal footing with the original States.

Mississippi Document No. 13, being resolutions for the admission of the State of Mississippi into the Union, approved December 10th 1817, page 473, volume No. 2 of the United States Statutes at Large.

Mississippi Document No. 14, being a copy of one of the Spanish grants annulled by a treaty between the United States and Spain on February — 1819.

Mississippi Document No. 15, being article No. 2 of the treaty of 1819 between the United States and Spain, signed at Washington on the 27th, day of February 1819. John Quincy Adams. Louis De Onis.

Mississippi Document No. 16, being sections No. 1 and
1390 No. 2, chapter 39, volume No. 2, of the United States Statutes at Large. An act for carrying into execution a treaty between the United States and Spain, concluded at Washington on the 22nd. day of February 1819. Approved March 3rd, 1821.

Mississippi Document No. 17 being an opinion of Chief Justice Marshal, in the case of Foster & Elam *vs.* Neilson, 2nd Peters, page —.

Mississippi Document No. 18, being the boundaries of Hancock county, as established December 14th, 1812, taken from section 44 of the Code of 1880 of Mississippi. Section 368 of the Code of 1892 of Mississippi.

Mississippi Document No. 19 being the boundaries of Jackson county Mississippi as established December 14th, 1812, taken from section 50 of the Code of 1880 of Mississippi, and section 37 of the Code of 1892 of Mississippi.

Mississippi Document No. 20, being the boundaries of Harrison county, Mississippi, established February 5th, 1841. Taken from section 45 of the Code of 1880 of Mississippi and section 396 of the Code of 1892 of Mississippi.

Mississippi Document No. 21, being chapter 52 of the Laws of Mississippi of 1842. An act to extend the jurisdiction of the county of Harrison, approved February 22nd, A. D. 1842.

Mississippi Document No. 22, being article No. 2, section 2, chapter No. 2, of the Revised Code of 1857 of Mississippi, respecting the boundaries of Jackson, Harrison and Hancock counties.

The commission here adjourned until nine o'clock tomorrow morning, which is June 2nd, 1904.

Upon reassembling of the commission this morning Mr. Bullard, commissioner on the part of Mississippi appointed Richard Pollard, Esq., as special bailiff to wait upon him and to execute his

orders during the taking of the testimony on the part of Mississippi, and Mr. Pollard was accordingly sworn and entered upon the discharge of his duties.

Mr. B. R. CLEMENTS being sworn as a witness on the part of the State of Mississippi testified as follows :—

Q. Mr. Clements, how old are you?
A. 74.
Q. Where do you reside?
A. I live in Biloxi.
Q. How long have you resided in Biloxi?
A. Since 1851.
Q. What has been your occupation generally since 1851?
A. Boatman running yachts and steamers, hoist boats and pilots etc.

Q. Where?

1391 A. All the way from Lake Pontchartrain, Mississippi sound and Louisiana marsh. Mississippi sound here and Mobile bay, as far as Pensacola.

Q. This is a controversy Mr. Clemens between the States of Louisiana and Mississippi in which it is claimed by Louisiana that the line dividing these two States is the deep water channel which passes out of the mouth of Pearl river through the Mississippi sound as far as Cat island and into the Gulf, and in which Mississippi claims that the real boundary between the States is a line drawn at six leagues from every point of the Mississippi shore between Pearl river and the Alabama line. Are you familiar with the territory that I have indicated to you and that is in dispute between these two States?

A. Yes, sir, I have been all over it.

Q. I understand you to say that since 1851 that you have been a boatman on these waters, and that you are familiar with the territory in dispute between these two States. Am I correct in that?

A. Yes sir.

Q. I will be obliged to you Captain to tell us if you can of your own personal knowledge what has been understood by you, and so far as you know other boatmen to be the dividing line between these two States since 1851?

A. Well sir it has always been my impression and all the boatmen's impression that Pearl river was the dividing line between Louisiana and Mississippi running due south.

Q. Running due south how far?

A. About 18 or 20 miles.

Q. You say that has been the impression of yourself and other boatmen so far as you know?

A. Yes sir, I never knew anything to the contrary.

Q. Now I will ask you to please state how you and other boatmen so far as your knowledge extends have acted upon that impression as to the boundary line between these two States?

A. Well sir we have made no distinction at all. We have fished all over there.

Q. All over where?

A. All over the marsh.

Q. How far south of the Mississippi shore?

A. Well say from where the oysters commence by Grand pass to Isle à Pitre and all of these places clean down to the Mississippi river.

Q. You have fished indiscriminately?

A. Yes sir.

Q. Was there ever any objection to your doing that?

A. Not any.

Q. The bill of complaint in this cause filed by the State of Louisiana against the State of Mississippi alleges that there is a deep water channel leading out of the mouth of Pearl river, as I have before mentioned, which is the dividing line between these two States. I want to ask you whether that channel has ever been recognized by you and all of the fishermen and boatmen on these waters so far as your knowledge extends as the dividing line between these two States?

A. No sir, I never heard anything of that kind.

Q. The answer of the State of Mississippi and her cross bill is to the effect that the dividing line between these two States is eighteen miles south of the shore at every point from Pearl river to the Alabama line. I wish you would please state how this line has been regarded by you during the last 50 or 53 years, and the other boatmen and fishermen in these waters, with reference to ownership, possession, and jurisdiction of the State of Mississippi to this eighteen mile limit?

A. Well sir I don't know how to explain that. We have always considered that Pearl river was the boundary line of the two States. As for the deep water channel, I don't know what you call the deep water channel. From Pearl river it runs into St. Joseph's, that runs east and west, and you have to go around there to get into Cat Island channel. That runs east and west. We always considered
1392 that the boundary line was due south from Pearl river.

Q. For how far?

A. About 20 miles.

Q. Did you always regard this channel as in the State of Mississippi?

A. Yes sir. Most undoubtedly, because there were oysters all around St. Joseph's, and Half Moon, and Cat island, and from there to the marsh and Grand pass.

Q. How far is it south of the Mississippi shore to Malheureux point?

A. Well, I could not say that now. It has been so long since I have been there that I could not say exactly. They change the names of those places so often down there. I could not say the distance exactly.

Q. It is less than 18 miles is it not?

A. Yes sir, I would not think that it was more than 18 miles any way.

Q. Do you know where Nine Mile bayou is?

A. Yes sir.

Q. The map shows that that is east of Malheureux point. Is that correct?

A. Yes sir.

Q. How wide is Nine Mile bayou?

A. Well the last time I was there I do not think it was over a quarter of a mile.

Q. And to the east of Nine Mile bayou is Three Mile bayou as shown by the map. Is that correct?

A. Yes sir.

Q. And then we have Johnson bayou. Do you know where that is?

A. Yes sir, I have heard of it, but every man that comes along there gives it a different name.

Q. And to the east of that we have Turkey bayou. Do you know where that is?

A. Yes sir.

Q. And to the east of Turkey bayou is Grand pass. Is that correct?

A. Yes sir.

Q. Grand pass as we understand it separates Isle à Pitre from the string of islands west of it?

A. Yes sir.

Q. You know where Creole gap is do you not?

A. Yes sir.

Q. It has been testified in this case that Creole gap is in part an artificial water course that cuts Isle à Pitre in two. Do you know whether that is true or not?

A. Well these storms had a great effect on these bayous. One storm would come along and fill it up, and next one would wash it out. For instance there is Grand pass. When I went there in the 50's it was not a quarter of a mile wide. Now it is two and a half miles wide. There were good oysters in there then but they are all washed away now. The reefs inside of it are washed up.

Q. You mean the natural reefs of oysters?

A. Yes sir, and in proportion all along through the marsh there. There are places that have been washed away there and others filled up, but from the chart there I recognize it as the same it was fifty years ago with the exception of some places that are washed away.

Q. I will ask you to please examine this chart exhibited with the cross bill of Mississippi in this cause and mentioned as Exhibit A to the testimony of Mr. W. K. M. Ducate in his cross examination by counsel for Mississippi as a witness introduced by the State of Louisiana and say whether the general contour of this chart or map correctly shows the Mississippi sound south of the Mississippi shore

and what is termed the Louisiana marshes within 18 miles of the Mississippi shore. Tell us whether this map is correct or substantially correct in showing land and water and the general surface and contour of the territory disputed in this cause?

A. Yes sir, that looks to me that it is about the same as when I went through it.

Q. Do you mean to say when you first went through it?

A. Yes sir.

Q. When did you first go through it Captain?

1393 A. In about 1851 or maybe before that.

Q. Do I understand you to mean that this map discloses the surface of water and land up there now about the same as it was fifty years ago?

A. Yes sir, it looks the same to me with the exception of some places as I stated before that are made wider and others narrower from the blows.

Q. This map indicates that boats of light draft may go through Nine Mile bayou into False Mouth bay, down into Treasure bay and Lake of the Mound, eighteen miles south of the Mississippi shore. Please tell me whether you could do that fifty years ago?

A. Yes sir, you could do that with a boat not drawing more than four feet.

Q. This map also indicates that you can pass through Three Mile bayou into Three Mile bay, passing between Raccoon island and little Raccoon island into False Mouth bay and around Mud island into Indian Mound bay and on down into South West pass about 18 miles south of the Mississippi shore?

A. Yes sir.

Q. Could you do that fifty years ago?

A. Yes sir, I think you could. All through there.

Q. And it also indicates that through Jones bayou you could pass down through West Karako bay to Indian Mound bay and on by water eighteen miles south. Could that be done when you first knew this country fifty years ago?

A. Yes sir, it could be done there then.

Q. I ask you this same thing with reference to Turkey bayou. Could you go through that way down as far south as 18 miles fifty years ago?

A. I have seen boats go through that way. I have not been through there, but I have seen boats go through there.

Q. Tell us what you know about Grand pass in the last fifty years please sir?

A. Well, Grand pass, as I stated a while ago, I don't think that it was over a quarter of a mile wide where it is two and a half miles wide now.

Q. What does that connect with?

A. On the west it connects with the other Louisiana shore; Louisiana marsh, and on the east the same thing down towards Isle à Pitre.

Q. What is on the east side of it?
A. Isle à Pitre.
Q. What is to the north of it?
A. Water.
Q. What water?
A. Lake Borgne.
Q. North of Grand pass?
A. Yes sir.
Q. It is Mississippi sound, is it not?
A. You do not get to the Mississippi sound until you get to St. Josephs island. The other part of it is Lake Borgne.
Q. What divides Mississippi sound from Lake Borgne. St. Josephs island?
A. Yes sir, that is the way that I have always understood it.
Q. Is not St. Josephs island a great distance to the west of Grand pass?
A. To the north of it.
Q. To the north west?
A. Yes sir.
Q. And due north of Grand pass is what?
A. North of Grand pass?
Q. Yes. What water is north of Grand pass. Is it the Mississippi sound?
A. Yes sir, and Lake Borgne comes as far as St. Josephs.
Q. And east of St. Josephs is the Mississippi sound?
A. Yes sir.
Q. What is this to the southeast of Grand pass? What water?
A. Well that is the Mississippi sound too.
Q. Mr. Clemens I wish you would tell us what right you and other boatmen have been exercising in what you call the Louisiana marshes for the last fifty years?
1394 A. What right? Well, sir, at that time we always got license for our boats that gave them the privilege of fishing
Q. Where did you get your license?
A. In Mobile and in New Orleans.
Q. What did you do after you got your license?
A. Fished oysters.
Q. Where did you fish oysters?
A. All through the Louisiana marsh.
Q. Have you any personal knowledge of any crimes committed or supposed to have been committed in what we term the Louisiana marshes and within eighteen miles of the Mississippi shore of which the Mississippi authorities took jurisdiction. If so state what they were?
A. No sir I never heard of any crimes committed except of one case of a boy getting drowned. Kennedy I believe was the name.
Q. When was this?
A. It must have been 12 or 14 years ago.
Q. Where was he drowned?

A. I could not say. I heard at the time, but I don't remember.
Q. Did you see the body?
A. I did.
Q. Where was the body when you saw it?
A. It was landed in front of the cemetery here.
Q. In Biloxi?
A. Yes sir.
Q. Was an inquest held over this body?
A. Yes sir, I was on the jury.
Q. You were on the jury of inquest?
A. Yes sir.
Q. Was violence charged by anybody?
A. Well yes sir, there was some talk about it but there was nothing proved.
Q. Who was charged if you remember?
A. Well, it was his brothers. Two brothers I think.
Q. As a member of this jury of inquest can you tell us where the body was found?
A. I heard, but I don't remember where it was.
Q. Do you know whether it was not somewhere below Isle à Pitre?
A. That is what I heard, yes sir.
Q. Is that what was proven before your jury?
A. I don't remember that how it was proven.
Q. Please refresh your memory and say whether or not this body was picked up about Jack Williams bay?
A. That is what I heard. That the body was picked up there. It was not drowned there. He did not fall off the vessel there. That is what the testimony was before the jury. But afterwards they found the body. I don't know how long afterwards.
Q. Who was the officer that held the inquest?
A. I don't remember that, but Dr. Peeley was the physician.
Q. Was it an officer of Harrison county, Mississippi?
A. Yes sir.
Q. Where did the doctor of whom you speak reside? Where did he live?
A. In Biloxi.
Q. In Biloxi, Mississippi?
A. Yes sir, Dr. Peeley.
Q. Were other witnesses introduced before the jury on which you sat in inquest upon the body of Kennedy that testified about the case?
A. There were no witnesses that I know of except the two brothers.
Q. Do you know what was developed before that inquiry as to where the boy Kennedy was drowned or murdered as the case might have been?
A. No sir, all of the report that was here was that in pushing a pole he fell overboard.
Q. At what point, do you remember, that the proof indicated?

A. I don't remember that. It was stated at that time.

Mr. McCLURG: Counsel for the State of Mississippi announces that he has information to the effect that the record in this cause will
1395 be produced, but up to this time he has been unable to find it.

By Gen. GUION: Counsel for the State of Louisiana notes an objection to the evidence of Mr. Clemens as well as to all other evidence of the same character tending to establish what took place at the inquest held, unless the State of Mississippi shows that the record of the inquest as well as all of the testimony given at the inquest has been mislaid or lost and can not be produced.

Q. Captain Clemmens, again calling your attention to the map exhibited with Mississippi's answer and cross bill in this cause, I will ask you to especially note the red lines marked out of the mouth of Pearl river, thence following what is supposed to be the Louisiana main land around to a point 18 miles south of the Mississippi shore, thence eastwardly intending to indicate a line out 18 miles from the Mississippi shore all the way to the Alabama line. Looking at these red lines I want you to say to the court whether or not these red lines correctly indicate what has been your understanding, and the understanding of all others using and frequenting the territory within the reach of these red lines as being Mississippi territory or belonging to the State of Mississippi?

A. Yes sir, we have always considered it as such. All of them that I knew of at that time were fishing there. We always considered that Mississippi territory.

Q. That covers how many years?

A. Well since 1851.

Q. About 53 years then?

A. Yes sir, there abouts.

Q. Are we to understand from this statement made by you that for the last 53 years so far as your personal knowledge goes that this territory has been considered belonging to the State of Mississippi?

A. Yes sir.

Cross-examination.

By Gen. GUION:

Q. Mr. Clemens, I understood you to say that the inquest that was held here in Biloxi was held about ten or twelve years ago?

A. Yes sir, twelve or fourteen years ago, I think it is.

Q. On the body of a boy named Kennedy?

A. Yes sir.

Q. You have no recollection as I understand you of any witnesses having testified where the body had been found?

A. No sir, not with the exception of his brothers that were with him.

Q. The two brothers?

A. Yes sir.

Q. Are those two brothers where they can be reached by the process of the court?

A. Yes sir, they are here.

Q. You don't remember any facts given in evidence at the examination held by the coroner, or who-ever held the inquest as to the place where the body was drowned?

A. Well they stated at that time, but I don't remember where the body was found.

Q. And you don't remember where they stated?

A. No sir. I do not. The body was brought up on the beach at the cemetery and then carried up to the grave and there the coroner held the inquest at the grave. They found no marks of violence on him. Nothing but bruises.

Q. When did you first take out a license as a fisherman to fish oysters?

A. Well about the first boat that I had charge of was about in 1856. Previous to that I was a hand on a boat.

Q. Previous to 1856 you were simply an employee of others?

A. Yes sir.

Q. But in 1856 you began to gather oysters on your own account?

A. Yes sir.

1396 Q. And you got a license to fish oysters from whom?

A. From New Orleans and from Mobile.

Q. What person in New Orleans did you get it from?

A. From the custom house.

Q. From the custom house?

A. Yes sir.

Q. And from what person in Mobile did you get the license to fish oysters?

A. From the custom house.

Q. From the custom house?

A. Yes sir.

Q. Have you any of these licenses in your possession?

A. No sir, it did not say in that, "oysters and fishing license." It says coasting license and fisheries.

Q. Did you understand that this license gave you the authority to fish oysters?

A. Yes sir.

Q. Were you informed by any of the officials in the custom house that you had the authority to gather oysters under that license?

A. Yes sir, we always asked that. What did it consist of, the fisheries. "Well you can fish anything you please." "Oysters, fish, crabs or anything else."

Q. That was told you by whom. Do you remember?

A. The custom house officer that issued the license.

Q. You don't remember any of their names, do you?

A. No sir.

Q. Captain, do you think you could not find one of these licenses if you were to look among your papers?

A. No sir, because I owned three or four boats, and when you sell the boat you give the license with it.

Q. When was the last one that you took out?

A. The last one was at the commencement of the war. About 1862 was the last one that I took out.

Q. 1862. That is during the war?

A. Yes sir.

Q. Do you remember who was in charge of the office in New Orleans at that time?

A. No sir, I could not say.

Q. And it was by virtue of these licenses and the supposed right you had that you gathered oysters in what you called the Louisiana marshes?

A. Yes sir.

Q. Did you apply to any authorities in Louisiana for this privilege?

A. Well you could go with this license any where. Alabama, Mississippi or Louisiana. It did not make any distinction where we were to catch oysters. We brought oysters to New Orleans and brought oysters to Mobile and brought oysters here even.

Q. Do you say that you got any authority from any person representing the State of Louisiana to fish oysters down in the Louisiana marshes?

A. I got the authority from the custom house.

Q. That was the United States office, was it not?

A. Yes sir.

Q. It was not an official holding the authority from the State of Louisiana?

A. No sir, I suppose not. It was at the custom house.

Q. I may be mistaken but I understood you to say just now that you and other fishermen had fished oysters down in what you call the Louisiana marshes as far back as 1851?

A. Yes sir.

Q. That you were then employed; in the employ of others?

A. Yes sir.

Q. And that you kept that up until when?

A. Until 1862.

Q. Until 1862?

A. Yes, sir.

Q. Well have you been fishing oysters since 1862?

A. No sir, not to sell.

Q. You mean to make a distinction then between the fishing of oysters for sale which you did from 1851 up until 1862, and fishing for oysters not for sale since 1862?

A. Yes sir, I did in this way. Previous to that we used to
1397 carry our oysters to market.

Q. Previous to what?

A. Previous to this time.
Q. You used to carry your oysters to market?
A. Yes sir.
Q. And since 1862?
A. Since 1862 I have been planting oysters here on Deer island.
Q. Planting oysters?
A. Yes sir.
Q. Then as I understand you have not been fishing oysters in the Louisiana marshes since 1862?
A. No sir.
Q. You only fished down there from 1851 up until 1862?
A. Yes sir, because after that we used to fish around Mobile.
Q. Do you know much about this territory or country of what is called the Louisiana marshes since this time. Have you visited it since this time?
A. I have been there but not very often. I think I have been there three or four times since.
Q. Only three or four times?
A. Yes sir.
Q. That is since 1862?
A. Yes sir.
Q. Now I understood you to say that you fished down in these Louisiana marshes believing that Mississippi went down eighteen miles from Pearl river. Eighteen or twenty miles?
A. Yes sir.
Q. What reason had you at that time, having a license from the United States Government which authorized you as you *to* say to fish oysters in Louisiana and Mississippi and Alabama to consider where you were fishing?
A. Well we made no special point of where we were going. We just went according to the water and the best places to fish.
Q. You had the authority as I understand it from the United States Government to fish in Mississippi and Louisiana and Alabama?
A. Ye- sir, it did not mention that in the license though.
Q. But you knew that the license that you got from the custom house authorized and permitted you to fish oysters in these three States?
A. Yes sir.
Q. What reason had you with this license in your possession to consider where you were, whether in Mississippi or Louisiana or Alabama?
A. We did not consider it at all. We just went where the oysters were the thickest.
Q. You went where you found the oysters?
A. Yes sir.
Q. Regardless of where they were?
A. Yes sir.

Q. Well what basis of information had you for fixing upon the 18 or 20 miles limit from Pearl river?

A. Well I can not exactly explain that, but all of the boatmen understood that the boundary line was Pearl river and eighteen miles due south of Pearl river.

Q. 18 miles due south?

A. Yes sir.

Q. Then if you would see upon the map that has been shown to you that the line is not due south of Pearl river, it would not be the line that you supposed was the line that governed you and other fishermen in finding the line between Louisiana and Mississippi would you?

A. Well Judge, that way we haphazard that. We say Pearl river runs due south. It might run south east, or east south east or some where around there. We never mentioned anything of that kind, but the supposition was among the boatmen that this was the boundary line between the two States.

Q. And that was the prevailing idea among the fishermen, you say?

A. Yes sir.

Q. That the line was due south 18 miles from the mouth of Pearl river?

A. Yes sir.

Q. Well now could you tell me what point you considered
1398 was 18 miles due south of Pearl river?

A. Well no, I could not say exactly now. Well from Pearl river that would go way into the marsh.

Q. I understand that, but what point in your mind could you fix upon as being the point which was 18 miles due south of Pearl river. I am now speaking without reference to your examining any maps. I am trying to test your memory.

A. Well due south from Pearl river. It ought to hit Three Mile bayou I think. Inside of Three Mile bayou.

Q. Do you consider Three Mile bayou about 18 miles?

A. No sir, inside of the marsh I say.

Q. You mean south of it?

A. Yes sir.

Q. How far is it to Nine Mile bayou from Three Mile bayou?

A. I could not say that now. It is a good distance though.

Q. Three Mile bayou is a good distance east of Nine Mile bayou?

A. Yes sir.

Q, Can you fix on some point due south of Pearl river. I don't want to go as far east as Three Mile bayou, but due south of Pearl river which is eighteen miles south of it?

A. No sir, I could not fix on any point and be sure of it.

Q. Did you ever fish as far down south as Drum bay?

A. Yes sir.

Q. Did you ever fish as far south as Live Oak bay?

A. Yes sir. No, I did not know it by that name then.

Q. Did you consider Drum bay and California bay in Mississippi or Louisiana?

A. Well we could not say Judge. We considered the whole business there in Mississippi at that time because we were never restrained from catching anything and nobody told us anything about it.

Q. No Louisiana authorities ever interfered with you did they?

A. No sir.

Q. No question was ever raised as to where you were?

A. No sir.

Q. Did I not understand you to say that you fished as far south as the Mississippi river?

A. Yes sir.

Q. Do you mean the mouth of the Mississippi river?

A. No sir.

Q. How do you mean as far south as the Mississippi river?

A. Right back on the quarantine station. That is a little north of Breton island.

Q. I understood you to say, Mr. Clemmens, in your testimony in chief that in fishing oysters you and others fished oysters as far down as the Mississippi river. Will you please indicate some point on the map before you marked "Tunison's new railroad, post-office, and distance map of Arkansas, Mississippi and Louisiana," which has already been offered in evidence for the State of Louisiana and state what point you have reference to as being one as far as the Mississippi river to which you went in fishing oysters?

A. I went as far as Eloi bay, Point Chico and Lake La Fortuna.

Q. Now I will ask you also if you remember having fished in what is called Junius pass?

A. Yes sir, I have but I don't remember the distance now.

Q. Well at the time you were gathering oysters in these waters had you any mind or idea of not going upon Louisiana or Mississippi either?

A. No sir, we considered it, the whole of what you call the Louisiana marsh. We considered all of that Mississippi marsh.

Q. Even as far south as Drum bay?

A. Yes sir, the boatmen considered it that way.

Q. Did you consider Point Chico as being in Mississippi?

A. Yes sir, we never made any inquiries about the boundaries or any thing that way you know.

Q. You were not concerned in boundaries at that time were you?

A. No sir, or nobody else.

Q. Was this matter discussed much between you and others at that time as to where this boundary line was between Louisiana and Mississippi. Were these boundary lines discussed between you
1399 and others connected in fishing oysters.

A. No sir, not unless the question came up. Do you mean since the question came up?

Q. No, at the time you were fishing oysters?

A. No sir, we never thought of such a thing.

Q. What depth of water at the time you were fishing oysters, down there in 1851 up to 1856 was there in Nine Mile bayou?

A. Well sir that portion of Nine Mile bayou. Five feet, six feet, and sometimes as high as seven feet. It is all according to the tides.

Q. After you get out of the Nine Mile bayou going south into the marsh proper, what depth of water was this?

A. Different depths. From four to five feet and some places three feet. I have gotten aground many a time drawing two and a half feet going through there. It is all according to the tides.

Q. How about the depth of water in Three Mile bayou? Was this more or less than this in Nine Mile bayou?

A. I think that it was about the same.

Q. And the marsh south of Three Mile bayou. Would this correspond with the marsh south of Nine Mile bayou?

A. Yes sir, very near it. As I mentioned during the storms some of the places would fill up and others get deeper, and *vice versa*.

Q. You did not then as a resident of Biloxi and a citizen and resident of Mississippi fish in what is called the Louisiana marshes at the point where you did in the belief that you were simply fishing in Mississippi waters did you?

A. Well not exactly.

Q. Did you understand that you had the right to fish whether it was in Louisiana or Mississippi?

A. Yes sir.

Q. In any part of this marsh?

A. Yes sir. We had the right according to our license.

Q. Do you know why this country down there was called the Louisiana marshes?

A. No sir.

Q. You never heard?

A. No sir. Why it was called the Louisiana marshes?

Q. Yes sir?

A. No sir.

Q. Did you ever enquire?

A. No sir.

Q. I understood the question or rather one of the questions put to you just now by counsel for Mississippi as suggesting to you and possibly your having answered it with the idea that you were answering the suggestion that Mississippi had in some way in her sovereign capacity claimed jurisdiction over some part of this Louisiana marsh. Do you know of any instance where Mississippi as a State has claimed jurisdiction over any of the Louisiana marshes?

A. Well not that I know of except since this talk has come up over it. Since this boundary question has come up.

Q. How long ago has this been?

A. It has been now a couple of years has it not?

Q. I would prefer you to answer it yourself?

A. I do not keep track of these kind of things at all. Only what I see in the papers and what I hear about the boundary question.

Q. In what way has the State of Mississippi been assuming jurisdiction since the time that you speak of. Since the last two or three years that you mention?

A. They claimed it I suppose because they thought it belonged to them.

Q. In what way has she been exercising any jurisdiction over it?

A. I don't know that sir.

Q. Was there any part of this Louisiana marsh or what is called Louisiana marsh assessed in the State of Mississippi?

A. I could not say.

Q. Does the State of Mississippi or any of the counties of Jackson, Harrison or Hancock collect any taxes on any of the lands lying in what is called the Louisiana marshes?

A. I could not answer that.

Q. Don't you know that it is a fact as an old resident of Biloxi that there are no taxes collected in this county, Harrison
1400 county, on any lands south of Harrison county in what is called the Louisiana marshes?

A. I don't know anything at all about that sir.

Q. Mr. Clemens, at a point south of Pearl river where you say; or rather to which you say the boundary line of Mississippi extends in your opinion, or as you and others believe. Starting from that point going eastward to the Alabama line is there any channel leading across this marsh?

A. Well there is Cat Island pass. That is about the only channel south of Cat island.

Q. Cat Island pass is east of Isle à Pitre, is it not?

A. East of Isle à Pitre?

Q. Yes sir, is not Cat Island pass between Cat island and Isle à Pitre?

A. Yes sir.

Q. I am not speaking of the north east part of this territory. I am speaking of the extreme southwest corner. As I understood you to say, you and others thought and believed that the Mississippi line extended due south from the mouth of Pearl river 18 miles down into the Louisiana marshes?

A. Yes sir.

Q. Now I ask you whether starting from this south western corner and going eastward towards the Alabama line is there any channel along that border line coming out into the deep water?

A. Well there is no channel except Cat Island channel and Pass Marianne channel.

Q. There is no channel then down in the marshes?

A. Yes sir, it is open and you can go through the marsh. You can go in between the Chandeleurs and the marsh.

Q. Between Chandeleur islands and the marsh?

A. Yes sir.

Q. I speak of in the marsh proper?

A. I say from different parts of the marsh you can go into the Chandeleur bay, I believe they call it, without coming clean out.

Q. You don't seem to have exactly understood my question. What I want to know is whether there is such a thing as a channel of water, water deep or shallow, that would conduct you from the south west corner of the line drawn from the southern corner to the eastern extremity of that line going east. Any channel through the Louisiana marshes?

A. No sir, you can go from one bayou to another and then come out as I say.

Q. Now examine this map about which you have already been testifying which is a map offered by Mississippi and concerning which her counsel has just examined you in chief and state whether on a line you find marked on this map in red ink; starting from the southwest corner and coming across eastward towards the Alabama line, does it not cross there bodies of land as well as water. Does this red line which is the most southerly line drawn on this map extend across land in going eastward?

A. Well it looks to me like this is all land that the line goes through. There is no channel that I know of.

Q. There is no channel that you know of extending from this southwest corner going eastward?

A. From the south west line of Louisiana marsh proper going eastward you can go between Grand pass. There are some islands there.

Q. Here is Grand pass way up here. I am not speaking about that part of the country up here. Is this red line here the channel?

A. No sir, if it is I don't know it.

Q. Do you know how far from the Mississippi shore this red line is Mr. Clemens that you have just been testifying about. How far this red line is from the shore?

A. No sir, I could not say.

Q. Then you cannot testify can you that it is 18 miles from the shore line of Mississippi?

A. Well no, I would not swear to that unless I measured it.

Q. Unless you measured it?

A. No sir.

Q. Can you measure it from this map?

A. No sir.

1401 Q. The reason I ask you is that it has been testified to by one of the witnesses for the State of Louisiana that this line was more than 18 miles south of the shore line of Mississippi.

A. (The witness does not answer this question.)

Q. One of the witnesses stated that it was 25 miles at some points.

A. (The witness makes no answer to this question.)

Q. Well now have you any idea how far Petit pass is from the mouth of Pearl river?

A. No sir, it is so long since I have been out there that I could not say.

Q. Do you know how far Round island is from the mouth of Pearl river?

A. Round island is inside of the marsh is not it. I don't know it by that name.

Q. You don't know of any island by the name of Round island?

A. I have heard of it.

Q. Where is it?

A. I could not say.

Q. Where was it when you heard of it?

A. I have heard of it since I have been out there. Judge, all of these oystermen go out there and they come to places and they give them different names.

Q. The Round island that I am speaking of is not in the marsh?

A. The only Round island that I know of is east of here.

Q. The Round island that I am speaking of is supposed to be and is south of Grassy island.

A. Well I know where it is then. I know the island but I don't know it by that name.

Q. How far is it from the mouth of Pearl river?

A. Well I don't think that it is over ten or twelve miles.

Q. Well some witnesses have testified if I am not mistaken that there was an island known as Round island which has entirely disappeared. Is that the one that you have reference to?

A. There is an island on this side of Grassy island. The last time I was there was 12 or 15 years ago. I could not say any thing about its disappearing since. I have never heard that it disappeared.

Q. Do you know how far south of the shore line of Mississippi Half Moon island is?

A. From the shore proper or from the marsh?

Q. From the Mississippi shore?

A. Well you might call it two shores, because there is a main land and then a lot of marsh run out where the channel commences. Do you mean from that or from the shore proper?

Q. Well take both. Well we will take the main land first. How far is it from that to Half Moon island?

A. I don't think it is over five miles.

Q. How far east from the edge of the marsh?

A. I could not say about the marsh. That marsh must be at least a mile or a mile and a half wide from the shore.

Q. What point on the Mississippi shore is due north of Half Moon island?

A. St. Josephs comes about the closest on it.

Q. St. Josephs?

A. St. Josephs island.

Q. I am not speaking of islands. I am now speaking of the main land. What part of the main land?

A. I don't know the name of that place there. Claiborne poin they call it.

Q. Is that marsh along there?

A. No sir, that is on the main land.

Q. Is there a marsh off the point?

A. Yes sir, there is St. Josephs island, and three or four litt islands lying between that and St. Joseph.

Q. Did you ever go down Turkey bayou?

A. I think I have.

Q. When was this. Do you remember?

A. It was a long time ago.

Q. Did you ever go down Three Mile bayou?

A. Yes sir.

1402 Q. You have been down Nine Mile bayou?

A. Yes sir.

Q. How far down Nine Mile bayou have you been?

A. I have been all through there. I could not tell you the di tance.

Q. You have gathered oysters all through this country?

A. Yes sir.

Q. And you have gone down as far south as Drum bay?

A. Yes sir.

Q. And Junius bay?

A. Yes sir.

Q. Now Mr. Clemens tell me if you please the exact line that yo and other boatmen understood to be the line drawn from the mout of Pearl river going south. Where did it strike the Louisian marshes?

A. Well sir, we considered the whole Louisiana marsh as belon ing to Mississippi.

Q. I understand you——

A. We have made no distinction about any line. We neve thought of such a thing. All that we knew was that Pearl rive was the boundary line.

Q. That is the boundary line between the western part of Missi sippi and the eastern part of Louisiana, you mean do you not?

A. Yes sir.

Q. What I want you to tell me if you can is what point in t Louisiana marsh do you first strike in drawing that line due sout from Pearl river?

A. Well you would strike about Bayou Boudreaux, I think the called it then. I don't know what they call it now.

Q. Where is this? Is it any where near Malheureux point?

A. No sir. Malheureux point lies to the east of that.

Q. Is it anywhere near Petit Pass island?

A. No sir, that is to the eastward of that too.

Q. Petit Pass island was to the eastward of Bayou Boudreaux?

A. Yes sir.

Q. Is there not a Bay Boodre too?

A. No sir, they always called it Bayou Boudreaux.

Q. Was it your understanding and the understanding of every one that was engaged in fishing at that time that the line after it left Pearl river went due south all the way down 18 miles into this marsh?

A. We never thought any thing about lines sir. We never thought anything about the lines.

Q. I understood you to say a while ago in giving your testimony in chief that you had always understood that the lines of Mississippi; the southern boundary line of Mississippi after it left Pearl river was 18 miles due south of Pearl river?

A. Yes sir.

Q. Well now I ask you the question whether you considered that the line that you refer to as being the southern boundary line of Mississippi was reached by going due south from Pearl river right straight down?

A. I do not get that exactly.

Q. You don't understand my question?

A. No sir.

Q. What I asked you was this Mr. Clemens. In order to find the southern boundary line of Mississippi after you leave the mouth of Pearl river, which is the boundary line between eastern Louisiana and western Mississippi, how far south do you go of Pearl river?

A. Well I don't know exactly how to answer that.

Q. Did you not state awhile ago that you understood that the Mississippi southern boundary line was found by going south 18 miles after you got out of Pearl river?

A. That is what I heard.

Q. That is what you understood?

A. Yes sir.

Q. I say was this understanding in your mind this. That this southern boundary line was found by going due south after
1403 you come out of Pearl river?

A. Well I don't know how they found it. I could not say that.

Q. Did not you undertake to say awhile ago when you had this map before you that was introduced in evidence that the line followed a certain course indicated by red marks?

A. Yes sir. I don't know anything at all about these red marks though.

Q. You don't know anything at all about that?

A. No sir.

Q. Did you ever hear anything at all about the line running down from Pearl river due south to a certain point and then going eastward to a certain point and then down Nine Mile bayou?

A. Well I have heard talk of that kind yes sir, but I never paid any attention to it at all.

Q. When did you hear that?

A. I could hear that every day when the crowd gets to talki about the boundary line, but I never paid any attention to it.

Q. When did you first hear of it?

A. Why about a year or so ago, I suppose.

Q. That is the first time, a year or so ago, that you heard abo this line being the line?

A. Yes sir.

Q. Going south to a certain point and then going around by t Nine Mile bayou?

A. I did not say anything about it going around anywhere.

Q. Going down by Nine Mile bayou?

A. No sir, it did not mention any thing about no bayou all of t time I have heard.

Q. Did you ever hear then, I will put it that way, that the li between Mississippi and Louisiana went down Nine Mile bayou?

A. No sir.

Q. Or followed Nine Mile bayou?

A. No sir.

Q. You testify for yourself and other fishermen that the line b tween the southern boundary line and Mississippi was found b going 18 miles due south after you left Pearl river.

A. Yes sir.

Q. I understood you to say that you had never heard any thi about the claim of the deep water channel being the boundary li between Mississippi and Louisiana. Am I correct in that?

A. Me hearing about the deep water channel?

Q. I understood you to say that you had never heard any clai being made that there was a deep water channel that separated Mi sissippi and Louisiana?

A. Well I have heard people talk about that. That Louisian claimed that.

Q. When did you hear that first?

A. I heard that some time ago. I could not say exactly when bu I heard that when this question came up.

Q. Do you remember when was the first time that you heard it

A. No sir, I could not say.

Q. Where were you planting oysters?

A. Right out here at Deer island.

Q. Are you planting there now?

A. No sir.

Q. How long have you been planting oysters there?

A. A couple of years. We are out of seed now.

Q. How far is that from Biloxi?

A. Right over here. That island that you see over there.

Q. The court don't know about that. How far is it?

A. I would call it about a mile.

Q. Is it a good bedding country?

A. Yes sir.

Q. Is not this whole coast country here a good bedding country for oysters?

A. Yes sir, very good.

Q. Is it not a good bedding country from Pearl river as far as the Alabama line?

A. Well no.

Q. Where is it that it is not good?

A. Well from Hendersons point clean here to the Biloxi pass. It is too much exposed. You plant oysters there and they will
1404 get covered up. That has been tried. There are people that have tried it.

Q. Covered up by what?

A. By the sand and mud.

Q. That is not the condition of the coast here?

A. No sir, you plant them here and Deer island and Back bay and all the way down to Pascagoula.

Q. How far is that?

A. Pascagoula is 25 miles from here.

Q. That is all good bedding country, is it not?

A. It is all good bedding country.

Q. Are there any natural reefs along there?

A. Yes sir, at Pascagoula there is.

Q. What was your reason for stopping fishing oysters in Louisiana marshes as far back as 1862?

A. Because I quit it altogether.

Q. You quit the business?

A. Yes sir.

Q. Is there not a channel between Cat island and Isle à Pitre?

A. As I stated before there is a channel between the islands but there is hardly any water in it. You could not take more than three or three and a half feet in good tide.

Q. Between Cat island and Isle à Pitre?

A. Yes sir.

Q. How do vessels come in here?

A. They come through Ship Island pass and Cat Island pass.

Q. What do you call Cat Island pass?

A. South of Cat island.

Q. Between Cat island and Isle à Pitre?

A. Yes sir.

Q. How far does this extend?

A. As far as St. Joseph island.

Q. How far is St. Joseph island from the mouth of Pearl river.

A. About five miles I suppose.

Q. From St. Joseph island to Pearl river is there a channel?

A. Yes sir.

Q. The same channel as comes through there?

A. No sir, you call it St. Joseph channel.

Q. But that is a channel of about the same depth is it not?

A. No sir, there is more water in St. Joseph channel than in Cat Island channel.

Q. There is more water in there than in the Cat Island channel?

A. Yes sir.

Q. How much water is there in Cat Island channel from Cat Island pass to Mound island?

A. You can take from seven feet to eleven feet.

Q. And that channel passes north of Half Moon island, does not it. It passes between St. Joseph and Half Moon island does not it?

A. That channel passes south of Half Moon.

Q. Are not you mistaken about that?

A. No sir.

Q. Where does the St. Joseph channel strike it?

A. After you get out of Cat Island pass you go around north of west and go into St. Joseph pass.

Q. I understand, but let's start from Cat Island pass. The pass between Cat island and Isle à Pitre, going towards Pearl river. That pass has as much as from seven to eleven feet of water in it?

A. Yes sir.

Q. That channel goes until it strikes St. Joseph channel does it not?

A. Yes sir.

Q. At what point does it strike St. Joseph channel?

A. I could not say that exactly. It always cuts off there when you get clear of Half Moon. They come right across St. Joseph. To the east of St. Joseph in to the St. Joseph channel.

Q. And that takes you to Pearl river does it not?

A. That takes you to Pearl river.

Q. What is the depth of this channel?

A. In some places it is 20 to 25 feet deep.

1405 Q. Are you not mistaken when you say that this channel is south of Half Moon. Does it not come north of Half Moon island?

A. The St. Joseph channel? Yes sir.

Q. The St. Joseph channel is north of Half Moon is it not?

A. Yes sir, we are talking about Cat Island channel?

Q. I am talking about the channel leading out of Pearl river and going eastward which you claim is St. Joseph channel?

A. Yes sir.

Q. That channel runs north of Half Moon island?

A. Yes sir.

Q. Where does it strike Cat Island channel?

A. It don't strike it at all. It comes right on to Pass Marianne.

Q. Where do the two channels intersect?

A. The Cat Island channel shoals off when it comes close to Grassy island there, and then the vessels cut off between that and St. Joseph and go into St. Joseph channel.

Q. How do they go from St. Joseph to another one?

A. Simply crossing over.

Q. From one channel to another?

A. Yes sir, after you leave Cat Island pass there is a difference of a foot or two between that and St. Joseph's. The vessels never attempt to go through there that draw over seven feet.

Q. Let's go back from that. When you go between Isle à Pitre and Cat island. Through this Cat Island channel. That channel leads through there going west. How far does this channel go before it loses itself?

A. Up to Grassy island.

Q. North or south of Grassy island?

A. North of it.

Q. North of Grassy island?

A. Yes sir.

Q. Well then where is what you call St. Joseph channel?

A. To the south of St. Joseph island.

Q. And it goes as far as Pearl river, does it not?

A. Yes sir.

Q. Well now how does a vessel for instance that goes in between Cat island and Isle à Pitre get to Pearl river? What channel does it take?

A. The vessel comes from the outside and it takes the Cat Island pass, and comes as far as Grassy island and comes north into the St. Joseph pass.

Q. I understand you now. At Grassy island where the Cat Island pass loses itself the vessel would take a northern course?

A. Yes sir.

Q. And it goes up into the St. Joseph channel?

A. Yes sir.

Q. How far are those two channels apart at Grassy island?

A. About three or four miles or some where along there.

Q. Is there deep water at that point. At Grassy island?

A. There is about eight or ten feet there.

Q. You can take that way from one channel into the other?

A. Yes sir.

Q. How deep is St. Joseph channel?

A. In some places it is 25 feet deep.

Q. From Pearl river until you get north of Grassy island?

A. From the Rigolets. You don't want to go that far.

Q. No, I am talking about from Pearl river?

A. You can take eight or nine feet there before you get to St. Joseph and then 20 or 25 feet.

Q. What is the channel called Mr. Clemens that comes out of the Rigolets. Is not that St. Joseph?

A. No sir, we call that Lake Borgne.

Q. Is not there a channel that comes out of the Rigolets?

A. Yes sir, there is a channel, but I never heard it called any name.

Q. How far does that go eastward? Does it strike either St. Joseph channel or Cat Island channel?

A. It don't strike Cat island at all. It strikes St. Joseph.
Q. At what point?
A. It is on a straight line from St. Joseph to the Rigolets.
Q. It strikes St. Joseph?
A. Yes sir.
1406 Q. How far does St. Joseph channel run eastward from St. Joseph island?
A. I think that it goes as far as Pass Marianne. They call it Marianne pass.
Q. Where does it go into the deep water?
A. From Pass Marianne.
Q. Yes sir?
A. It goes out at Ship island
Q. North of Ship island?
A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. Gen. Guion asked you Mr. Clemens about going through Nine Mile bayou, Three Mile bayou, Turkey bayou and I believe Grand pass. When was it that you first went through these streams?
A. In the 50's.
Q. In what sort of a craft or vessel did you go through them?
A. Schooner.
Q. Schooner of what draught?
A. Two feet to two and a half feet.
Q. How far south did you go then?
A. I could not say how far south. I went all through it.
Q. You went down into the marshes did you?
A. Yes sir.
Q. Gen. Guion asked you about whether there were any channels in the marshes proper, and I think you answered that there were none. I want you to answer me now whether you had any trouble with a schooner drawing two or three feet in going around through the waters of these marshes in 1851, 1852, 1853 and along that time?
A. Well some times we had a little trouble. We would run out of the channel and get on a mud lump. The channel proper was so crooked that once in a while you would get out of it.
Q. I understand you to mean there is something like a channel through these marshes?
A. There are channels all through the marshes from one bayou to another. For instance you leave that Indian Mound Bay island. You have a channel to go through there, and on both sides of that is maybe oyster reefs.
Q. Could you go with a boat drawing three feet through Nine Mile bayou to False Mouth bay down into Treasure bay?
A. Yes sir, you can go from any of these places to any other.

Q. With a boat of three feet draught?
A. Yes sir.
Q. You said to Judge Guion that you did not know any thing about this red line on the map about which we have examined you?
A. Yes sir.
Q. And you have also stated that your general understanding was that the Mississippi line extended 18 or 20 miles south?
A. Yes sir.
Q. That is true as to your understanding regardless of the red lines?
A. Yes sir.
Q. And that has been your understanding for fifty years? Is that correct?
A. Yes sir.
Q. That Mississippi extended 18 miles south?
A. Yes sir, I have always understood it that way.

Here the commission adjourned until the afternoon session.

The commission reassembled Thursday afternoon, and the following testimony was taken, towit:

1407 Captain WILLIAM GORENFLO, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows towit:—

Q. Where do you reside, Captain?
A. On the back bay of Biloxi.
Q. How old are you?
A. I will be 61 years old on the 5th day of this month.
Q. How long have you lived in Biloxi?
A. I came here in 1853.
Q. What is your present occupation?
A. I am engaged in the canning business at present.
Q. Oyster canning?
A. Yes sir, that is right.
Q. What has been your business since 1853?
A. Well since 1874 I have been in the oyster business, and from 1868 to 1874 I was running on boats and jobbing around.
Q. Running on a boat where?
A. Part of the time in the Louisiana marsh and part of the time fishing oysters in Mobile bay. In the waters of the marsh out there.
Q. This is a suit brought by the State of Louisiana against the State of Mississippi in regard to establishing the boundary line between the two States. The claim of Louisiana is substantially that the line between the two States is one that follows the deep water channel out of the mouth of Pearl river eastward north of Half Moon island. Into South West pass between Cat island and Isle à

Pitre and to the north east of Chandeleur into the Gulf. It is claimed on the part of Mississippi that no record should be made of any channel, but that we should follow the intention of Congress in fixing the boundary between these two States at 18 miles from the shore of Mississippi, and at each point from the shore between Pearl river and the Alabama line to the eastward. This line claimed by Mississippi extends far into what is called the Louisiana marshes. I would like for you to say please whether you are familiar with this territory that is in controversy as indicated by what I have stated?

A. Yes sir, I believe that I am.

Q. How long have you been familiar with this territory?

A. Well the first time that I went out there I spent about three weeks out there when I was a boy. I think that it was in the winter of 1858 that I went out there. I spent three weeks with my father out there. He was sick and the doctor advised him to go out there.

Q. Where was it that you spent these three weeks?

A. We went in Three Mile bayou and struck off to the westward. We went out with an old man who had a sloop called the Fairy. My father went out there and spent three weeks so as to get a change of air, and be in the open air.

Q. Where were you?

A. We spent most of the time in what they call Treasure bay where this old fellow had his traps. He was catching muskrats and otter and minks and such as that. That was my first visit.

Q. If you can state I would like for you to state in what jurisdiction you were then. In Treasury bay. Whether in Louisiana or Mississippi.

A. Well at that time we did not know where we were. At that time that question had not come up. We did not know whether we were in Louisiana or Mississippi at that time. That is really in what we claim as Mississippi now according to our present contention from the map.

Q. You say that is what we contend now?

A. Yes sir.

Q. Can you say how long we have been contending that this is in Mississippi jurisdiction?

A. Well that is more than I can say. I will say that we have been contending though for the last 12 or 14 years; we have been contending that that part belonged to the State of Mississippi.

1408 Q. Treasure bay is within 18 miles of the shore is it?

A. I think that portion of it is yes sir.

Q. Have you been in that disputed territory since that time?

A. That is the first time I went out there on a short trip when I was out there about three weeks.

Q. You have been familiar with it since that time?

A. Yes sir, during the war, of course, I was not out there then. But in 1868 I think I began to give attention to it there.

Q. I wish you would please tell us what has been your uniform understanding and so far as you are informed the understanding of

every boatman, fisherman, and the people generally who have been in that section as to about where the limits of the State of Mississippi are, and have been regarded during this time?

A. Well as I stated, I think in the last 12 or 14 years this question has been broached, but previous to that I don't think that anybody gave it any thought, whether we were in Mississippi or Louisiana. We were never interfered with by the authorities of either State, Mississippi or Louisiana, and consequently we did not think about it and did not know who it belonged to, but since this question has been agitated, when we went out 18 miles; we knew that was a good long ways out; it was natural to suppose that we were in Mississippi.

Q. 18 miles from what?

A. From the main land.

Q. Of what?

A. Mississippi.

Q. I understand you to say that you and other fishermen and boatmen and the people of Mississippi have regarded yourselves within the limits of the State of Mississippi so long as you were within 18 miles of her shore?

A. We did at that time yes sir.

Q. At what time?

A. Say the last 14 years. I think that it has been about 14 years since this agitation commenced with the papers about the boundary question. I think that it has been about 14 years since the first intimation that we had of it.

Q. How long has it been since there has been any definite dispute about this boundary line?

A. I could not say exactly. It has been about four or five years ago.

Q. Previous to that time there was never any controversy about the right to go in there?

A. No sir, there was never any controversy about it no sir.

Q. I will ask you to please examine this map before you made an exhibit with the cross bill of Mississippi in answer to the original bill of complaint filed against her by the State of Louisiana in the Supreme Court of the United States and say whether you recognize the red line beginning at the mouth of Pearl river, running southward through Lake Borgne, and thence around what are termed the Louisiana marshes by Malheureux point, and between Malheureux point and Petit pass on to Nine Mile bayou, and thence going southward and westward around what is claimed to be the mainland of Louisiana to a point westward through Lake of the Mound, and thence meandering eastward with the shore of Mississippi, and supposed to be about 18 miles from the Mississippi shore. Please say whether that is according to your personal knowledge, individual judgment and general information covering all of your past observations and experience within the limits of the State of Mississippi?

By Gen. GUION: The question is objected to by counsel for Louisiana because of its leading character, and as indicating to the witness the answer that is desired, and the counsel for Louisiana further objects that the question should be put in the form of a direct inquiry to be answered by the witness as to what he considers is and should be the southern boundary line of the State of Mississippi.

1409 A. Well, I should say that so far as the southern boundary is concerned, I would say it was well within the boundaries claimed within this State. So far as the western boundary is concerned, I don't know much about that. The western boundary, because I don't know how you measured this, but I do know that all of this portion here from Treasure bay east, and south as far as the red line is concerned I would state according to my belief that it is within the State of Mississippi. That is within the 18 mile claim.

Q. What is your belief based upon?

A. Well so far as that is concerned it is both upon the distance and from the fact that we have never been molested since we started to fishing there. Nobody has tried to stop us. We have always considered that we had a perfect right to fish there and nobody has ever tried to stop us.

Q. What State did you consider your self in?

A. We considered ourselves in the State of Mississippi.

Q. Did you ever go through Nine Mile bayou southward?

A. Yes sir.

Q. When did you first make that trip?

A. I made that trip in about 1869.

Q. In 1869?

A. Yes sir, in 1869.

Q. By what means did you go through there in 1869?

A. With a schooner.

Q. What draught was she?

A. We went through there very light.

Q. About what was she drawing?

A. I suppose that she was drawing about two and a half feet of water.

Q. Where did you go?

A. We went into a half dozen different places, but our main object was to go to Bayou Treasure.

Q. That is Treasure bay?

A. Yes sir, we called it Bayou Treasure. This is the bay. The southern portion of it was then called Bayou Treasure.

Q. How wide would you say that Nine Mile bayou was at that time?

A. Distance on the water is hard to tell. At that time I would say that it was about 150 yards wide.

Q. Did you ever go through Three Mile bayou to the southward?

A. Yes sir, that has been some time ago though that I went through Three Mile bayou.

Q. About what time was it that you first made that trip?

A. The only time that I went through there is when I went with the Evangeline, about 12 years ago. You see we did most of our fishing on West Karako bay. The most of our fishing was down through Fox bay and through this section of country in Southwest pass, into East Karako and in about Greque bayou. We did a great deal of fishing below there in Bayou Greque. Through Grand Pass into Bayou Greque.

Q. Tell me if you can Captain about how wide Three Mile bayou was when you first went through it?

A. That has been a good long while ago that I first went through Three Mile bayou. I went once through Nine Mile bayou and once through Three Mile bayou, but I don't recollect how wide it was.

Q. Did you go through Three Mile bayou with the same craft that you did Nine Mile bayou?

A. Yes sir, we went with a steamer through Three Mile bayou.

Q. How much was she drawing?

A. I suppose about three and a half feet of water.

Q. Where did you go?

A. All through here by Little Raccoon and West Karako bay and through Cranetown and came out at Elephant point.

Q. Into what?

A. Out into the Gulf. We went to Martin island and through Live Oak bay and through that section of country with a steamer, and through Drum bay, and came down again through Southwest pass. We were examining the oyster reefs at the time to see whether there were any left there.

Q. When was this?

1410 A. It is about 12 or 14 years ago that we were through there on that trip.

Q. Did you ever pass through Johnson bayou to the south of it?

A. Bayou Johnson. No sir, I was not in there.

Q. Have you ever travelled through Turkey bayou?

A. Yes sir.

Q. On what kind of a craft did you go?

A. It was a small craft.

Q. Drawing how much water?

A. About 20 inches of water through Turkey bayou.

Q. Where did you go?

A. We went into Turkey bayou and then into Karako bay.

Q. When was this?

A. That was in about the '70's.

Q. What were you looking for?

A. We were fishing oysters. There are some of the finest kind of oysters in Turkey bayou.

Q. There were at that time?

A. Yes sir.

Q. And are yet?

A. Yes sir.

Q. Did you ever pass through Grand pass?
A. Yes sir, often. Hundreds and hundreds of times.
Q. Your first trip through Grand pass was about when?
A. About 1868 or 1869, because I had to go through Grand pass to get to Bayou Greque, where our fishing grounds were.
Q. What is the largest craft you were ever in going through Grand pass?
A. Well the Nymph. 42 foot keel.
Q. Drawing how much water?
A. About five feet loaded.
Q. I notice on the map before you Creole gap. Tell us what you know about Creole gap, please sir.
A. I have been through there.
Q. Did you ever go through Creole gap?
A. Yes sir.
Q. In what kind of a craft?
A. I have been through there with the schooner Nymph. I was out there with her when I was buying shrimp. I was out there buying shrimp. In 1890, 1891, 1892 and 1893 I was out there buying shrimp.
Q. When did you first go through Creole gap?
A. I don't think I went through Creole gap, not before maybe in the '80's 1882 or something like that.
Q. Are you familiar with Isle à Pitre?
A. I have been around it and on it.
Q. Since when. How long ago?
A. I have been on Isle à Pitre since 1868 off and on nearly every year.
Q. In what State is Isle à Pitre?
A. Well that is in Mississippi too.
Q. Turkey bayou is in what State?
A. The State of Mississippi.
Q. How about Three Mile bayou?
A. That is in the State of Mississippi also.
Q. Nine Mile bayou?
A. Mississippi.
Q. Petit pass?
A. Well that I don't know. I don't know much about Petit Pass section of the country. Of my own personal knowledge I don't know how that line would run. That is from the mouth of Pearl river in the southerly direction, whether it would strike Petit pass or not. Of my own knowledge I would not know whether it would or not.
Q. False Mouth bay, and Nine Mile bay are in what State?
A. In the State of Mississippi.
Q. Treasure bay is in what State?
A. In the State of Mississippi.
Q. Indian Mound bay is in what State?
A. In the State of Mississippi.
Q. Big and Little Raccoon islands are in what State?

A. Well I don't know them. Perhaps if I know them they would call up some other name.

Q. East and West Karako bays?

1411 A. According to my belief they are in the State of Mississippi.

Q. Mud island is in what State?

A. Mud Grass island we call it. That is in the State of Mississippi. That is all up to the eastward.

Q. Crane Town bay is in what State?

A. It is in the State of Mississippi.

Q. Brush island is in what State?

A. In the State of Mississippi.

Q. Jack Williams bay is in what State?

A. In the State of Mississippi.

Q. Do you know where Grassy island is?

A. Yes sir.

Q. In what State is Grassy island?

A. If Pearl river is the western boundary that is in the State of Mississippi.

Q. And Round island? What State is that in?

A. In the State of Mississippi.

Q. La Petit Pass island is in what State?

A. I don't know anything about that.

Q. Half Moon island?

A. Half Moon island is in the State of Mississippi.

Q. St. Joseph island is in what State?

A. That is in the State of Mississippi. I don't think there is any more island there. It is all gone.

Q. What has become of Half Moon island?

A. It is washed away.

Q. I will ask you to please state what change if any there has been in the general contour of this section of the country in dispute between these two States in what we term the Louisiana marshes. That is to say whether there has been any substantial transformation in any respect since you first became acquainted with the territory?

A. As far as I am concerned I don't see but very little. In fact I don't see that I see any changes really. We have to go through the same bayou and we have to go around the same island that we did 25 or 30 years ago to get to any point. Most of the islands are there yet. The only place that I see any changes. They had some reefs on the outside of Battle Door point and they are washed away.

Q. That is on the east side?

A. Yes sir, on the east coast. They are no longer there. They are gone.

Q. Have you ever noticed whether there has been any subsidence or sinking of this section?

A. No sir. The marsh is as high as it ever was. The ground is as high as it ever was. I can not see any difference.

Q. I understood from what you said that you are familiar gener
ally from Nine Mile bayou eastward to the north east point of Isle
Pitre. Am I correct?

A. Yes sir. I have travelled over this country looking for shrimp
more than I did for oysters.

Q. For how long have you been travelling this shore?

A. I have been travelling that off and on since 1885 or 1886.

Q. Have you noticed any material changes in the coast line be
tween Nine Mile bayou, and the north east point of Isle à Pitre
during this time?

A. No sir, I could not say that I have. The bayous are there ye
and the islands are there yet.

Q. Are they there substantially the same as they were when you
first saw them?

A. They are about the same that they were then.

Q. Have waves, natural, or unnatural in the shape of storms
made any material changes in the coast between Malheureux point
and Nine Mile bayou and the northeast corner of Isle à Pitre during
your knowledge?

A. No sir, the only thing, is that it might have widened the
mouth of Nine Mile bayou right at the entrance. I think it is a
little wider there than it was. But for the balance I don't see any
changes. It has cut off a little here at Grand pass, but what it has
cut off there it has made on the other side.

1412 Q. Is it true where this is cut away at one point it has
made at another?

A. It generally does. It is this way. If there is a storm, the
marsh is all low, the water rises and the whole thing is covered.
There is nothing there to offer any resistance really to wash. It is
just one lake, one sea. You can not see any land or marsh for
miles and miles.

Q. Have you ever observed any where in this marsh about which
we have been talking, or this territory, any industrial life, such as
agriculture, horticulture, stock raising or gardening or anything
like that?

A. No sir.

Q. Is it suitable now or has it ever been to any such occupation
or habitation?

A. No sir, the only habitation that was ever down there is the
fisherman's camp that was built up there for temporary houses to
fish in. I have been out there in Grand pass several times and no-
ticed them. We had a camp at Door point ourselves. We built a
fisherman's camp there but it was swept away by the gale.

Q. That was a cheap concern was it?

A. Yes sir, it was a temporary structure, but there is no place
around there that would do to cultivate or for a man to go there
and make it his permanent home. I don't know of any such place
around there in that section of the country.

Q. Taking your eyes off of the map and relying upon your own

information and memory respecting that territory, what have you to say with reference to its adaptability for habitation or industrial life of any kind?

A. I don't believe that I would live out there if a man would give it all to me.

Q. And how does that compare with the years back since your first knowledge of it?

A. It was not any better then than it is now.

Q. No worse than it is now?

A. I don't know. About the same I think. I don't think that the mosquitoes have gotten any less or any thing like that. They are about the same.

Q. Could you say whether there is more or less water now than there was forty years ago?

A. No sir, I don't think that there is.

Q. It is about the same do you mean to say?

A. Yes sir, about the same. There may be some few places that are deeper. I believe the Creole gap is cut deeper. I think there is more water in Creole gap than there was years ago. That is about the only place that I know of.

Q. You will notice on this map a line is indicated as the deep water channel leading out of the mouth of Pearl river around to the north of Half Moon island and to the southwest of Cat island, commonly called the deep water channel, and which line is claimed by Louisiana as the true dividing line between these two States. You are familiar with that channel are you?

A. I have gone up and down that channel yes sir.

Q. Could you say whether or not that has ever been recognized as the dividing line between Louisiana and Mississippi?

A. No sir, it never has. I have never heard it claimed by any one at all until this suit came up.

Q. You say that that channel was buoyed by the United States Government?

A. Yes sir.

Q. For what purpose?

A. To mark the deep water channel for the sea going vessels.

Q. For navigation purposes and for commercial purposes?

A. Yes sir, that is really the course that was pursued by vessels that used to go to Pensacola, and Florida. They used to go over this way. There was considerable traffic from Pearl river to the mouth of Mississippi river also. There are a good many schooners around there.

Q. Boats of light draught in common commercial business. Do they pay any respect to the channel or do they travel wher-
1413 ever they find water enough?

A. Wherever they find water enough. Sometimes they save a great deal of distance in doing that.

Q. The channel, if I am not mistaken, is used for vessels of deep draught?

A. Yes sir.

Q. You are familiar with the Mississippi shore line, from P cagoula to Pearl river are you Captain?

A. Yes sir. I have travelled it as far as Moreland. I have b many times a good deal west of that, but from Moreland dow have travelled it considerably.

Q. Have there been any material changes in the Mississippi co within your knowledge?

A. No sir, not that I saw.

Q. Do you remember the storm of 1893?

A. I do.

Q. What direction did it come?

A. The hardest of the blow was about south of west. South w

Q. From the south west?

A. Yes sir, that is the hardest of it. Of course it blew very hea from the southeast, but I think that the hardest blow that we h was a little to the west of south. Southwest.

Q. Then its force was strongest against the Mississippi sho was it?

A. Yes sir.

Q How was this storm with reference to its strongest force in pa ing over this disputed territory in the marshes?

A. That I could not say.

Q. How did it cross these marshes after it touched them?

A. From my own personal knowledge I could not say what w the strongest wind out there except from conversations with survivors of the storm. Of my own personal knowledge I do know. I was on the main land when it occurred.

Q. Have you any knowledge of any violation of the criminal la of Mississippi within this disputed territory? about which you ha been talking?

A. Well I know of one case where the party was arrested for offense. That is it was supposed to be some offense that was co mitted out here at Isle à Pitre. A young man was drowned there.

Q. What was his name if you know?

A. His name was John Kennedy, and his body was found on I à Pitre.

By Gen. GUION:

Q. Is that of your own personal knowledge?

A. Of my own personal knowledge? No sir.

By Gen. MCCLURG:

Q. Did you see the body?

A. No sir, I did not.

Q. What personal knowledge have you about the matter?

A. Well the personal knowledge that I have about it is from t parties that were arrested.

Q. You talked with them?
A. Yes sir.
Q. Who was arrested?
A. Well the two brothers of this man that was drowned.
Q. You talked with them?
A. Yes sir.
Q. Where did you talk with them?
A. Right here in Biloxi.
Q. Were they under arrest at the time that you talked with them?
A. No sir, it was after they were acquitted.
Q. Had they been tried?
A. Yes sir.
Q. Do you know of your own knowledge where they were tried?
A. Here in Biloxi.
Q. Here in Biloxi?
A. Yes sir.
Q. Do you know of any notice that has been taken by the officers of the State of Mississippi down there?
A. No sir, I do not.

1414 Cross-examination by Gen. Gibbs:

Q. Captain will you please examine the map before you and look in that part of it west of Nine Mile bayou and state if you can what is meant by the letter "T." followed by the figure "12," and the letter "R." "17" "E." "T. 12. R. 17. E."
A. I stated before that I did not know any thing much about west of Nine Mile bayou. I don't know what that means.
Q. You don't know what that "T. 12. R. 17 E." means?
A. No sir I do not know.
Q. Would not that in your opinion stand for township 12, range 17 east?
A. Yes sir, it would I reckon.
Q. Then a little east of that you will find this letter "T. S. corner"?
A. Yes sir.
Q. And just above that a round mark, round dot. Could you state what that is in your opinion?
A. No sir I don't know.
Q. Would not you be inclined to think that that stands for a township corner?
A. Possibly so. I don't know what it is.
Q. Then further down on the same map and still west of Nine Mile bayou you will find the following "T. 13. R. 17. E."?
A. Yes sir.
Q. Could you state what that stands for?
A. Well if the other stands for township and range I suppose that would mean the same thing. If the other stands for that.
Q. Now please examine the rest of this map and state whether

you find any lettering at all which would seem to indicate townships and ranges going east of Nine Mile bayou. Through the whole part of the map east of Nine Mile bayou do you find any lettering that would seem to indicate townships and ranges?

A. No sir, not on this map.

A. Could you give us any reason why this lettering is found west of Nine Mile bayou on this map and no lettering east of Nine Mile bayou?

A. I don't know but that was put down there from some marks they found from some old map to call that the Louisiana line. That the Louisiana line run up that far.

Q. Would you believe that to be the fact, if as a matter of fact this whole country had been laid off into townships, ranges and sections?

A. I don't know sir. That is a question I cannot answer.

Q. Captain, could you give us the distance from the mouth of Pearl river to Malheureux point?

A. No sir, I don't know but very little about Malheureux point. When I get around Nine Mile bayou I know very little of this section of country. I have passed there once or twice in my life, but I know very little about it.

Q. Then you don't pretend to state what the boundary line is between Mississippi and Louisiana going south after you leave the mouth of Pearl river?

A. No sir I don't know much about that section.

Q. Do you know any thing at all as to where the line that divided Louisiana and Mississippi in the waters south of Pearl river strikes what is called the Louisiana marshes. At what point of your own knowledge?

A. Well of my own knowledge, looking at this map of course according to this map it would strike and come along around—that is considerable distance to the west of Petit pass, but how far I don't know. As I say I am not familiar with that portion west of Nine Mile bayou. I never had any occasion to go there to work there or any thing.

Q. You know nothing at all about the boundary line between the two States in waters between the mouth of Pearl river and the first land in the Louisiana marshes do you?

A. At Malheureux point?

1415 Q. Do you know any thing at all about the boundary line after you reach the Louisiana marshes going south except from what you see on the map?

A. How do you mean?

Q. I mean what is the dividing line in the marshes between Louisiana and Mississippi?

A. No sir, I do not. That is to the westward. Because we never had any occasion to ask and find out any thing about it. I never worked much down there. Most of our work was done to the eastward.

Q. Is it not a fact Captain that when you make the statement that you believe that this red line which you find on this map before you indicates the southern boundary line of Mississippi, that you believe that this is the southern boundary line because it is supposed to be 18 miles from the shore?

A. Yes sir.

Q. In other words is it not a fact that you have simply a general idea and belief that Mississippi's line or southern boundary should extend 18 miles from the shore line following the meanderings of the coast?

A. That has always been our contention. That has always been our belief yes sir.

Q. Always?

A. Ever since this question has been agitated.

Q. That is for the last 12 or 14 years?

A. Yes sir, our attention was called to it before that. We did not know who it belonged to. We fished any where and were never bothered, and nobody interfered with us. A good many of them supposed that it belonged to the United States Government I suppose as far as we knew. We did not know where the boundaries of Louisiana came.

Q. You don't know now where the southern boundary line is. But you believe that it is 18 miles from the shore?

A. Yes sir, that is our belief so far as the boundary line of Mississippi is concerned.

Q. You don't know actually where the designated points are starting from the southwest corner coming eastward do you?

A. No, I don't know how far west they go into the marsh. No sir, how far west they extend I don't know.

Q. Did I understand you to say Captain that you believed that this red line which indicates the southern boundary line of Mississippi is the correct boundary line?

A. Well so far as I know I believe that it is.

Q. Do not you base that belief upon the fact that you believe this red line is 18 miles from the shore line?

A. We have measured the different maps with a scale and one thing another, and so far as out measurement is concerned I think this red line is very near correct.

Q. I say, do not you base your belief in stating this red line is the southern boundary line between Louisiana and Mississippi upon the fact that you believe it is 18 miles from the shore?

A. Well according to the maps and what we have measured by the scale it is about 18 miles and I base my belief on that because according to our understanding Mississippi's southern boundary line is 18 miles from the shore.

Q. Where did you get that from. That Mississippi's line is 18 miles from the shore?

A. To tell you the truth I don't know. I know that I have read it. I can not say where I have read it. I know that it has always

been considered. I know that I have read some where that Mississippi's line goes due south six leagues including the islands.

Q. How is that?

A. We have been reading up on it. I don't know whether it is in the constitution of Mississippi defining the boundaries, but I know that I have read some where that the Mississippi line goes six leagues due south including the islands.

Q. Does it say that the lines shall extend 18 miles south of the shore line?

A. I suppose if it says six leagues including all islands that it certainly means that line.

1416 Q. Your idea then is that because it says it includes all islands within six leagues that therefore the line should extend six leagues south?

A. If you read that the boundaries of the State of Mississippi shall extend 18 miles due south including all of the islands——

Q. But is that the language of the act?

A. I think that it is.

Q. Well you may be right but I don't agree with you exactly about the language of it?

A. That is where I formed my impression that the boundaries of Mississippi extended 18 miles from the main shore.

Q. And acting upon that belief you believe that this red line on this map is the boundary line?

A. I certainly do.

Q. That is because you believe that is 18 miles from the shore?

A. Yes sir.

Q. If as a matter of fact that red line was not 18 miles from the shore you would not believe that this was the boundary line would you?

A. If it was seventeen and a half miles we would have to go a half a mile further. If it was eighteen and a half miles we would have to draw back a half a mile, but it is very near it.

Q. Is there a well defined shore or coast line from Malheureux point to the north east corner of Isle à Pitre?

A. A well defined shore line all along here.

Q. Yes sir.

A. Well now from Nine Mile bayou or Malheureux point I am not prepared to say because I don't know much about that. But from Nine Mile bayou east from the places there where the shore is perhaps 18 or 20 inches high, and then you will get a low place again where there is a lot of marsh grass sticking out, and maybe covered over every high tide. It is covered with marsh grass, and you go along there and you will find little higher places where you can walk along there, and then you come to a low place covered with marsh grass. Low and no sign of land. That is the general character until you get down on the east side of Grand pass, and there are some little shell mounds there where the fishermen had their camps for awhile. When you get on the inside of Grand pass it is the

same way. Isle à Pitre is a little higher in some places I think than to the west of there.

Q. There is a well defined line of demarcation between the land and the water all along there is there not?

A. Yes sir.

Q. A part of it being land and a part being marsh?

A. Yes sir, none of the ground there is very high.

Q. The only thing that breaks that line are these bayous, like Nine Mile bayou and Three Mile bayou and Turkey and Johnson bayou-?

A. It would be the marsh because these islands are all marshes.

Q. Composed of what?

A. I say that these islands are nearly all covered with marsh grass. There is only one little piece on Isle à Pitre that there are any bushes growing on.

Q. But that marsh is definitive is not it. It is not a flooded marsh?

A. No sir, it is not a flooded marsh.

Q. It is some thing in which the marsh grass grows?

A. Yes sir.

Q. Which is soil is it not?

A. Yes sir, it is soil.

Q. What is it that breaks that line of marsh land from Nine Mile bayou to the eastern extremity of Isle à Pitre. That breaks into it. Is there anything except these bayous that you speak of?

A. That is about all. It is all cut up into bayous. There is Nine Mile bayou and Three Mile bayou, and Turkey bayou, and some little bayous there that have no names.

Q. Captain do you know when for the first time there was any law passed by the State of Louisiana that prohibited other persons than citizens of the State to fish in what was claimed to be the Louisiana waters?

A. No sir, I do not.

Q. Well is it not a fact that it was only after Louisiana
1417 passed laws confining and limiting to her own citizens the fishing of oysters in waters that she claimed that this question arose between Louisiana and Mississippi as to the exact location of the Louisiana territory?

A. Yes sir, it is.

Q. The Louisiana authorities made no attempt to interfere with the Mississippi people until after such laws had been passed did they?

A. I don't know whether they ever passed any laws, but I don't know any time that they have attempted to interfere with any body in this particular locality that I know of until about five years ago, four or five years ago.

Q. In what way did that occur?

A. Well I was informed by some of my boatmen that some sheriff or sheriff's officer had come down and notified some of the boatmen

fishing in there, I think it was in Indian Mound bay or some where around there, no, they were fishing in Drum bay I think it was. And said that they would be arrested, and in order to test the matter I made an agreement and went and employed Mr. Neville to see about this matter. Mr. Neville went over to see the district attorney of that parish, I think Estopinal was his name. He went over there and I don't know what they did do, but they never troubled us any more or came around us. We were never bothered any more about our boats at all. I don't know what arrangements Mr. Neville made with them. They never took any further steps. That was the last of it.

Q. Well is it not a fact Captain when you were fishing oysters in this territory that you have spoken of that you believed yourself in Mississippi because no one claiming to represent Louisiana made any effort to interfere with you?

A. As I stated, up to 12 or 14 years ago we never gave it a thought. We did not know where we were. We never gave it a thought at all.

Q. It is a fact that there was no question about where you fished until this interruption?

A. Yes sir, until these newspaper articles were published calling our attention to the fact, and then we began to read the constitution of the State of Mississippi to find out how far we could go.

Q. You had been fishing indiscriminately all through this Louisiana marsh country?

A. Yes sir, every where.

Q. Until this happened?

A. Yes sir.

Q. And you had never given it any thought about where your boundary line was?

A. No sir, not up to 12 or 14 years ago we did not.

Q. Has the State of Mississippi ever undertaken to exercise any jurisdiction over this territory north of this southern boundary line, which you claim to be the boundary line. Marked red on this map.

A. In what way?

Q. In any way?

A. Well I don't know that anything ever happened out there that they should claim any jurisdiction of. Not to my knowledge.

Q. Has she ever assumed the right to tax any of this property out there?

A. No sir, there was never any tax levied on oysters until the last three years.

Q. Has she ever assumed any right to collect taxes on any of these lands out there?

A. Not that I know of, no sir.

By Gen. McCLURG:

Q. Does Mississippi tax oysters taken out of that territory like he does oysters taken elsewhere?

A. Now, at the present time?

Q. Yes sir. Where ever you take oysters in this State?

A. They have for the last three years since this oyster law went into effect.

By Gen. GUION:

Q. I have understood you to say Captain that you under-
1418 stood Isle à Pitre and Three Mile bayou and Nine Mile bayou and other places between Malheureux point and the end of Isle à Pitre to be in the State of Mississippi. Am I right?

A. Yes sir.

Q. Upon what do you base that belief?

A. Because it is within this 18 mile line.

Q. Is it not entirely on that ground that you have formed that conclusion?

A. Yes sir, I have read that the boundaries of the State of Mississippi extend due south 18 miles including the islands, and of course we know very well that it is not 18 miles from Waveland to Isle à Pitre.

Q. How do you reconcile that with the claim that Louisiana makes under the act of Congress that she gets nine miles from her coast?

A. My understanding would be that nine miles would start from the main land the same that the State of Mississippi does. Not from out at this marsh.

Q. What do you mean by the main land of Louisiana?

A. I mean from *terra firma.*

Q. Where is that?

A. You can go back until you get to the cypress trees there where *terra firma* is.

Q. Where is the point in Louisiana that you would measure your boundary line from?

A. Well this map does not show it. If you go far enough. You can go through. After you pass California bay you can go through this pass there. The only place that I know of that I have struck *terra firma* I went through a place that they call Pass Fortuna. I think that went up towards Lake Leary. You can go with a schooner in six miles of the shell beach road.

Q. You have already reached the conclusion that Mississippi ought to get this territory down there that you have just designated, including that country from Nine Mile bayou, going east as far as the eastern extremity of Isle à Pitre, because you believe that Mississippi extends 18 miles from her shore line?

A. Yes sir.

Q. And it is entirely on this theory is it not, that you think she ought to get this?

A. Yes sir, I do because I believe that is her boundary.

Q. Now I ask you if you were called upon to define and give Louisiana's boundary line, giving her three leagues from her coast, where would you start her line from?

A. I would start her line from what you would call *terra firma* Land. Not this marsh.

Q. Well now, where is that point. Is it on this map before you?

A. No sir, it is not.

Q. You don't see on this map any point from which you would start Louisiana's boundary?

A. No sir, not on this map.

Q. The one before you?

A. No sir.

Q. This map is designated as Mississippi "A"?

A. Yes sir.

Q. Then according to that would not you draw a straight line from Pearl river due south 18 miles until you reached a point immediately west of the southernmost; the red line indicating the southern boundary of Mississippi?

A. I don't really know how that would be. I don't know anyabout this country. When it reaches this corner where it stops I don't know how far it is from the main land, or Lake Borgne. I don't know any thing about this country west of Nine Mile bayou. I don't know any thing about that.

Q. What would you do with the intervening space between the mouth of Pearl river and the red line, which is indicated on this map as being the southern boundary line of Mississippi. You have got to have a starting point, have you not?

A. What would I do with this intervening space?

Q. Starting from Pearl river?

A. Are you asking me as a witness or an expert?

Q. You have stated that you believed that this line which is marked red on this map, and which on this map would
1419 seem to indicate the southern boundary of Mississippi. You say that you have reached the conclusion that that is the southern boundary line of Mississippi because it is 18 miles in your opinion from the shore?

A. Yes sir, due south.

Q. I say where would you find your western boundary line starting from Pearl river?

A. That is what I say. I say I don't know anything about this. I don't know how this Louisiana shore runs here on this western line as marked on this map.

Q. You have no idea where the Mississippi and Louisiana line is on the west?

A. On the western boundary because I don't know how wide this Lake Borgne is, but I do believe this. That it is more than nine miles from this red line to what I would consider *terra firma*, or what I would call the coast of Louisiana. I believe that it is more than nine miles to the woods.

Q. You mean the main land by *terra firma?*

A. Yes sir, the main land and not the marshes.

Q. Have you ever known of any store being at Three Mile bayou. Kept there?

A. No sir. I did know that there was a travelling store on flat boats. I know a couple of boys from Biloxi. I don't know whether it was a blind tiger or what it was. They had a floating palace out there.

Q. It was not on the land?

A. No sir.

Q. Who were they?

A. Masters were the young fellows' names. One was named Toney. I don't know what the other was named.

Q. That was a blind tiger on the water was it?

A. Yes sir, on the water.

Q. Did I understand you to say Captain that you went with your father in 1858?

A. In 1858. I was quite a boy.

Q. Into this Louisiana marsh country?

A. Yes sir.

Q. By means of Three Mile bayou?

A. No sir, Nine Mile bayou.

Q. How far down this bayou did you go?

A. I was young then but the captain said that we were in Bayou Treasure. That is where he had his traps located. He was a trapper.

Q. What did you stay on at that time?

A. On the boat. We lived on the boat.

Q. Altogether?

A. Yes sir, on the sloop.

Q. You have testified have you not that there is a sailing channel from the mouth of Pearl river going out to deep water in the Gulf, which passes by Cat island and Isle à Pitre have not you?

A. Yes sir.

Q. Is that the deepest channel in this direction?

A. Yes sir, I think it is.

Q. The channel that you see marked on this map, or line rather. The marked line claimed by Louisiana in her original bill. Is that the channel that you speak of as the deep channel?

A. Yes sir, that is where they come from the outside. From the Chandeleur islands.

Q. That is the sailing channel?

A. Yes sir, the sailing channel.

Q. What depth of water is there in this channel?

A. 12, 14, 16, 18, and in some places 28 feet of water.

Q. That whole distance?

A. No sir, not the whole distance. When we get up here towards Half Moon island it gets shallower then.

Q. What is the depth there?

A. That I could not say. I never run on the large vessels. These

large schooners running down to Florida. I have noticed that they went that course.

Q. Did they go up into Pearl river?

1420 A. Yes sir, and some of them went up into the basin at New Orleans.

Q. I mean were they such vessels as could go up into Pearl river?

A. No sir, not this Pearl river. They would go through the Rigolets and get there, and then turn to the right. That is through West Pearl river. Now East Pearl river is generally used by crafts coming back light.

Q. But there is a channel to East Pearl river is not there?

A. Yes sir, there is a channel there now. There has always been a channel there.

Q. When I say channel I don't mean simply for the purposes of light draught. What draught vessel could come up that channel to East Pearl?

A. Right now?

Q. At mean season?

A. A vessel drawing six and a half or seven feet could go through there now.

Q. Is there any time that a vessel drawing more than that can go through there?

A. I don't know any thing about the larger draught vessels. I have not gone on them. There are very few oyster boats that draw more than five and a half feet. Very few of them. Some, however, draw more than that, but as a rule five feet is considered a pretty good size boat.

By Gen. McCLURG:

Q. What is the average draught of the oyster boat?

A. Say five feet is about the average.

By Gen. GUION:

Q. This person by the name of John Kennedy that you spoke of as having been drowned was found and brought here to Biloxi; the body was was not it?

A. Yes sir.

Q. You don't know of your own personal knowledge where this body was found do you?

A. No sir, I do not.

Q. You don't know that a person was drowned of your own personal knowledge?

A. No sir, not of my own personal knowledge I do not.

Q. You say that the case of the two persons charged with committing the crime of drowning him was tried here?

A. If you will allow me I will explain here why they were arrested and brought here. The young man was drowned out there, but there were quite a number of fishermen out there when the body was found that held an informal inquest over the body.

Q. Where?

A. Out at Isle à Pitre. There was no officer there. Just among themselves. In examining the body they noticed some marks as though he was cut in the neck before he was buried. Some of these fishermen came and reported these facts here and others reported that they had heard some dispute or some thing on this boat. In order to satisfy themselves there was a crowd went out from Biloxi and disinterred the body and brought it over here. In the mean time these two boys were arrested.

Q. What two boys?

A. The Kennedys. The two brothers of the drowned man, and the body was brought in here and examined, and these boys were put under arrest and tried before the justice of the peace, and the coroner's inquest said that these wounds were caused by the body being cut by the shells as it drifted ashore and the boys were released.

Q. They were released?

A. Yes sir.

Q. They were never tried then?

A. Yes sir, they were tried and acquitted.

Q. They were regularly tried?

A. Yes sir, the two boys are living now.

Q. You don't know as a matter of fact where the drowning took place.

A. No sir, I don't know. I was not out there and I don't know any thing about where it occurred.

Q. Then the drowning may have taken place in Mississippi waters and the body may have been found at Isle à Pitre and buried there, and the parties tried here because of his having been drowned
1421 in Mississippi. Could not that have been the case?

A. The boys were fishing at Creole gap at Isle à Pitre when this happened.

Q. That is what you heard?

A. That is what the two boys told me, but of my own knowledge I don't know anything about it.

Q. Where are those boys Captain?

A. They are here in Biloxi.

Q. So I understand you to say that when you first knew Nine Mile bayou that it was in 1858?

A. Yes sir, that is the first time that I went through there.

Q. At that time Nine Mile bayou was about how wide?

A. That has been a long time ago.

Q. Excuse me, but I understood you to say 150 yards.

A. I think I said 150 yards. It is a mighty hard matter to judge distance on the water. You may think that it is 150 and it may be 300. It is a hard matter to answer that question, because the water is very deceiving.

Q. Do you know what point, measuring from the shore line of Mississippi going south you would reach, without referring to the

map, as the point of division; the line of division between Louisiana and Mississippi?

A. What? Sailing in a certain direction?

Q. If you would go south 18 miles?

A. Well it would all depend upon where you would start from on the main land.

Q. I will take this point. Taking a point right opposite Gulfview. What point is there in the Louisiana marshes that would be 18 miles from that point?

A. Well that would be a hard matter to say if you started from Gulfview with a sailing vessel.

Q. I mean a line due south?

A. A direct line?

Q. Yes. That is what I understand to be the theory that you have given us?

A. You mean in my opinion where would it strike?

Q. Yes sir, what point. I am speaking of your own recollection from the country down there without reference to the map. If you know what point in your own mind would be reached as a dividing line between the two States?

A. Well if you took from there you would strike perhaps a little to the westward of Indian Mound bay. Out there some where. From Gulfview you would pass perhaps a little to the east of Half Moon island or very near it. You would pass to the east of it. Yes sir, you would pass to the east of it on the line. Of course I could not give you exactly where you would strike out in the marsh.

Q. Captain, how wide is Nine Mile bayou now?

A. I have not been in Nine Mile bayou for twenty years. As I say most of our fishing was done through this portion of the country (showing location on the map).

Q. How wide was Three Mile bayou when you first knew it?

A. When I first knew it. It has not been so long that I have known Three Mile bayou. I have only gone through there twice. I went through there in that steamer, but I never paid much attention to that. I went through there but I never gave it much attention.

Q. When was it that you first went through Three Mile bayou?

A. I went out there in 1890 after the oysters were all killed.

Q. Have you ever been there since?

A. No sir, not through Three Mile bayou.

Q. You did not know how wide it was at that time?

A. No sir.

Q. Can you give us an approximate as to how wide it was at that time?

A. No sir, I might not even have been on deck when we went through there.

Q. Do you know how wide Turkey bayou was when you first knew it?

A. Turkey bayou was about, I don't know the number of feet.

I am a poor hand to judge the distances on water. I don't think Turkey bayou when I went through there was over 100 yards wide. 80 or 100 yards.

1422 Q. When was this Captain?

A. It must have been about in the seventies when I was out there.

Q. In the seventies?

A. Yes sir.

Q. Have you ever been there since?

A. No sir, I have not been there since.

Q. Do you know anything about the width of Grand pass?

A. Grand pass, the last time I was there in the year of the storm of 1893, I suppose that the mouth of it must have been nearly a quarter of a mile wide. After you once got in the mouth it was a half a mile wide, Grand pass is that wide in some places.

Q. Was there never a time in your knowledge when it was narrower than that?

A. Well the mouth of it might have been a little narrower where the shell mounds on the east side were. I think that they washed away a little bit. On the east side of Grand pass, it might have washed away a little.

Q. Do you remember Isle à Pitre before Creole gap was created?

A. I recollect Isle à Pitre many years ago, but I don't know so much about Creole gap. I never had any occasion to go down there. I don't know much about it.

Q. Don't you know as a fact that Creole gap did not exist at one time?

A. I have heard so. I have heard that it was dug out by hand.

Q. Do you know how wide it is now?

A. Yes sir.

Q. How wide is it?

A. Well the outside of it is a quarter of a mile.

Q. What do you attribute the widening of that Creole gap and this Three Mile bayou to?

A. The currents.

Q. What sort of currents?

A. The strong currents washing out there at Creole gap.

Q. Is St. Joseph island still in existence?

A. I don't think it is.

Q. Is it not gone?

A. I think it is sir.

Q. Do you remember when it was in existence?

A. I do yes sir.

Q. How long ago was this?

A. About 18 or 20 years ago.

Q. What caused it to disappear. Do you know?

A. It was the waters.

Q. Storms?

A. It gradually washed away all the time there by the currents.

There were a good many rocks there and they seemed to wash aw there.

Q. Do you know an island called Round island just to the west Half Moon island?

A. No sir, I don't know much about that country. I have bee to Half Moon. I don't know what they call Round island. I don recollect that.

Q. Do you know anything about Half Moon island?

A. I have been on Half Moon island, yes sir, and fished oyste there. Banks of oysters east of Half Moon I have fished on.

Q. You have spoken of this land lying down here Captain throug which this red line indicating the southern boundary line of Missi sippi is drawn as being called the Louisiana marshes. Do you kno why that name was given to them?

A. The origin of it I can not say, but I would naturally suppo on account of its bordering on the lines of Louisiana. Being ju outside the waters of the Mississippi sound and bordering on Louis ana they were called Louisiana marshes, I suppose.

Q. They never have been spoken of as islands have they?

A. By whom do you mean?

Q. By any one that you know of?

A. It is all islands from Raccoon island to Isle à Pitre.

Q. But they have never been designated or called Louisian islands or Mississippi islands. They have just been known as th Louisiana marshes?

1423 A. Neither have Cat island or Ship island been designate as Mississippi islands. They have a name for them.

Q. I understand. I asked you as a matter of fact. Is it not a fa that they have always been known as Louisiana marshes?

A. Yes sir.

Q. And put in that name?

A. That section of country has been known as Louisiana marsh from time immemorial as far as that is concerned.

Q. Captain, where have the canners been getting their oyste principally for canning purposes. The canners at Biloxi and oth places along the Mississippi coast?

A. In late years, or how far back a period?

Q. Well you might say for the last fifteen years?

A. There has been a considerable portion of the oysters from Pa Christian reefs over here. They have gotten a great many from th Pass Christian reefs, and a great many from what is called Bayo reefs, but from the Pass Marianne Shoal banks and Half Moon is and, and there are a great many reefs down near St. Joseph, an then over to Isle à Pitre, and between Isle à Pitre and Cat islan that was formerly the finest kind of reefs. On either side of th Ship channel. Grand pass furnishes a great many oysters, and i side of Grand pass, and then through this section of the country he in Karako bay, and Cranetown, and Brush island and Martin islan and then the freighters they used to go through Three Mile bayo

and buy them from the fishermen in Karako and Bayou Boudreaux they used to call it, and small boats would fish through that section of the country and bring them to the larger boats.

Q. In what part of the country?

A. In this disputed territory inside of the marsh.

Q. Is it not a fact that the quantity of oysters taken from the Louisiana marshes has increased very perceptibly within the last few years and taken to the canners along the Mississippi coast?

A. No sir, I don't think so.

Q. You do not?

A. No sir, the most of our supply that we have been getting for the canners have been from Pass Christian and Cat island. In that section of the country.

Q. What class of persons use the oysters then that are taken from the Louisiana marshes?

A. A great many of them were used for the raw shippers.

Q. Are there any shipments of that kind along the Mississippi coast?

A. A few. I suppose there are a half dozen of them.

Q. At different points along the Mississippi coast?

A. Yes sir, from Pass Christian to Pascagoula.

Q. Straight west from Pass Christian?

A. Yes sir, from Pass Christian to Pascagoula.

Q. So if I understand you correctly the canners have been getting the principal quantity of their oysters from the territory not in dispute between Mississippi and Louisiana, and those engaged in shipping raw oysters have been engaged in getting their principal quantity from the Louisiana marshes?

A. Before this neutral zone was declared yes sir.

Q. Prior to that time?

A. Yes sir, prior to that time.

Q. And these people shipping raw oysters have been getting their oysters down in this disputed territory?

A. Yes sir, right in this disputed territory that Mississippi claims now.

Q. How long have they been getting their oysters down there?

A. ——.

Q. How long have you been getting oysters down there?

A. We went into the business in 1874, but we got the bulk of our oysters from what is now defined as Mississippi territory.

Q. Are you engaged in the raw oyster business?

A. Yes sir, I am.

Q. I thought that you were a canner?

A. I am both. Yes sir.

Q. Are there any natural oyster reefs along the Mississippi coast in that part of the water not in dispute between Mississippi and Louisiana?

1424 A. North of this channel?

Q. Yes sir, north of the channel.

A. Yes sir.

Q. A number of them?

A. Yes sir, quite a number.

Q. Is there not a very large area of oyster territory in the reefs starting from Pascagoula and coming west as far as Pass Christian?

A. No there are very few between say about opposite Pass Christian and Pascagoula. There are very few oyster reefs. Very few.

Q. Are there not good bedding grounds all along there?

A. There has been many a thousand dollars lost there.

Q. Are not there good bedding grounds in this neighborhood? In the neighborhood of Biloxi?

A. No sir, there are some few reefs at the mouth of Pascagoula river, and some few reefs around the mouth of Back bay and Biloxi, but not to any great extent.

Q. They are pretty much exhausted are not they?

A. No sir, there never was much of a reef. It was never very extensive.

Q. Do I understand you to mean that there are no oysters of any consequence?

A. There are some, but not until you get to Pass Christian, and then commences the oyster territory.

Q. Going east?

A. Going west.

Q. West?

A. Yes sir, going west and south.

Q. Towards Bay St. Louis?

A. Towards Bay St. Louis and the south yes sir. When you get opposite Pass Christian you commence to strike the oyster country. The oyster country is Pass Christian and Waveland and Gulf View and St. Joseph and Half Moon, out towards Cat island. All through that section of the country is where the oyster reefs are. If you leave Cat island east you don't get to the oyster reefs until you strike the mouth of Back bay of Biloxi. All in that section of the country there are no oyster reefs. There are no oyster reefs from Biloxi to Pass Christian.

Q. Is there nothing in there?

A. That I don't know sir.

Q. Is there nothing in oyster fishing coming on between Biloxi and Pass Christian?

A. Not that I know of, no sir.

Q. What difference is there in the reefs from Pass Christian going west as compared with what they were formerly. Are they depleted?

A. No sir, I don't think they are. We have gotten as many oysters from our boats as we ever did. I packed more oysters last year than I did before. I don't know that they have become any less.

Q. You are being supplied by oysters taken from that part of the water that is not in dispute between Louisiana and Mississippi?

A. No sir, I get two thirds of my stock that I put up, I get it from this section around Half Moon.

Q. A part of the area that is in dispute?

A. Yes sir, I get two thirds of my stock from there.

Q. How long have you been getting your oysters from that section?

A. I have been getting them there for about two years.

Q. Previous to this time where were you getting them?

A. All through this Mississippi sound there, Pass Christian and Cat island and westward.

Q. Why don't you continue getting them there now?

A. Because I can get better oysters out here at Half Moon.

Q. Is it not a fact Captain that all of this country you have shown us on this map from Pass Christian going westward is exhausted?

A. No sir, there are plenty of oysters there yet. This year we did not get so many over there but from the simple fact that this has been a very dry season and the oysters are salty and poor, and therefore we find oysters as near to the mouth of Pearl river as we could. Because the oysters were in much better condition. They were fat.

1425 Redirect examination by Gen. McCLURG:

Q. Do you remember the name of the justice of the peace that tried the Kennedy boys?

A. Yes sir, it was Lyman B. Holly.

Q. Where is he now. Is he living or dead?

A. No sir he is dead.

Q. Do you know how long he has been dead?

A. He has been dead about three or four years.

Q. He was a justice of the peace, was he?

A. Yes sir.

Q. Of what county?

A. Harrison county.

Q. Mississippi?

A. Mississippi.

Q. He was regularly elected, was he?

A. Yes sir.

Q. And held office under the law?

A. Yes sir.

Q. Do you know any thing about the records of his office?

A. I think that they were destroyed by fire.

Q. When?

A. About two months ago.

Q. His records were destroyed by fire?

A. Yes sir.

Q. When you spoke awhile ago of neutral ground did you mean the territory agreed upon by the oyster commission to be neutral ground for both to fish in until this suit was settled?

A. Yes sir.

Q. From Malheureux point to Isle à Pitre?
A. Yes sir.
Q. Under the agreement of the oyster commissions of Mississippi and Louisiana, Mississippians were not to go into the marsh lands until this suit was settled?
A. No sir.
Q. But both sides might go into this other land?
A. Yes sir.

And thereupon the commission took — until tomorrow morning at nine o'clock.

In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI. } No. 2.

And thereupon the commission met Friday morning, June 3rd, and the following testimony was taken towit:—

JOSEPH KENNEDY, a witness introduced on behalf of Mississippi, being duly sworn, testified as follows, to wit:

Q. Was John Kennedy your brother?
A. Yes sir.
Q. Where is John?
A. He is dead.
Q. When did he die?
A. On October 26th, 1886.
Q. What was the cause of his death?
A. He was drowned.
1426 Q. Where was he drowned?
A. Out at white and black buoy outside of Cat Island spit. That is the bar at Cat island.
Q. Is Louis Kennedy your brother?
A. Yes sir.
Q. And John Kennedy that was drowned out there was also your brother?
A. Yes sir.
Q. Is the place where he was drowned in the neighborhood of Creole gap?
A. It is about five miles from Creole gap where he fell over board.
Q. On which side of the deep water channel?
A. On the south side.
Q. On the south side?
A. Towards the marsh.
Q. Were you and your brother Louis charged with the murder of your brother John?
A. Yes sir.

Q. Were you tried on that charge?
A. Yes sir.
Q. Where were you tried?
A. Right here. Right up there where Mr. Elmore used to have a bar room. Right over here in Biloxi.
Q. Before whom were you tried?
A. Judge Holly.
Q. Who was Judge Holly? What office did he hold then?
A. I believe that he was the justice of the peace or coroner. I could not say which.
Q. Of what county?
A. Of this county. And State of Mississippi.
Q. Harrison county and State of Mississippi?
A. Harrison county and State of Mississippi.
Q. You were regularly arraigned before him on the charge of murder?
A. Yes sir.
Q. And what was his judgment?
A. Not guilty.
Q. Was the body of your brother recovered?
A. Yes sir, it was found in Creole gap.
Q. In Creole gap?
A. Yes sir, in Creole gap.
Q. Where was it buried?
A. It was first put away right there in the marsh.
Q. Near Creole gap?
A. In Creole gap.
Q. On what land.
A. Right there in the marsh.
Q. What do you call it?
A. Nothing but in the marsh. That is all I can say. Right in there.
Q. On Isle à Pitre?
A. No sir, it is right on the side of Creole gap. He was hauled up there, or dragged up there like a dog we might almost say.
Q. Was the body afterwards removed?
A. Yes sir, I went myself with my grandfather and cousin and uncle and took it up and brought it here and Mr. Jones the sheriff went too.
Q. So that it is buried finally in Biloxi?
A. Yes sir.
Q. That was in October 1886?
A. Yes sir, 1886.
Q. And the place where he was drowned is on the south side of the white and black buoy?
A. The white and black buoy. That is the general mark outside of Cat island.
Q. Is that the channel that runs out here and is commonly known as the deep water channel?

A. Yes sir.
Q. Who was the constable of this court?
A. Mr. Holloman was the constable.
Q. Where is he?
A. He is dead.
1427 Q. Mr. Holloman the constable is dead also?
A. Yes sir.
Q. Do you know any thing about the records of that court?
A. No sir, I do not.
Q. What was your occupation in 1886?
A. Fishing oysters.
Q. What is it now?
A. The same thing.

By Gen. GUION: To all of the evidence given by the witness concerning the arrest and trial of the witness on the charge of having been guilty of murder of his brother John Kennedy, the State of Louisiana through her counsel objects on the ground that the best evidence as to the arrest, examination and trial of the witness is the record itself, and in default of evidence of the destruction of the record no secondary evidence can be introduced, all of which objections the counsel for the State of Louisiana made timely.

Q. I understood you to say that you had been continuously in the oyster business since that time?
A. Yes sir.
Q. How long altogether have you been in the oyster business on the Mississippi sound and in the neighborhood of the Mississippi coast?
A. Twenty-five years.
Q. During that time where have you been taking oysters?
A. Well sir we do most all of our oyster work from Creole gap up to Pass Christian. All about and around in there up to about Half Moon.
Q. Any other place that you have taken them?
A. No sir.
Q. Do you take any in the neighborhood of Grand pass?
A. Well that is all about in the same neighborhood.
A. That is in the same neighborhood?
A. Yes sir.
Q. Have you taken oysters about Grand pass?
A. Yes sir.
Q. How long have you been doing that?
A. This winter we have taken some over there, and then we have fished in and about Greque a good deal too. That is right along side of Grand pass.
Q. Do you know where Turkey bayou is?
A. Yes sir.
Q. Have you taken any oysters there. In that neighborhood?
A. No sir.

Q. Do you know where Three Mile bayou is?
A. Yes sir.
Q. Have you ever taken any oysters in that neighborhood?
A. No sir.
Q. How about Nine Mile bayou?
A. I have been there but I have never taken any there. Half Moon would be some where abreast of it. In the open and outside we did fish there this winter.
Q. When did you first take oysters in the neighborhood of Half Moon?
A. This winter.
Q. Is that the first time?
A. Yes sir.
Q. In what portion of this water did you take oysters 25 years ago?
A. Creole gap.
Q. Has that been your principal fishing ground?
A. Yes sir, from there running in towards Pass Christian.
Q. Where are the best oyster places in which you have fished during these 25 years?
A. I have found them best this winter off of Half Moon.
Q. Well before that?
A. Creole gap used to be about as good as we would require.
Q. How wide is Creole gap do you think?
A. I could not tell you that. It would be a little space, I suppose of from about here to the end of the foot walk out there.
1428 Q. How many yards or feet is that?
A. I could not tell you. I suppose that it is about one thousand feet wide or something like that.
Q. Was it as wide 25 years ago as it is now?
A. No sir, it keeps getting wider.
Q. Is there any industrial life of any kind such as farming, gardens, or stock raising or anything like that about Creole gap along there?
A. No sir.
Q. Any habitations of any sort?
A. No sir, none that I know of, except there was a house out there at the time they planted oysters they stayed in it. There is only a watchman.
Q. A watchman stays in the house?
A. Yes sir, at Door point and one at Turkey bayou.
Q. What sort of houses are they Kennedy?
A. Nothing but little barns.
Q. Has your right to take oysters south of this deep water channel near to Cat island channel and along there about Creole gap ever been questioned by anybody?
A. No sir.
Q. You never have been molested by the State of Louisiana?

A. No sir, no more than winter before last when we were stopped in there.

Q. That was by agreement between the two oyster commissions?

A. Yes sir, the patrol boat at that time stopped us there. If I am not mistaken the load is there yet. He stopped us before we got our load but he made us leave them there just the same.

Q. Was this before or after this suit was started?

A. It was published in the papers, but at that time the patrol boat got to us.

Q. Was that in the papers?

A. About Louisiana owning that portion of it. Yes sir, he sure hooked us right.

Cross-examination.

By Gen. GUION:

Q. You used the word patrol. What did you mean by that?

A. He stopped us. He sure did.

Q. Where was it that this patrol boat stopped you?

A. In about Bayou Greque.

Q. When was that?

A. Winter before last.

Q. The winter of 1902?

A. Yes sir.

Q. Did not you say you fished down there last winter?

A. No sir, not in Creole gap. Not Creole gap, but down at Half Moon.

Q. Is not Creole gap in that part of the territory that it was agreed that the Mississippi people should not fish in until this suit was settled?

A. No sir.

Q. Where is that territory?

A. That line is on the west side of Grand pass; all east of that Mississippi owns. Supposed to be the Mississippi side. West was Louisiana.

Q. Well you understood then did you that west of Grand pass and all down in what is claimed the Louisiana marshes, there should be no fishing until this suit was settled?

A. Yes sir.

Q. And you understood that east of Grand pass was not included in the agreement. You understood that east of Grand pass the Mississippi people were to continue to fish if they wanted to?

A. Yes sir, to continue to fish.

Q. You spoke of the patrol boat having stopped you two winters ago?

A. There is the man that I was working for over there.

Q. Will you please tell us what patrol boat you spoke of?

A. Well the name was the Toiler. The steamboat Toiler.

1129 Q. Who did she belong to?

A. She belonged to Mr. Sweatman, but the gentlemen aboard I didn't know at all. They were from Louisiana.

Q. They were Louisiana people?

A. Yes sir.

Q. What did they tell you there?

A. They told us to stop. That we had to take out a license to fish oysters in that territory.

Q. You had no license?

A. No sir, not for that territory.

Q. Did you have any license at all?

A. For Mississippi.

Q. Where was Mississippi's license? Where did it authorize you to fish?

A. From the Grand pass all east.

Q. From Grand pass east?

A. Yes sir.

Q. Have you got that license with you?

A. No sir, it is on the boat you know.

Q. Where is that boat?

A. It belonged to Mr. Desport's brother at that time.

Q. Where is the license?

A. I suppose it is on the schooner. It is torn up by now I suppose.

Q. Could not you produce it? Could not you give it to Gen. McClurg and let the State of Louisiana look at it?

A. These things they tear them all up. They are no good for more than one season and we don't take any care of them after that.

Q. Where did you get this license from?

A. Gulfport.

Q. Who gave it to you. What authority gave it to you?

A. Mr. Hughes is the man that issued the license if I am not mistaken at Gulfport at that time.

Q. That was to fish oysters where?

A. In Mississippi.

Q. You don't mean up about Hazlehurst. I am speaking about some particular place. In what part of Mississippi did you understand that you had the right to fish oysters?

A. Any where from the west side of Grand pass running east.

Q. Did these people who stopped you from fishing oysters there in the winter of 1902 tell you that they were representing the State of Louisiana?

A. Yes sir.

Q. And that was in Creole gap where you were fishing then?

A. No sir, I was in and about Bayou Greque.

Q. That is south of Grand pass is it not?

A. No sir, it is west of Grand pass.

Q. Southwest is it not?

A. Yes sir.

Q. And it is down in what is called the Louisiana marshes
A. Yes sir.
Q. And that was in Creole gap where you were fishing then
A. No sir, I was in Bayou Greque, I was just over the line.
Q. That is south of Grand pass is it not?
A. No sir, it is west of Grand pass.
Q. Southwest is it not?
A. Yes sir.
Q. It is down in what they call the Louisiana marshes?
A. Yes sir, that is what they call them yes sir.
Q. Mr. Kennedy, won't you show me on this map if you can w
it was that your brother was drowned?
A. I say that this was in Creole gap here (witness shows on
map).
Q. He was found in Creole gap?
A. Yes sir, he was found in there.
Q. Was he drowned in there?
A. He went over board south of the white and black buoy al
Cat Island channel.
Q. Where is that?
A. It is about half way across you know of the water.
Q. It is about half way across from what?
A. From Cat island to the marsh.
1430 Q. This is the end of Isle à Pitre that I am now pointi
out to you. Do you know anything about that?
A. Yes sir.
Q. This place that I am pointing out to you on this map mark
Exhibit A is Cat island?
A. Yes sir.
Q. Now will you show me please as near as you can where yo
brother fell off the boat? Fell overboard?
A. I could go and show you the place out in the channel.
Q. What buoy did you speak of?
A. The white and black buoy just across the spit.
Q. Who put it there?
A. The United States Government I suppose.
Q. Is it the buoy that marks the channel?
A. Yes sir.
Q. Were was it with reference to that buoy that your brothe
drowned?
A. He was drowned south of the buoy.
Q. Where is the Cat Island spit that you spoke of?
A. It is a bar that leads out from Cat island in the shoal wate
After we reach that we go into the deep water again.
Q. How far south of this buoy was it that your brother went over
board?
A. I could not tell you that. It was more than I could say. I
was at night.
Q. It was at night?

A. It was at two o'clock in the morning.
Q. Was it dark?
A. It was sure and blowing a gale from the north.
Q. How did he fall over board?
A. He put his foot on a rope and it rolled and over board he went.
Q. How do you know that you were south of the buoy at that time?
A. I passed it. Certainly I passed it and saw it.
Q. Which direction were you going at that time?
A. I was running south.
Q. Did you have a compass?
A. Sure. That is the only thing that I could guide by.
Q. Who was with you at that time on the boat?
A. Two brothers.
Q. Who had the compass?
A. I did. I was the pilot.
Q. Well now after this happened you say that your brother's body was found in Creole gap?
A. Yes sir, Creole gap.
Q. How long afterwards?
A. Three days I believe. Three or four days. I think that it was three days that he was found.
Q. Were you there when it was found?
A. No sir, I was hunting for it, and there were some men that were working in Creole gap at that time that were the ones that picked him up.
Q. Did they report it?
A. Yes sir, they seen us out some distance and they blowed for us and we went to them.
Q. Who informed the authorities about it over here? The law officers. Who notified the law officers here at Biloxi?
A. I did when I brought him here. I gave myself up sir.
Q. And the examination was had over here?
A. Yes sir.
Q. And they turned your brother and yourself loose?
A. Yes sir.
Q. And this was in 1886?
A. Yes sir, in 1886.

Redirect examination:

By Gen. McCLURG: You spoke about the license issued by the authorities of the State of Mississippi to fish oysters in this State. Was this the license issued by the Mississippi Oyster Commission?

1431 A. Yes sir.
Q. It was not an United States license?
A. No sir, it was the oyster commission license.

Q. The oyster commission license of Mississippi?
A. Yes sir.
Q. It did not designate any territory except west of Grand pass?
A. Grand pass. And I don't believe it had that in it.
Q. Just to fish oysters in Mississippi?
A. Yes sir, to fish oysters in Mississippi.
Q. You don't know where this license is?
A. No sir, but I don't know why they could not get some of them. Now the license run the same thing.
Q. You could not get that license?
A. No sir, the boat has been sold and everything. After the season is over we don't take any care of them.
Q. That is two years ago?
A. Yes sir.
Q. And this agreement that you spoke of west of Grand pass was an agreement between the Oyster Commission of Louisiana and the Oyster Commission of Mississippi?
A. Yes sir.
Q. To stand until this suit was ended?
A. Yes sir.

LOUIS KENNEDY, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLUNG:

Q. Your name is Louis Kennedy?
A. Yes sir.
Q. And you are a brother of Joseph Kennedy?
A. Yes sir.
Q. What is your occupation Mr. Kennedy?
A. I am working at the ice factory at the present time.
Q. You were a brother of John Kennedy?
A. Yes sir.
Q. What was your occupation in October 1886?
A. I went out oystering then. I was in the oyster business.
Q. You were in the oyster business?
A. Yes sir.
Q. Where?
A. Out here in the marsh.
Q. Were you on the boat from which your brother was drowned?
A. Yes sir.
Q. Were you and your brother Joseph tried for the murder of your brother John?
A. Yes sir.
Q. Where were you tried?
A. Here in Biloxi.
Q. Before whom?
A. Judge Holly.
Q. Where is he?

A. He is dead.
Q. Who was the constable?
A. Mr. Holloman.
Q. Where is he?
A. Dead.

By Gen. Guion: To the above evidence and to all other evidence of the same character, whether given by this witness or any other witness, testifying to the same facts counsel for the State of Louisiana objects on the ground that no evidence can be given in respect to the arrest or the trial of the parties charged with the
1432 murder of John Kennedy, except it be the record evidence of the proceedings had in the matter. That no oral evidence can be given concerning the trial or the examination in that matter unless proof be first offered showing the destruction of the primary evidence.

Q. Where were you fishing oysters in 1883? What part of the country?
A. I had not fished any. That is the first trip that I went fishing in my life.
Q. That was your first trip?
A. Yes sir.
Q. Did you fish after that?
A. No sir, it was about a year after that before I went out. When I did go I went on the Vera for Mr. Lopez.
Q. Is that a boat?
A. Yes sir, a steamboat dredging.
Q. Where did you dredge?
A. Grand Pass reefs.
Q. Were you interfered with by anybody in your fishing out there anywhere?
A. Yes sir, they had some boats that came out there and spoke to the captain, but he never stopped.
Q. When was this?
A. It is about three years ago now. About three or four years ago now.
Q. You were acquitted by Judge Holly?
A. We were acquitted.
Q. Do you know where your brother's body was found?
A. Nothing more than what I was told. I was told that it was found in Creole gap.
Q. Was his body out there?
A. Yes sir, I went out there and saw it.
Q. Before it was brought to Biloxi?
A. I went out there and dug him up to be sure that it was him, and we came back here to get help. The other help went out there and got him and brought him back here.

Cross-examination.

By Gen. GUION:

Q. Mr. Kennedy, where was your brother drowned?
A. They told me that he was drowned off of Cat island.
Q. They told you. Who told you that?
A. My brother. He was the only one that saw this at this tim
Q. Who did you mean by saying us?
A. There were three brothers of us. One got drowned and t
other one was the one that told me about it.
Q. If you were there how come you not to know it?
A. Because it was the first time that I was out there.
Q. You did not know where you were then?
A. Certainly not. If I had gone over board I would have drow
too.
Q. You are not able to tell where you were although you wer
there at the time your brother was drowned?
A. No sir.
Q. You could not tell?
A. No sir, how could I tell when it was the first time that I wa
out there.
A. Well I don't know. I am asking you. Have you any idea
or would you have any idea as to where you were if your brother
had not told you?
A. He had told it to me that often. No sir. I would not know
if he had not told me.
Q. When was it that he told you?
A. He has told me so often.
Q. What did he tell you was the place?
A. He told me that he was drowned off of Cat island and he
marked it down in the Bible and made a record of it.
Q. He marked it down where?
1433 A. In the Bible.
Q. What is the entry in the Bible.
A. I can give you a copy of it. I just taken a copy of it.
(Witness shows a copy of the entry in the Bible to counsel.)
Q. Who made this entry?
A. An uncle of mine in New Orleans.
Q. What is his name.
A. His name was Henry Smith. He is dead now.
Q. He entered that in the Bible?
A. Yes sir, in the family Bible.
Q. In the family Bible of the Kennedy family?
A. Yes sir.
Q. Now what is marked in here are these words. "Drowned on
Wednesday, October 26th, 1886 at two o'clock in the morning at Cat
island. John Collaratt Kennedy"?
A. Yes sir.

Q. You say that you took that from your family Bible?
A. Yes sir.
Q. Whose handwriting is this in?
A. That is my little girl's. My daughter's handwriting.
Q. And the information on which your uncle made this entry in the Bible was given by your brother was it not?
A. Given by me. I wrote the letter to him and told him it was done.
Q. And you got your information from your brother?
A. Yes sir.
Q. Were you awake at the time your brother was drowned?
A. No sir, I was asleep in the cabin.
Q. You were asleep?
A. Yes sir.
Q. When did you find out that your brother had been drowned?
A. My brother called me up and told me that John was overboard, and I got up and went to him.
Q. What was the boat doing at that time?
A. She was sailing.
Q. Was the water rough when you went to get up?
A. It was not so rough but it was dark.
Q. It was dark?
A. Yes sir.
Q. Very dark?
A. Yes sir, pretty dark. I could not see very far ahead.

In connection with the testimony of this witness counsel for Louisiana now offers in evidence the memorandum of entry taken from the family Bible of the Kennedy family which was testified to by the witness and marked Exhibit "A" in connection with the testimony of Louis Kennedy.

Drowned on Wednesday October 26, 1866 at 2 o'clock in the morning at Cat island John Callavatt Kennedy.

Endorsed Exhibit A to cross examination in the testimony of Louis Kennedy State of Louisiana vs. State of Mississippi Filed June 3rd, 1904. William D. Ballard, commissioner.

Q. Mr. Kennedy, who reported to the authorities here the death of your brother? To the authorities here at Biloxi?
A. My brother did.
Q. Were not you arrested?
A. Yes sir, we were arrested. We came here and got help to go out and find him, and while we were in here they found his body and buried it, so my brother and I went and dug it up.
Q. Did the justice of the peace Judge Holly, ask you and your brother where your brother had been drowned?
A. Well he might have at that time, but if he had I could not have answered his question for the simple reason that I did not know.
Q. Did you hear him ask your brother where he was drowned?
A. No sir, I did not hear his evidence.

Q. You were separated?
A. Yes sir.

Q. You spoke just now Mr. Kennedy of having been
1434 stopped by some body from fishing oysters about two or three or four years ago?
A. Yes sir, that was the Mississippi authorities.
Q. That is the only time that you know that you have been stopped?
A. Yes sir.
Q. Where have you been fishing oysters?
A. Well I have not been fishing oysters but a little. In last winter I was fishing oysters with my brother down here at Half Moon island.
Q. Any where else last winter?
A. No sir, we fished there all of the time that I was with him. I was only there for a month or two.

Redirect examination.

By Gen. McCLURG:

Q. Mr. Kennedy, I want to call your attention to this little slip marked "Exhibit A" to your testimony in this case and ask you who copied this from the Bible?
A. My little girl. I told her to write it because she writes a better hand than I do. I asked her to make a copy of it.
Q. Who made this entry in the Bible?
A. I say that an uncle of mine in New Orleans made it. I wrote the letter to him and he taken it down.
Q. Did he put it in the Bible in New Orleans?
A. Yes sir.
Q. Did you see him do it?
A. No sir, but I know that he did it because there was only him and my grandmother there and she was too old. She could not write. She was too old.
Q. How come your uncle to state by this entry in the Bible that John Collarett Kennedy was drowned at Cat island?
A. Well that is just the saying; drowned at Cat island, but just exactly where I could not say.
Q. You just said Cat island?
A. Yes sir, I just said Cat island. You know very well that he could not get drowned on the island. He had to get drowned off of the island.
Q. You stated awhile ago that you did not know how far it was?
A. I did.
Q. And you don't know how far it was now?
A. No sir, I do not.
Q. And you did not know at the time you had this entry made in the Bible did you?
A. No sir.

Q. That was your first trip out?
A. Yes sir.
Q. And how long after that was it before you had this entry made in the Bible?
A. As soon as my case was here and gotten rid of, then we wrote the letter to my uncle, and my grand-mother. She is the one that raised me, and I wrote the letter to her to tell her that my brother was drowned. It might have been a couple of weeks afterwards.
Q. Joseph Kennedy, your brother was acting as pilot at that time was he?
A. Yes sir at that time he was.
Q. Had he been on the water longer than you had?
A. Yes sir.
Q. He was very familiar with it?
A. Yes sir, he was very familiar with it.
Q. Do you remember any buoys that night?
A. No sir, I was asleep.
Q. Were you asleep when your brother went over board?
A. Yes sir, I went to sleep about dark.
Q. Where were you when you went to sleep?
A. I was on the south side of Cat island.
Q. You were on the south side of Cat island when you went to sleep about dark?
1435 A. Yes sir.
Q. Which way were you travelling?
A. Southwest. We were making for Creole gap. That is the only thing that I remember.
Q. What time of the night was it that you and your brother were out there; that your brother John was drowned?
A. It was two o'clock in the morning.
Q. So you had been travelling from about dark when you went to sleep until two o'clock in the morning before you waked up? What was it that waked you up?
A. My brother called. He called me and told me that my brother had fallen overboard.
Q. You did not know then and you don't know now how far it was from Cat island?
A. No sir, I never have been over the same ground.
Q. You never have been over the same ground again?
A. No sir.

Here the commission took a recess for the dinner hour, and upon re-convening, with the same counsel present as this morning, the following testimony was taken to-wit:

JOHN WALKER, being duly sworn, testified as follows:—

Q. What is your age Mr. Walker?
A. I am going on 71 years of age.
Q. Where do you reside?
A. In Biloxi.
Q. How long have you lived here?
A. I have been located here and resided here permanently for the last 20 years: going on 21 years.
Q. Where did you reside before?
A. New Orleans.
Q. What has been your occupation for the last thirty years?
A. I have followed the sea since boyhood. I have been steamboating here since 1855.
Q. Are you familiar with the Mississippi sound between Pearl river and Pascagoula say?
A. Quite so. I held a pilot's license for all of these years. Master and pilot.
Q. Issued by authority of the United States?
A. Yes sir.
Q. Where was your license issued?
A. In New Orleans. I have got with me a copy of one issued. The first issued as master, and I have the 16th issued as pilot. Congress passed a law in 1872 requiring masters and mates to be licensed as well as pilots and engineers, and my pilot's license dates from 1856 and the master's license from 1872, covering all of these years.
Q. You have stated that you were familiar with the Mississippi sound east of Pearl river?
A. Yes sir.
Q. Are you familiar with what is commonly called the deep water channel that runs out of the Rigolets and Pearl river?
A. Yes sir, the deep water channel runs between Cat island, and then there are two channels with one each side of Merrilss Coquile. The other one south of that. The deep water channel would be south of it.
Q. How long have you been familiar with this channel?
A. Since 1856. That is I quit piloting in 1883, the winter of 1883. Then I retired from the water altogether, but I was at it constantly for about 27 years.
Q. That is the channel that has been buoyed by the United States Government?
A. Only recently. It was not buoyed in my days.
Q. Do you know when it was buoyed, Captain?
A. No sir I do not.
1436 Q. Could you say whether or not the deep water channel line has ever been regarded as the dividing line between Louisiana and Mississippi?
A. I never heard of it until this controversy arose between the

two States. I always heard and always considered that the boundary line was due south from Pearl river 18 miles. I always did so consider it and always heard it spoken of in that way until this lawsuit.

Q. Until this lawsuit?

A. Yes sir.

Q. What was the character of your steamboat, freight or oyster business?

A. Freight and passenger business.

Q. You were never engaged in taking oysters?

A. No sir.

Q. Do you know anything about this country that we call the Louisiana marshes?

A. I know the coast line only. I don't know anything about the inside. Not through the marshes, but I am familiar with the coast line.

Q. Are you familiar with the line from Malheureux point to Isle à Pitre?

A. Yes sir, all of the way around from the mouth of the Mississippi river, and from the passes of the river all the way around to Lake Maurepas, excepting as I say that I have never been in the marsh, except that I have been through Three Mile bayou, and once in the entrance of Nine Mile bayou from the eastward.

Q. What craft did you have in going through Three Mile bayou?

A. I had a small steamboat.

Q. How much did she draw?

A. Well she only drew about four feet, but I found seven feet of water in there.

Q. You found seven feet of water where?

A. In the entrance.

Q. You say that you went through Three Mile bayou?

A. Three Mile bayou.

Q. Where did you go Captain?

A. From Chandeleur into Lake Borgne.

Q. From Chandeleur sound through Three Mile bayou into Lake Borgne?

A. Yes sir.

Q. With a steamer drawing four feet?

A. Yes sir, she was a steamer.

Q. When was this?

A. I would have to refer to a memorandum to see. I think that t was about 1867 or 1868.

Q. Now look at this map, please sir.

A. I am not at all familiar with maps. I never used them even fter I was a licensed pilot.

Q. This is marked Exhibit "E" to this bill of complaint in this ise, and here is Three Mile bayou?

A. Yes sir.

Q. I want you to tell me how you travelled in going there?

A. Well we came up the coast and turned into the sound throug this bayou into Lake Borgne. Now that I was not familiar wit myself and I had an oyster fisherman who piloted me through tha bayou. I do not claim to be familiar with that at all, nor do I clai to be familiar with any part of the inner marsh.

Q. You came up the coast from the direction of the mouth Pearl river?

A. Yes sir.

Q. And went through this bayou into Lake Borgne?

A. Yes sir.

Q. Well that is in the Three Mile bayou, that is on the Louisian coast between Malheureux point and Isle à Pitre is it?

A. This fisherman took me through there and called that Three Mile bayou. No, that is not Three Mile bayou. The Three Mil bayou that we went through is up here somewhere in the neighbor hood of Isle à Pitre. I never did use charts in all of my piloting. I learned it from other pilots and by observation.

Q. Do you mean to say that you went through this bayou into Lake Borgne?

A. Yes sir.

Q. Does Lake Borgne extend to the east of Grassy island?

1437 A. I so consider it.

Q. How far east does Lake Borgne extend?

A. As far as Cat island pass.

Q. Where does the Mississippi sound begin on the west?

A. At St. Joseph on the west.

Q. Is Lake Borgne south of the sound? Mississippi sound?

A. Part of it.

Q. Have you ever noticed whether there had been any material changes in the Mississippi shore along east of the mouth of Pearl river?

A. Well the only change; there was not much change during my time, but there has some change taken place since. St. Joseph island is cut away some.

Q. Have you noticed any material change along the Louisiana marshes between Malheureux point and Isle à Pitre?

A. None there.

Q. When were you last through there Captain?

A. The last time was in 1883.

Q. You think that there had been no material changes from 1856 to 1883?

By Mr. DYMOND: Objected to on the ground that it is a leading question.

A. No sir, nor had there been any change on the east side of the marsh. No material change from 1856 to 1883. There was a slight change at Point Chico. Point Chico had cut away a little bit where it was exposed to the open sea.

Q. What part of the marsh is Point Chico at?

A. I would call that out about south east.

Cross-examination.

By Col. ZACHARIE:

Q. Were you in the employ of any regular line of steamboats?

A. Yes sir, at times. Of course I travelled on transient steamers around that part principally.

Q. Were you a captain on the old Geltz line of steamboats?

A. Not a captain. I was a pilot.

Q. That is prior to the Civil war?

A. Yes sir.

Q. Were you a pilot on the Morgan line after the war?

A. No sir.

Q. Those boats were running between New Orleans and Mobile were they not?

A. Yes sir.

Q. Now what was the draft of these vessels of the Geltz line?

A. Well the Creole was a light draft, she drew about five or five and a half feet and the Oregan and Cuba generally drew about six or six and a half feet of water.

Q. Now what channel did you follow after leaving the Rigolets?

A. We followed the channel—which way?

Q. Going eastward?

A. Going east, we followed the channel through St. Josephs, and up by Merrils Coquile and through Pass Marianne.

Q. How close did you run to the Mississippi shore. About?

A. Where do you mean? Very close to it at St. Joseph.

Q. I mean from the mouth of East Pearl on past the Malheureux islands and Marianne islands. About how far was this channel that you followed from the Mississippi shore. The main land?

A. Well I don't think at any time except in the middle of the sound that we were over three miles at the furthest. Some times much closer than that.

Q. Do you know what distance the main land was from the Louisiana marshes. What the distance is across there?

A. That varies a great deal too. Just tell me any particular point and I can get at it.

1438 Q. Well say at the east mouth of Pearl river?

A. Over to the marsh?

Q. Yes sir?

A. Well I would say right over on a due south line that it would probably be 11 or 12 miles.

Q. Now as you went on to the eastward until you passed Malheureux islands what would you estimate the distance between the same points. That I have just spoken of?

A. Would you call St. Joseph a part of it?

Q. Yes sir, and Round and Grassy islands?

A. Well it would be about eight miles.

Q. That was the recognized deep water channel was it?

A. Yes sir, Cat Island pass was. Yes sir.

Q. That channel branched off to the south east did not it?

A. Outside yes sir.

Q. Captain, what did you base your opinion on that the Louisiana marshes were a portion of the State of Mississippi?

A. Well on what I have always heard expressed. Whenever I heard it spoken of.

Q. Did you ever hear it discussed?

A. Yes sir, frequently, as late as 1867 I think at one time. I was then in the city of New Orleans and I thought at one time of getting a license as a Mississippi bar pilot. I thought that it extended even that far, and Mr. Henderson who was in the legislature here, we got him to introduce a bill, or he intended to introduce a bill, but he investigated it and he told us that the line only extended 18 miles south of the Mississippi shore. That Mississippi had no jurisdiction further than that. There were several of us citizens of New Orleans who were not bar pilots, and we could not get it from Louisiana, but we could get it from Pass Lucre which would be taken in by Mississippi if the line run the whole way. Mr. Henderson after investigating it told us that he could not do any thing. That the jurisdiction of Mississippi only run 18 miles south of Mississippi.

Q. When you spoke of a bar pilot you meant to the mouth of the Mississippi river?

A. Yes sir, to the mouth of the Mississippi river.

Q. Was it ever mentioned by Mr. Henderson or others that the jurisdiction of Louisiana extended three leagues or nine miles from this Louisiana marsh?

A. We never discussed that. This was in 1867 that I spoke of that Mr. Henderson told us this.

By Mr. DYMOND:

Q. Captain, will you kindly come around here and look at this map, which is called map No. 59. Will you see if you can find the mouth of Pearl river on this map?

A. Yes sir, here it is.

Q. Will you please designate in what direction from St. Joseph you find this mouth of Pearl river?

A. Well I never took the bearing directly.

Q. In a rough way. Approximately?

A. Well it would be east, north east.

Q. Well now don't you mean just exactly the opposite?

A. Yes sir, west north west.

Q. Well now if you were to come out of the mouth of Pearl river with the intention of going eastwardly would you or would you not go through what is called here Grand Island pass, between Point Clear, lower Point Clear and Half Moon island?

A. Yes sir.

Q. As you progress eastwardly what direction would you take as shown on this map?

A. Well I would run up clear by St. Joseph island and north east by east and clear Merrilas Coquile.

Q. Did you notice coming out of the mouth of this Grand Island pass a line with the sailing directions S. W. ½ S. Is that the sailing direction that you would take?

1439 A. No sir, I would go the very reverse. I would go E. ½ north.

Q. Now that was the channel in 1886 was it?

A. That was the channel.

Q. And it was for the purpose of passing to the eastward, north of Merril's Coquile was not it?

A. Yes sir.

Q. Well now was there any other channel in 1856 south of Merril's Coquile?

A. Yes sir.

Q. Will you please look at this line emerging from Grand Island pass, shown on map 59 and marked west ½ south and extending over eastwardly south of Merril's Coquile which I now point out to you?

A. Yes sir.

Q. And I ask you if this is the other channel that you would have gone through south of Merril's Coquile?

A. Yes sir.

Q. You will then notice this channel proceeds S. W. by W.?

A. I am going to the eastward. I was steamboating.

Q. You were going the exact reverse of these indications on this channel?

A. Yes sir.

Q. You notice where it comes to a point north of Porpoise shoal. That it runs south east from Cat Island channel?

A. Yes sir.

Q. Now is it this channel which we have just indicated extending from the mouth of Pearl river north of Half Moon island across Mississippi sound, south of Merril's Coquile, thence eastwardly, north of Porpoise shoals, between Cat island and Isle à Pitre, Was this channel in existence in 1856?

A. Yes sir.

Q. Was there any other channel that you know of by which you could get from the mouth of Pearl river out between Cat island and Isle à Pitre, into Chandeleur sound?

A. No other channel, but the bayou that I spoke of——

Q. Was there any other that would be commonly recognized as a deep water channel?

A. No sir.

Q. Now Captain, going back to your understanding. You never recognized or understood that to be the boundary line between Louisiana and Mississippi. What knowledge if any did you have as to what the boundary line of Louisiana and Mississippi is?

A. I did not have any more than any one expressing an opinion among others in a discussion.

Q. Well now please mention one person who expressed to you any opinion as to the boundary of Louisiana?

A. Well I could give you several. Capt. Ben Ames who was a pilot.

Q. Capt. Ben Ames?

A. Yes sir, he was a resident of New Orleans, and Capt. Jack Hoskins of Mobile, and Capt. Ben. Midget of Mobile.

Q. Now, what did they say to you?

A. Well I could not remember exactly what they said. They all expressed that that was the boundary line.

Q. Do you think that you understood my question?

A. Did not you ask me what they said to me?

Q. No, I asked you what knowledge you had in regard to the boundaries or limits of the State of Louisiana?

A. I told you that I had none except from what I had learned in discussions with others.

Q. Now what did they tell you was the boundary of the State of Louisiana in the south east portion of the State. South of the State of Mississippi?

A. I don't think they ever told me what was the boundary of Louisiana at all. They spoke of the boundary of Mississippi though.

Q. Now did you ever have occasion to look at the acts of Congress which created the State of Louisiana and the State of Mississippi?

A. No sir.

Q. Therefore you never as an independent proposition endeavored to ascertain for yourselves what was the boundary really and correctly between these two States in these waters?

A. No sir, I have never had occasion to study into it through any of the acts of Congress.

1440 Q. You simply, as I understand it, were told that in the act of Congress creating the State of Mississippi that she was given all islands within 18 miles of her shore line?

A. And what Mr. Henderson told me and others connected with him in regard to his researches when we wanted to pass the bill through the Mississippi legislature.

Q. Had you ever heard of Mississippi appointing pilots to pilot to the mouth of the river?

A. I never had. We intended to try and have a bill passed if we could do so, but I had never heard that Mississippi had done that previously.

Q. You don't know whether any Mississippians were ever arrested for piloting in Louisiana at the mouth of the Mississippi river, do you?

A. No sir.

Q. Did you ever hear that as common talk amongst old pilots or any legendary history that came down amongst the pilots of Mis-

sissippi? that any of the Mississippi pilots had been arrested and taken to Pointe à la Hache because they were piloting in Louisiana without a Louisiana license?

A. I never heard of it sir.

Q. Now in this long experience of yours of something like 27 years have you ever encountered any storms?

A. Yes sir. I have encountered a good many.

Q. Between the mouth of Pearl river and the Rigolets and the eastern extent of your voyages?

A. Yes, sir, I have been in a great many.

Q. Were they mild or severe storms?

A. Some were pretty severe. Some as severe probably as we had for many years. Two storms in 1860. Two of the most severe storms that we have had along this coast.

Q. In a rough way, about how many storms, or what you call storms have you experienced in this section in the 27 years that you have piloted? That is from 1856 to 1883?

A. Well I suppose that I have encountered eight or ten severe storms. There were two storms in 1860. One in August and one in September and both of them were severe.

Q. These storms were they as a rule about the equinoctial period in the fall.

A. Yes sir.

Q. What was the effect of these storms on the shipping in this section?

A. Well I have known vessels to go ashore and be wrecked. In one of the storms a Spanish barque went ashore on Pelican island, and a British ship went ashore on Ship island. I remember when the Josephine found herself at Ship island in a pretty severe storm. Another ship was foundered on Cat Island spits, and that is I believe about all of the wrecks of the ocean vessels.

Q. What was the effect on the smaller vessels navigating the inside and on the bath houses and piers and wharves alone on the main Mississippi shore?

A. Well there were a good many smaller vessels that were wrecked in these storms.

Q. Well now is there any effect on the shore of Mississippi itself. The main land. Any erosion as a result of these storms?

A. I don't know of any.

Q. Did you have occasion to notice whether the water was any closer to the front along the coast at any point as a result of these storms?

A. There might have been coasts where a few feet had been cut away, but if there had been any perceptible change I would have noticed it without making a close observation. I am so familiar with it all.

Q. What effect did these storms produce on the bath houses along the Mississippi shore there?

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A. Well sometimes it would sweep nearly all of them away along the front.

Q. Would these storms cross over to the Louisiana marshes?

A. Yes sir.

1441 Q. Would you be able to say what effect they would have produced or did produce on the Louisiana marsh from any positive personal information of yours?

A. I never noticed any effect from 1856 to 1883 except that Point Chico had cut away a little. The most of this was done in the storm of 1860.

Q. You don't mean to say that there were no changes produced?

A. No sir, but it was hardly perceptible.

Q. Do you mean to say that there were no changes produced, or that it was hardly perceptible?

A. I mean in the shore line of the marsh where I am familiar. I don't speak of the inside of the marsh for I don't know about that.

Q. You don't know what changes have been produced on the inside of the marsh?

A. No sir, I only know the coast line.

Q. As to the interior of the marsh I understood at the beginning that you were not prepared to tell. You don't know anything about that?

A. No sir.

Q. You spoke of the coast line. You know where Malheureux point is?

A. Yes sir.

Q. You know where Isle à Pitre is?

A. Yes sir.

Q. You have sailed along down there in your trips?

A. Yes sir.

Q. And you saw the coast line there as you sailed along there?

A. Yes sir, I sailed with a class of vessels that used to coast it very close when I was sailing from Chandeleur sound. I never passed through but very seldom with sea worthy boats. Whenever I was taking a sea worthy boat out from the mouth of the Mississippi out to Mobile, or Lake Pontchartrain I would go up through the middle of the sound. The most of the boats would be Red River boats, long stern wheel boats. Some were crossed out by the insurance and we had to be very careful with them.

Q. I am speaking of the shore line between Malheureux point and Isle à Pitre. You have not gotten to Chandeleur sound?

A. Sir?

Q. I was speaking of the shore line from Malheureux point to Isle à Pitre, and after you come out of the mouth of Pearl river you have not yet gotten to Chandeleur sound?

A. No sir.

Q. Well now if you had occasion to notice this shore line from these vessels as you came out of the mouth of Pearl river? Did you?

No, sir, not particularly. Not along there.
Well what shore line is it that you say you have noticed?
All the way down along the Chandeleur sound. From Isle à
down to Point Chico.
What do you know about the shore line from Malheureux point
le à Pitre?
Well I never had occasion to notice that much.
Therefore you don't know it at all?
No sir.
Could you see it from your boat as you went along there
gh the Mississippi sound?
Well we could have seen it yes sir.
Did you ever look as you were passing eastward out of Pearl
Did you ever look?
I could see Isle à Pitre of course.
Did you ever look to the south as you were passing out of the
of Pearl river and moved on eastwardly Did you ever
o the southward and see this shore line of the Louisiana line;
uisiana marshes between Malheureux point and Isle à Pitre?
No sir.
In all of your trips of 27 years you can not say that you ever
is shore line?
A. You mean south of Isle à Pitre?
A. I said south of the channel between Pearl river and Cat
island?
Yes sir, I have seen it a short distance but I could not see it
way down.
Will you please look at this map which is map No. 59, and I
ut to you on it Malheureux point. Do you recognize it as
es sir.
nd I point out this as Isle à Pitre?
es sir.
o you recognize it as such?
es sir.
nning out of the mouth of Pearl river following as I do with
l along this channel concerning which you have just testi-
f your boat was to progress in this way and you look to the
rd could you see that shore line?
o sir.
d you ever on any of those trips go close enough to the shore
e able to see it?
ell I have gone around here during the war.
here do you mean? Do you mean north of this shore line
aters of the Mississippi sound. You say that you have been
ring the war?
s sir.
w close to the shore line were you then?

A. Well I was on a steamer a short while. A boat drawing feet. Some times we would be a half a mile from it.

Q. Could you see the shore line?

A. Yes sir.

Q. Was it a drâned shore line?

A. A defined shore line. Marshes.

Q. Have you ever been continuously along this shore line fro Malheureux point following this pencil to Isle à Pitre?

A. No sir, I have down to the eastward. Chandeleur sound.

By Mr. Guion:

Q. Captain, I want to ask you a couple of questions that have o curred to me during this examination. Did I understand you t say a moment ago when you were giving your evidence that ther was a bayou that you called Three Mile bayou through which yo went?

A. I was told when I was taken through by this fisherman. H told me that he would take me through Three Mile bayou and cu off this distance up here.

Q. What do you mean by up here?

A. Up around this deep water channel. Between Cat island and Isle à Pitre. He took me through a bayou that he called Three Mile bayou to save that distance there.

Q. To save the distance between Cat island and Isle à Pitre?

A. Yes sir, we were going around into Lake Pontchartrain.

Q. Where — you coming from?

A. From Calcasieu river. When we come up by the lower lagoon we then hauled in towards this bayou and he told me that it was Three Mile bayou.

Q. I find on this map before you which is map No. 59 no bayou along that point west of Grand pass called Three Mile bayou. Could you indicate which one of these bayous it is. Which opening you speak of as Three Mile bayou?

A. No sir, I only went by what he said.

Q. Was it Grand pass through which he went?

A. It might have been Grand pass through which he took me, but he went out Three Mile bayou. This was my regular route up through Chandeleur sound, and then through Cat Island pass. That was my regular route, but on this occasion I had this fisherman aboard, and he was thoroughly posted in the marsh and he proposed to take me through Three Mile bayou to shorten the distance.

Q. At what point did you go into this marsh?

A. I don't know unless it would be —. I know that we cleared this Battle Door island. Left it to the left and went to the westward. It might have been through Grand pass that he took me.

1443

Q. You don't know what the place was except he told you that it was Three Mile bayou?

A. He told me that it was Three Mile bayou.

Q. Now there is one more question that I would like to ask you I understood you to say that you understood that Mississippi, or rather the southern boundary of Mississippi was 18 miles south of Pearl river. Did I understand you correctly?

A. Yes sir.

Q. Was it your understanding that the line was found due 18 miles south of Pearl river. 18 miles due south.

A. That the line extended due south 18 miles.

Q. Due south from what?

A. From Pearl river.

Q. Is it the western mouth or the eastern mouth?

A. The eastern mouth.

Q. The eastern mouth of Pearl river?

A. Yes sir.

Q. Have you ever heard discussed the subject of where the line after it left Pearl river, the eastern mouth struck the Louisiana marshes. At what point?

A. No sir, I don't think that I ever did.

Q. All that you heard was that Mississippi extended 18 miles south of the eastern mouth of Pearl river?

A. Yes sir.

Q. Did you ever discuss or hear discussed the subject matter of the line running along Nine Mile bayou or down Nine Mile bayou?

A. I don't think I ever did.

Q. And you are quite sure that you are not able to state the point that is reached in the Louisiana marshes after you leave the mouth of Pearl river that far down?

A. No sir.

Redirect examination.

By Gen. WILLIAMS:

Q. Captain, you explained awhile ago that your usual route was up the channel here by this point. What is that?

A. Isle à Pitre.

Q. And that on one occasion you were carried through this pass by some fisherman who was on your boat?

A. Yes sir.

Q. Now as I understand it you were questioned by the counsel for Louisiana as to the reason why you went through this way and the distance. I would like for you to state in your own way why you happened to go this way and what the distance is from this point to that one over there?

A. Well sir, when we come up north of Door point——

Q. Now call your points all of the time. You did not do it is the reason I am asking you this question now?

A. When we come north of Door point this fisherman proposed to me that he knew the way and could take me through Three Mile

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bayou as he said and shorten the distance that we would have to g
We went right around Isle à Pitre and out this channel.

Q. To what point?

A. To the point that we were going to wherever it was. We stru
this deep water channel and came down past St. Joseph. In oth
words he would have to go through at Door point, up through th
that he said was Three Mile bayou. We would have to run in
deep water channel over here and carry us to St. Joseph island?

Q. Was your point in view St. Joseph island?

A. Yes sir, that is the point in view to keep in the channel throug
the Rigolets.

Q. To go through this way was to shorten the distance to S
Joseph island?

1444 A. Yes sir.

By Mr. McCLURG:

Q. What river was it you say you came out of?

A. Out of Calcasieu. We entered at the head of the river an
went through the head of the pass and went down Pass Alutia.

Q. And came out to the eastward?

A. Eastward. We came out of this pass and up inside of Chande
leur sound.

Q. When was this?

A. I think it was in 1867.

Q. You spoke awhile ago about some trip that you made around the
coast from Malheureux point to Isle à Pitre during the war did not
you?

A. Yes sir.

Q. Where did you start from on this trip if you remember?

A. Well it was on a small gun boat, and we were on the go all
of the time. We were on the go all of the time on a Confederate
boat.

Q. How near did you go to this Louisiana coast at that time?

A. At any time we were hardly further than a half a mile from
the shore.

Q. Did you make more than one trip?

A. Yes sir, we made probably three or four trips. There were
some Malays living on a small bayou. I disremember where it was
but we used to go there and watch them once in a while.

Q. Where were they?

A. I forget the name of the bayou.

Q. Would you recollect it if you were to hear it?

A. It was some French name. I don't think I would.

Q. Do you remember whether it was Nine Mile bayou?

A. It was not Nine Mile bayou.

Q. Turkey bayou?

A. No sir.

Q. Johnson bayou?

A. No sir.

Q. Creole gap?
A. No sir.
Q. St. Malo?
A. No sir, it was a French name. I can not think of the name that they called it.
Q. Where was it?
A. On the north coast of the marsh.
Q. Between Malheureux point and Isle à Pitre?
A. No sir, further west.
Q. It was on the coast of Lake Borgne then was it?
A. Yes sir, it was Bayou St. Malo.

T. C. MORRISON, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you reside, Mr. Morrison?
A. Biloxi.
Q. How long have you lived here?
A. I have been living here about 19 years.
Q. What is your occupation?
A. Oysters.
Q. Are you familiar with the waters to the east of Lake Borgne?
A. Yes sir.
Q. How long have you been familiar with them?
A. Ever since 1866.
Q. Tell us how your familiarity has been acquired since that time?
A. I have been getting oysters out at the marsh and bringing them to Biloxi and Mobile.
Q. Since 1866?
A. Yes sir.
1445 Q. Look at this map please sir that is marked Exhibit "E" to the bill of complaint. You will notice the red line drawn from the Rigolets and from Pearl river running eastwardly here?
A. Yes sir.
Q. What is called on the map here channel?
A. I can not see very good. Yes sir, here is Pearl river, and Petit pass, and Petit Pass island. Here is Nine Mile bayou and Three Mile bayou, and Johnson's bayou and Turkey bayou, and Grand pass and Creole gap, and here is what they call Freeze Out harbor here, and here is Isle à Pitre. (Witness points out locations on the map.)
Q. How long have you been familiar with these places?
A. Ever since 1866. That is the first year that I run over there.
Q. Have you gone through these passes?
A. Yes sir, through all of them.
Q. How large a boat did you ever carry through Nine Mile bayou?

A. I have carried a boat through there drawing four and a half feet of water light.

Q. How about through Three Mile bayou?

A. It drew the same water. It was the same boat.

Q. How about Johnson bayou?

A. That has not so much water. After you get inside it is shoals.

Q. How about Turkey bayou?

A. It is the same way.

Q. How about Grand pass?

A. It is good water all the way through, clean out to Door point.

Q. How far have you gone into these marshes with your boat?

A. I have gone down to what they call Kaliko bay.

Q. How far is that?

A. I don't know how many miles it is. We come through Three Mile bayou and into Bayou Mussell and come out in to the narrows.

Q. What State were you in. Louisiana or Mississippi when you were down there?

A. I did not know who it belonged to, but I have always heard that the line run due south from Pearl river.

Q. What line?

A. The dividing line between Louisiana and Mississippi.

Q. How far south?

A. Three leagues, 18 miles.

Q. That would be six leagues, would not it?

A. Yes sir, six leagues.

Q. Why did you think that Mississippi extended six leagues south of Pearl river?

A. I have always heard it that way. I never have heard it any different.

Q. I will ask you whether you have noticed the islands such as Big Raccoon and Little Raccoon?

A. I do not see any difference in them. They are about the same that they were when I first went there. The mouth of Three Mile bayou is washed away a little, very little. The heavy northwesters have washed it some.

Q. You have mentioned the northern coast of these marshes. Have you noticed any material change in it from Malheureux point to Isle à Pitre since 1866?

A. No, sir, these shells on the outside will wash away and wash up again, but it is just the same thing.

Q. You will notice on this map Mr. Morrison of Louisiana that she has drawn her line of contention between these two States on what is written on the original map as channel. Are you familiar with that channel?

A. Yes sir, I have been across it many a time.

Q. Do you know whether it has ever been regarded by yourself or others frequenting these waters as the line dividing Louisiana from Mississippi?

A. No sir, I never knew anything about it.

Q. Where is the east end of Lake Borgne. Tell us where you fishermen consider the east end of Lake Borgne?

A. I have never caught any oysters in Lake Borgne.

Q. Where did you catch them?

A. In the marsh.

1446 Q. Have you ever caught any around Grassy island?

A. Yes sir.

Q. Grand island?

A. Yes sir.

Q. And Petit pass?

A. Yes sir, and Nine Mile bayou and Three Mile bayou and Turkey bayou and Drum bayou, and in all of these I have gotten them.

Q. How long have you been catching them?

A. Ever since 1866. In different places. We don't work every year in the same place you know.

Q. Where is the best oyster field?

A. By the marsh. Down by Bayou Mussell.

Q. How did you get there?

A. Come through Three Mile bayou.

Q. How far is it south of Three Mile bayou?

A. It is about eight miles southwest.

Q. What kind of a vessel can you go in Three Mile bayou with?

A. I have been in there with a schooner drawing four and a half feet of water light.

Q. Through Three Mile bayou?

A. Yes sir, down abreast of Bayou Mussel.

Q. How much was she drawing loaded?

A. She would not draw very much more loaded. I had to tip her to get her out. She draws that much light. She belongs to Mr. Sweatman here. My own schooner did not draw but three and a half feet light.

Q. Can you tell us where you have been in that marsh with that schooner?

A. I have been all through there clean through from Isle à Pitre, and down to Drum bay.

Q. Have you gone through Nine Mile bayou?

A. Yes sir, I have been through there and there is plenty of water there. Deep enough water there for a full rigged ship.

Q. Did you ever go as far as Indian Mound bay?

A. Yes sir.

Q. You have been as far as Southwest pass?

A. Yes sir, as far as Southwest pass yes sir.

Cross-examination.

By Mr. Dymond:

Q. Did you ever fish oysters in Mississippi?
A. Yes sir.
Q. When did you first start to fishing them?
A. In 1886.
Q. Did you ever fish oysters in this territory lying south of the main shore line?
A. Yes sir, and along down the coast.
Q. What is that territory called?
A. I have always heard it called the marsh.
Q. Is it not a fact that you have always heard it called the Louisiana marsh?
A. No sir, I have heard it called Louisiana marsh in different parts of it. Down about the mouth of the Mississippi river down there.
Q. Is it not a fact that you have always heard it called Louisiana marsh indiscriminately?
A. I have heard it called that yes sir.
Q. Let's be frank about it. Is it not a fact that you have always heard it called Louisiana marsh?
A. Yes sir, I have always heard it called Louisiana marsh.
Q. When you went into this marsh with a boat drawing four and a half feet of water was it not high tide?
A. No sir, always low tide, so that if you go aground you can get off when the high tide comes up.
Q. Did you have any trouble in getting out?
1447 A. No sir, never. We come out in the night time.
Q. You spoke of having your boat tipped by the bar?
A. When you go inside of Three Mile bayou, it is deeper in there and there is more water.
Q. As a matter of fact Three Mile bayou is quite a short bayou?
A. Yes sir.
Q. It is right deep in the bayou, but it shoals up again as you come out of the bayou?
A. As soon as you get in the bay it shoals up.
Q. Is not it the same way in Nine Mile bayou?
A. No sir, Nine Mile bayou is deep water all through the bayou?
Q. Is it not a fact as to Nine Mile bayou and Three Mile bayou, that some differences exist. That it is deep in the bayou but as soon as you get in the end of the bayou out into Lake Boudreaux that it shoals up again just as it does at Three Mile bayou?
A. Certainly.
Q. Well now is it not a fact also in fishing oysters there that you have never considered whether you were in Louisiana or Mississippi, but that you fished as far down perhaps as American bay?
A. Yes sir.
Q. And it is only within recent years that you have thought at

about any boundary line between the two States. Is not that
rect?
. Yes sir, it is only the last two years or three years that they
e tried to stop the boats from fishing there.
. You did not know what the oyster laws were in Louisiana be-
did you?
. No sir.
. You did not know whether the laws stopped non residents
fishing or not did you?
No sir, I did not know anything about that.
It could have been possible that the oyster law of 1886 per-
d non residents to fish and the oyster law of 1892 stopped them.
could have been possible?
Yes sir, the way that I always looked at it I thought that the
p and overflowed land belonged to the United States. I
ght that everybody could fish there, and I went there to fish
You did not know whether this swamp land had been selected
e State of Louisiana and approved to it by the United States,
ou?
No sir.
And you never investigated it to find out?
No sir.
Now in your years of experience since 1866 have you had oc-
to go frequently through the interior of the Louisiana
es?
What for, oysters?
Yes sir?
Of course that was where the best oysters were.
In going through there have you ever noticed the effect pro-
by any storms?
No sir.
Have you ever been in the Louisiana marshes during a storm?
Yes sir.
When was this?
t was not a regular gale of wind but the marshes were all
The marsh is always under any ordinary tide.
ould you see the grass?
o sir, you could not see the grass. It would be even on the
of Grand pass.
low high is the grass there?
he grass grows different heights in different parts of the
aking the highest grass. How high would be the high
bout five and a half or six feet.
ow high were the camps off of the ground?
A. About this high. I don't know exactly how high they
ere but I could pretty near walk under them.

Q. You are about five and a half feet tall?

A. Yes sir, they bedded the oysters there and carried them New Orleans.

Q. Was I correct in hearing you say that you could not see th grass on account of the water?

A. Yes sir.

Q. Was it a heavy wind at that time?

A. Yes sir, it was blowing a southeaster.

Q. Was it that way as far as you could see from your boat?

A. Yes sir, as far as I could see. I had to stay up all night t keep the timber off of the boat.

Q. Were the waves big?

A. Yes sir, you would have thought so if you had been aboar of her.

Q. Did you have occasion subsequent to this storm to go up an of these bayous or places in the marsh and notice whether an changes had been produced by the heavy water and the storms?

A. Well I did not see any difference in it.

Q. I am asking you whether you went up there and noticed that Did you go with that purpose or object in view?

A. I did not go for that purpose, but I used to go out in the marsh maybe every week. Make a trip a week.

Q. Well now are you familiar with St. Joseph island?

A. Yes sir.

Q. Is it in the same condition that it was twenty-five or thirty years ago?

A. No sir, it is washed away some.

Q. It is gone almost out of sight, is it not?

A. I have not been down there very lately.

Q. How about it. What have you heard. Has it not gone nearly out of sight, and have they not had to move the light house?

A. Yes sir, they have had to move the light.

Q. Has not Round island almost washed away?

A. I have not been down there lately.

Q. When was the last time you were there?

A. Two years ago.

Q. Could you see much of Round island two years ago?

A. Yes sir.

Q. What do you call Round island?

A. I call it the next island, last next to Long point. You see nearly every body have got different names for places in that marsh.

Q. That is what I want to get at. Please look at this map marked Exhibit "E" and notice Malheureux point. Do you know where that is?

A. The point that I am talking about is lower down here. This is what I call Round island.

Q. Now what do you call this island which is just southwest of Half Moon island?

A. I don't know what that island is. This is Round island here. You see every body has a different name down there.

Q. You will notice the name Round island on this little island?

A. Yes sir, I see it.

Q. Are you familiar with that island?

A. No sir, I never went around that way much. I always went around here about the marsh and Nine Mile bayou.

Q. You would not be prepared to controvert or deny other witnesses who state that this island was almost washed away?

A. I could not, no sir.

Q. Well now take this pass between Malheureux point and this island. To your knowledge has there been any change in that pass?

A. I don't know. I have not been that way for some time. You see most of my fishing was all down through Three Mile bayou and the middle part of the marsh.

Q. Has there been any change in Three Mile bayou?

A. There is just a little bit on the point. It was washed there with a heavy north wester.

Q. How wide is Three Mile bayou now about?

A. Not very wide. Wide enough for a boat to go through.

Q. Is it a thousand feet wide?

A. I expect it is that.

1449 Q. Well now suppose that witnesses had positively testified that within their knowledge that bayou was at one time but 75 feet wide. Would you say that they were mistaken?

A. It has not been that way since I knew it.

Q. How long have you known this bayou?

A. Ever since 1866.

Q. Did you go through Three Mile bayou on your first trip?

A. Not on my first trip, no sir.

Q. When did you make your first trip out there?

A. The first of September 1866.

Q. Did you go through Three Mile bayou. You did not. Where did you go?

A. I went through Grand pass and Jack Williams bayou.

Q. Well how did you get into Jack Williams bayou?

A. Come through Grand pass.

Q. Will you please point out Jack Williams bayou on the map?

A. Yes sir, I will show it to you. (The witness shows location on the map.)

Q. That is on the eastern shore of the Louisiana marsh is not it?

A. Yes sir, just behind Sun Down island. You can go through by Sun Down island. Go through Grand pass and come out into Jack Williams bay.

Q. That led you into the interior of the marsh?

A. Yes sir, into the marsh.

Q. That is east of West Karako bay.

A. Yes sir.

Q. Did you go any further than that on that trip?
A. I could not say about that. Yes sir, I worked in Crane
bay that winter. That is the next bay from it.
Q. Did you ever in 1866 go over here in the neighborho
Raccoon island?
A. No sir, I did not work that far down that year.
Q. Have you ever noticed any changes in any of the islan
the neighborhood of Raccoon island since you were there?
A. Raccoon island is the same that it was when I first saw
don't see any difference in it.
Q. Did you ever notice any change in the island called N
island?
A. I don't know any island by that name.
Q. If witnesses testified that that island was wiped off of the
of the earth would you be familiar enough with the subject to
that it was not true?
A. I don't know of any such name for an island since I have
there at all.
Q. Is it not your idea that the success of Mississippi's case dep
upon proof that there has been little or no change in the topogra
of that part of the country?
A. No sir, there is very little change that I saw in it at all.
Q. You are sure of that?
A. Yes sir, I am sure of that.
Q. Is it not a fact that there have not been any changes at all
A. I don't know anything about it before I went there.
Q. As far as you know there have been no changes at all?
A. No changes at all only this little place washed away in
Three Mile bayou.
Q. The storms etc., made no difference down there?
A. They have not made any difference down there to my kno
edge.

By Col. ZACHARIE:

Q. How old a man are you?
A. 59 years old. I was born in 1845.
Q. How long have you lived in Biloxi?
A. 18 years.
Q. Where did you live before that?
A. I was at Mobile. Mobile bay on a skiff.

By Gen. GUION:

Q. How wide is Nine Mile bayou now at the mouth?
A. I have not been there in two years.
Q. How wide was it when you were there two years ago
1450 A. I could not tell you exactly how wide it was. I kno
that there was room enough to beat out of it with a schoone
with a head wind.

Q. How wide was it in 1866 when you first went down in this country fishing oysters?

A. I don't see any difference in it only the north point is washed away a little.

Q. How wide was Grand pass when you first saw it in 1866?

A. Well it was about the same. I don't see any difference in Grand pass.

Q. You are not answering my question. I asked you how wide it was in 1866?

A. It was about the same as it is now.

Q. That is not an answer to my question. I am asking you how wide is was. What was its width in 1866?

A. I don't know I never measured it.

Q. How wide is it now?

A. About the same that it was when I first went there. There is no difference in it.

Q. Could you say how wide it is now?

A. No sir, I could not tell you exactly how wide it is.

Q. How wide is Creole gap?

A. That is only a small place. It is shallow.

Q. What width would you call it?

A. There is room enough to beat through the bay there. It is a shallow bay inside.

Q. I don't know any thing about beating through. What I want is to get you as far as you know to give us the width?

A. It is about half as long as that wall.

Q. What distance would you give us as being half as long as that wall?

A. I don't know exactly.

Q. Can you give us an approximate? How wide is Creole gap at the mouth of it going in?

A. It is I guess about one thousand feet wide.

Q. How wide was it when you first knew it in 1866?

A. About the same that it is now.

Q. When was Creole gap made?

A. It has always been that way ever since I knew it.

Q. Did you ever know that country down there when there was no such thing as Creole gap?

A. No sir, it has never been that way since my time. It is the same now that it was when I first went down there.

Q. Did you ever hear it said that Creole gap had been cut there?

A. There was a smack got aground on the south side and they cut a place to get her out. That was before I ever run down in the marsh.

Redirect examination.

By Mr. McCLURG:

Q. You have stated on cross examination that about two years ago you stopped going down there in the marsh?
A. Yes sir.
Q. You were stopped at that time?
A. Yes sir.
Q. Before that time had you ever been disturbed by any of the Louisiana people?
A. Never.
Q. Did you ever know of any objection on the part of the State of Louisiana to fishermen going in there and taking fish and oysters?
A. No sir, they never bothered me. There were some of the Cecilian boats tried to prevent the other boats from fishing there. They told them to get on their own side but they never bothered me. I have been right along by them.
Q. Sailing boats?
A. Yes sir, luggers. They have only one sail. They run in the old basin to New Orleans.
Q. They were taking oysters in there?
A. Yes sir, taking oysters in there.

By Mr. DYMOND:

Q. They told you to stay on your own side?
1451 A. They never said anything to me. They told the other people.

By Mr. McCLURG:

Q. When was this?
A. It was some time ago.
Q. About how long?
A. About five or six years ago. That was down in Indian Mound bay, close to Chimney pass. The bayou runs through from Indian Mound bay to Drum bay.
Q. Was there any objection or interference up to the last two years by any authority or officers?
A. No sir, they never have said a word to me. Nobody has.
Q. Do you know whether you ever carried Captain Walker through the marsh in 1867?
A. No sir.

aptain JOHN WALKER being recalled on behalf of the State of Mis-
ppi testified as follows :—

By Gen. WILLIAMS :

Look at this map now before you filed with the original cross
nd answer as Exhibit " A " and which was offered in evidence
e cross examination of W. M. K. Ducate. I understood you in
examination a short time ago to say that when you were off
in island that it was suggested to you by a fisherman, who was
e boat of which you were the captain, that the most direct
to St. Joseph island was across what has been termed in the
ony heretofore taken as the Louisiana marshes, through Three
bayou. Is that true ?
Yes sir.

Gen. GUION : This testimony is objected to by counsel for the
of Louisiana as being a leading question, and not in accord-
with the testimony of the witness on the stand, who testified
at he was off Martin's island, but that it was Battle Door

You testified in your direct examination that you were directed
sherman on the boat of which you were the captain to a cer-
ute through to St. Joseph island. What route was this.
look at the map heretofore mentioned in the preceding ques-
d say where you were and which way you were going and to
oint your course was directed, and explain fully the route
d taken on similar trips and the reason why you changed it
trip to which you referred in your testimony heretofore.
here were you Captain ?
was coming up Chandeleur sound intending to go around by
of the south side of Cat Island channel towards St. Joseph,
ad an old Greek fisherman on the boat who seemed to be
hly familiar with all of the marsh.
hat marsh ?
e Louisiana marsh as it is called, and when I got abreast of
island he suggested to me that he could take me through
ttle bayou and shorten the distance to St. Joseph island. I
im if he was sure that he could do it without getting
, and he told me he certainly could, so I told him all right,
ut and took the lead line myself and did the sounding, and
he steering, but what route he took through the marsh I
ow. He did go through the marsh and come out on the
e of the marsh, thereby cutting off a great deal of the dis-

here did you reach in that course ?
went across to St. Joseph island and then followed the
down to our destination in Lake Pontchartrain.
ere were you when this fisherman suggested to you that
d go through this way across to St. Joseph island ?

A. About abreast of Martin island It was in sight.

Q. What was your usual course?

1452 A. My usual course would have been straight up Chandeleur sound to Isle à Pitre.

Q. What part of Isle à Pitre?

A. Out in the natural channel between Isle à Pitre and Cat island.

Q. Around to what point?

A. To St. Joseph.

Q. And his suggestion was that you were to do what?

A. The suggestion was that he could take me through Three Mile bayou and thereby cut off all of that distance.

Q. Was this to the east or to the west of Isle à Pitre, the channel between Isle à Pitre and Cat island?

A. It was to the west.

Q. Did you go through these marshes?

A. That is where he took me. What route he followed through the marshes I could not say.

Q. Did you pass through Three Mile bayou?

A. I could not tell you whether it was Three Mile bayou or not.

Q. Are you certain that you passed to the west of the western extremity of Isle à Pitre?

A. I am certain of that.

Q. Did you reach St. Joseph island by that route?

A. Yes sir, by that route.

Q. How much water did the boat draw that you carried that route?

A. Between four feet and four and a half. I could not tell you exactly. She drew over that when I started. I judge that she drew fully four feet at that time after burning fuel.

Q. You said awhile ago that you took the sounding. Did you find deep water through that route?

A. I got no less than seven feet at any time. After we got into some of these bayous in the marsh I got as much as twenty feet in some of them, but the wider places would shallow up again.

Q. Were you in the marsh?

A. Yes sir, in the marsh. Some of the small places that he passed through were very narrow. A long steamer could not have made the short turns.

Q. As a matter of fact you know that you did go through the marsh in some direction from Martins island to St. Joseph?

A. Yes sir, that I am sure of.

Q. And you left Isle à Pitre to the east?

A. To the east.

Q. What course were you going at that time?

A. At the time we changed the course to go in the marsh?

Q. Yes sir?

A. We were going north.

. What direction did you go in taking the route that was fixed he fisherman on your boat?
. Nearly north.
. How much water did you say the boat of which you were the ain at that time was drawing through this marsh?
. As near as I could judge after burning out considerable fuel drew about four feet. She drew about four and a half at the e we started.
. As a matter of fact, if you know, how deep did you find the er between Martin island, and St. Joseph island through the sh?
. Not less than seven feet at any place.
. And you are unable as I understand to determine the exact rse that you took?
. Yes sir, I would not know it.
. But as a matter of fact you do know that you went through n Martin island to St. Joseph island through the marsh?
. Yes sir. I had been around this other course perhaps a few ndred times. It is the usual course. Out north across Chande- sound to the north side of Isle à Pitre, and then westward to Joseph. That is the usual course. I had been there several ndred times, but this time I went through a route that I had er been before or since.
. And that route was?
. Through the marsh.
. Through what marsh?
. Through Louisiana marsh. As the fishermen told me it was through Three Mile bayou.
3 Q. And you were directed on that route by the fisherman who was on your boat?
. Yes sir.
. And he said that he carried you out through Three Mile ou?
. Yes sir.
. All the way along the route which you were carried?

By Mr. DYMOND: Counsel for Louisiana objects to the leading stion.

. Were you or not informed by the fisherman that he carried out through Three Mile bayou?
. He did not inform me afterwards. He informed me before he ted in that he would take me through that route. Through ree Mile bayou.

Recross-examination.

By Mr. DYMOND:

. You were examined in chief and cross examined and ex- ined again, and I understood that your examination was com-

pleted. At that time you testified that when this change of course was made by you that you were off Door point. How is that you have now changed?

A. No sir, I don't think I stated Door point. I said Battle Door island, but after looking at the map I find that I was mistaken about it being Battle Door island. It was Martin island.

Q. What map did you look at. What map have you looked at in the interval, and by whose request did you look at it?

A. I looked at this map while I was sitting in the room yonder.

Q. Was it not shown to you and was it not suggested to you that you had made a mistake?

A. No sir. But after looking at the map I saw that I had made a mistake in that. Instead of being Battle Door island it was Martin island that I was abreast of and in sight of when he made this suggestion.

Q. How is it that you happened to be recalled and put on the stand to correct this?

A. Oh I don't know sir.

Q. Was not the mistake called to your attention by counsel for Mississippi?

A. Not to any thing particular. They merely told me that the attorney general wanted to ask me a question or two more.

Q. Did not he know that you realized that you had made a mistake?

A. Not that I know of.

Q. Did not you tell any body that you had made a mistake?

A. No sir, I did not tell any body until I looked at this map afterwards and I saw that I had made a mistake.

Q. But you do admit that you had made a mistake?

A. Yes sir, instead of Battle Door island I should have said Martin island in my first evidence.

Q. Now you are just as likely to have made a mistake as to the other phases of this question?

A. I hardly think so. I probably, by looking through some of my papers can verify it all now. I happened to keep a daily diary and perhaps when I get through I can refresh my memory by referring to it.

Q. I understood you to say a while ago that you had perhaps made two hundred trips between the mouth of Pearl river and Chandeleur sound?

A. Yes sir, in the 27 years' time that I was there.

Q. And out of these 200 trips it was only on that one occasion that you went through there?

A. Only one occasion.

Q. Through the Louisiana marshes by this route that you have just described?

A. Yes sir.

Q. You never went before?

A. No sir.

1454 Q. And you have never been through there since?
A. No sir.

Q. This route that you have described certainly was not an ordinary route was it. The customary route for people to take?

A. I was a licensed pilot at the time I was taken through there. It was a route that I had never seen or known, and knew nothing about.

Q. Were not the conditions of the tide very favorable at the time you went through there?

A. No sir. In fact out in the water we could not have told the condition of the tide.

Q. I know, but did not you learn that after you got in there. What was the condition of the tide after you found yourself in there?

A. Just an ordinary tide.

Q. Was it a high or a low tide?

A. Just an ordinary medium tide. It was just about medium. It might have been half ebb.

Q. How long a boat were you in?

A. She was about 110 or 120 feet long.

Q. I understood you to say that you had considerable difficulty in getting around some sharp curves?

A. No sir, not with her. She was a side wheel boat.

Q. She was easily handled?

A. Easily handled.

Q. Could a stern wheel boat have gone around these corners?

A. Not very well.

Q. Therefore it was not a well defined course that was capable of being used by regular commerce between Pearl river and the Chandeleur sound?

A. Hardly so to advantage. There is not sufficient commerce going in this direction.

Q. I suppose you endeavored to pick out; and your pilot endeavored to pick out the deepest water that he could, did not he?

A. I suppose that he did because I cautioned him against running aground. He assured me that he would not go aground, and to make sure of it I went and took the lead line myself.

Q. Your boat drew four and a half feet of water?

A. Somewhere between four and four and a half feet.

Q. So far as your lead line was concerned; that was only thrown at intervals as you went along?

A. Yes sir, thrown at intervals, until you would strike these deep bayous and then I did not throw it so often.

Q. The depth of the boat was a constant thing. You knew that there was nothing under four feet?

A. Yes sir.

Q. You would not say that there were no lumps or anything so that you could take a seven foot boat through there would you?

A. No sir, I would not say that.

Q. You would not say that that was a safe thing to do?

A. Yes sir, I would if you did not have a longer boat and one that was managed as easily as she was I think you could do it again.

Q. Do you mean to go in a boat drawing seven feet of water?

A. Yes sir, after you get over the bar there is no further danger. The outer bar is where I got the seven feet.

Q. The outer bar where?

A. At the entrance from the east, and the outlet at the west.

Q. When you saw the entrance from the east you were in the neighborhood of Martin island?

A. Yes sir, where he entered the marsh.

Q. What was the name of this pilot?

A. That I don't know.

Q. Is he dead?

A. I might have his name too. He was a pretty old man then though.

Q. You would not be able to go back that way yourself would you?

A. No sir, I would not know the route that I took at all.

Q. What time was it that you made this trip. What year?

A. I think that it was in 1867. I am not quite confident of that, but I have a memorandum at home.

1455 Gen. GUION:

Q. Could you tell us please how long it took you to go through the Louisiana marshes when you went in at Martin island?

A. No sir, I don't think I could tell you, but there was no delay. No stoppage. We kept going all of the time.

Q. Were you running slow?

A. No sir, we were running full speed except at the entrance and in going out. Then I made him slow up. I was steering the boat myself.

Q. As you went out into Lake Borgne?

A. Into Lake Borgne we slowed up. As I entered there I was very careful. As soon as we got on the inside of the marsh on both sides we dropped into 16 or 18 feet of water.

Q. That is the first time that you had gone through there?

A. Yes sir.

Q. Have you ever gone through there since?

A. No sir.

Q. Do you know of *it* its being a route for vessels to go through there?

A. Not for regular navigation unless the oyster boats and fishing boats go there.

Q. I am speaking of the boats engaged in commerce?

A. I don't know of any thing going through there.

Q. I understood you to say that you had intended when you were

'handeleur sound to go on the regular channel route by Cat nd and Isle à Pitre?
. Yes sir.
. There was a well defined channel which was between Cat nd and Isle à Pitre?
. Yes sir.
. And that channel you said you intended to follow as far as St. eph island?
. Into Lake Pontchartrain. We all used to go right by St. eph island. That is the regular channel between St. Joseph nd.
. In taking this channel did you go north of Grand island?
. North of it.
. North of Grassy island?
. Yes sir.
. Is that channel a well defined channel that leads into the Rigo- ?
. Yes sir.
. Is there any channel that debouched from that and left it ng on up into Pearl river?
. Into East Pearl river?
. Yes sir?
. No sir, it was a wide channel all the way from the Rigolets up.
. How did you reach that channel coming out from Pearl river?
. You steered right straight out south.
. South out of Pearl river?
. Yes sir.
. Did I understand you to say that there was after leaving the ern mouth of Pearl river a channel that led into this other chan- that you spoke of that went into the Rigolets?
. Yes sir, it is the only channel east and west, and Pearl river ties out into this channel.
. Was this the deepest channel that you know of that would e a vessel from Cat Island pass to Pearl river?
. Yes sir, that is the deepest channel.

Redirect examination.

Gen. WILLIAMS:

. When was it that you said you went through these marshes tain in this boat. In what year?
. I could not say positively but I judge that it was about 1867.
. How long have you been on boats on this water. When did you begin?
A. Constantly about 27 years.
Q. How long from the time you began to be on a boat; captain of it; how long ago since you were captain or occupied e other position on some boat in the waters off the southern coast Mississippi and Louisiana?

A. You mean how long since I retired?
A. No sir, how long since you started?
A. I counted up to the time of my retirement. I don't know anything about the waters after my retirement. I retired in 1883.
Q. When did you start?
A. In 1856.
Q. When did you retire?
A. In the winter of 1856.
Q. Since you have ceased to be a captain on a boat on the waters of the southern coast here what has been your position and occupation?
A. Well I have been in commercial business. I have been president of several institutions here in Biloxi. I am now president of the Bank of Biloxi, and president of the Biloxi artesian ice factory, and president of the telephone Co., and president of the water works during its existence, and president of the Inter State Building and Loan Association. I have been holding quite a number of positions of that kind. I have for the last seven years constantly been the president of the Bank of Biloxi. For the last 14 years I have been president of the Biloxi Artesian Ice Mfg. Co., and am still president of it.

Thereupon the commission adjourned until Wednesday June 8th, 1904.

Upon the meeting of the commission this morning June 8th, 1904, there were present Hon. William D. Bullard, commissioner, and Gen. Monroe McClurg, counsel on behalf of Mississippi, and Col. F. C. Zacharie, and Hon. John Dymond, Jr., on behalf of the State of Louisiana.

Mr. Louis Grou, a witness on behalf of the State of Mississippi being duly sworn, testified as follows:—

By Mr. McClurg:

Q. How old are you?
A. I am 65 years old.
Q. Where do you reside?
A. Back bay.
Q. What county?
A. Jackson county.
Q. How long have you lived here Mr. Grou?
A. I was born and raised here.
Q. Are you familiar with the waters between Biloxi and the mouth of Pearl river?
A. I was raised on that water.
Q. Back bay and Jackson county are in Mississippi are they?
A. Yes sir.

Q. And the waters between Biloxi and the mouth of Pearl river are in Mississippi?

A. Yes sir.

Q. What is your occupation?

1457 A. Oysters. Oystering all of the time.

Q. How long?

A. Since 1865.

Q. Where?

A. At Grand marsh and Back bay.

Q. Where is Grand marsh?

A. It is out there 18 miles from Pearl river to the south of it.

Q. You have been taking oysters in Grand marsh since 1865?

A. Yes sir.

Q. When you were taking oysters in Grand marsh what State were you in?

A. They called it Mississippi.

Q. Do you know how far Mississippi extends from her shore?

A. 18 miles to the southward.

Q. How long have you understood it to extend 18 miles to the southward?

A. Ever since I was able to crawl I heard it.

Q. Do you know where Isle à Pitre is?

A. Yes sir.

Q. In what State is Isle à Pitre?

A. It must be in the State of Mississippi.

Q. Do you know where Grand pass is?

A. Yes sir.

Q. In what State is Grand pass?

A. It is in Mississippi.

Q. You have stated that you took oysters since 1865 in Grand marsh. Please tell us now what part of the marsh you have been taking oysters in during this time and if you believed that you were in the State of Mississippi.

A. I have been taking oysters out of Greecue bayou and Three Mile bayou and Jack Williams bay, and at Isle à Pitre, and Bayou Boudreaux and all around there.

Q. Why did you say that you were in the State of Mississippi?

A. Because they said that the line went 18 miles south of Pearl river.

Q. How long have you considered that to be the line?

A. It has been a good while. Since I was a young chap. The old folks always said that it was.

Q. Do you know where the channel is that comes out of Lake Borgne and Pearl river around Southwest pass?

A. Lake Borgne. I never have been there. I never have been in Lake Borgne.

Q. You don't know any thing about the deep water channel?

A. No sir, I never have been there fishing oysters.

Q. What sort of boats have you been fishing in?

A. Schooners.
Q. How much did these schooners draw?
A. Light draft. Skiff schooners.
Q. How much?
A. About five tons.
Q. How deep would she go in the water?
A. About two or two and a half feet. Light draft.
Q. Did you ever go in Three Mile bayou in a schooner of that kind?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Karako bay?
A. Yes sir.

Cross-examination.

Mr. DYMOND:

Q. Now Captain what makes you think that Mississippi has jurisdiction 18 miles from her shore?
A. Well that is what I have always heard the old folks say. That it was 18 miles to the south of Pearl river.
Q. Do you know what jurisdiction Louisiana has from her shore?
A. No sir, I could not tell you.
Q. Did you ever hear that she had jurisdiction for nine miles from her shore?
A. No sir.
1458 Q. You never heard that?
A. No sir.
Q. You never looked at the act of Congress creating Mississippi did you?
A. No sir.
Q. You never looked at the act of Congress creating the State of Louisiana?
A. No sir.
Q. You don't know which one was passed first?
A. No sir, I don't know.
Q. Would you be able to say where the 18 miles line was from the Mississippi shore?
A. From the shore?
A. Yes sir, 18 miles.
A. No sir, I could not tell you at all.
Q. Now all of these years that you have been fishing oysters in the Grand marsh as you call it is it not a fact that that has been called the Louisiana marsh ten times as much as it has ever been called Grand marsh?
A. I always called it Grand marsh, me.
Q. Has not every body called it Louisiana marsh?
A. I don't know. I have heard some of them call it that way.

Q. Have you not heard it called that very frequently now?
A. Some of them did call it that, but I always called it Grand marsh, me.
Q. Which did you hear the people call it most. Grand marsh or Louisiana marsh?
A. I could not say. We used to call it Grand marsh all of the time.
Q. You can understand the questions that were put to you by counsel for Mississippi, and I want you to understand the questions that I put to you. You said when you began coming out here they called it Louisiana marsh. Is that correct or not?
A. I heard it called a long time ago the Louisiana marsh. But we always called it Grand marsh.
Q. Have you ever fished in Drum bay for oysters?
A. Mighty few. Karako and Jack Williams——
Q. Have not you ever fished in Drum bay for oysters?
A. No sir.
Q. Do you know where Martin island is?
A. Yes sir.
Q. Have you ever fished for oysters around Martin island?
A. Yes sir.
Q. Were you in Mississippi then?
A. I expect that it is within the 18 miles.
Q. Did you ever fish in California bay?
A. No sir.
Q. Did you ever fish in Drum bay?
A. No sir, I have fished in Karako bay.
Q. Did you ever fish in Lake of the Mound?
A. No sir.
Q. Did you ever fish in Scow pass?
A. No sir.
Q. Did you ever fish around Mitchell's keys?
A. No sir. I never did.
Q. How far is Southwest pass from the main shore of Mississippi?
A. To what?
Q. Southwest pass. And Jack Williams bay. How far is that from the main shore of Mississippi?
A. That would be hard for me to tell you. Southwest pass is inside of Karako there.
Q. You know where Jack Williams pass is do you?
A. Yes sir.
Q. How far is that from the main shore of Mississippi?
A. I could not say now.
Q. What is your best judgment? From the main shore up at Bay St. Louis?
A. It would be about 10 or 12 miles. I don't know exactly whether it is or not. I don't know whether I am right or wrong there.

Q. What makes you think Captain that Isle à Pitre belongs to Mississippi?

A. Because it is to the east over here and within 18 miles of the shore.

Q. You think that it belongs to Mississippi because it is
1459 within 18 miles of the Mississippi shore. That is what makes you think that?

A. Yes sir.

Q. You don't know whether Louisiana has any claim to it or not do you?

A. No sir.

Q. Now when was the first time that you were ever stopped from fishing in Louisiana?

A. That is going on about two years now. They never stopped me. I quit going as soon as this law come out. I quit then.

Q. What law?

A. About the license in Louisiana and Mississippi.

Q. You did not fish oysters then any more?

A. I did not go out there. It has been a year and a half that I did not go in the marsh.

Q. Why? On account of the law?

A. Because we had to pay license from that on.

Q. You had to pay too many licenses?

A. Yes sir.

Q. Were you ever stopped by any body from fishing down in the Louisiana marshes. Did any one ever stop you from fishing there?

A. I did not give them a chance to drive me off because I quit.

Q. I mean before two years ago. Way back in 1870?

A. Nobody ever troubled me at all.

Q. Do you know what the Louisiana law provided at that time. Do you know what the Louisiana law was in 1870 in regard to oysters?

A. No sir, I do not.

Q. Do you know what the Louisiana law was in 1886 on oysters?

A. No sir, I never read the law about this suit at all.

Q. You never read the Louisiana law on oysters at all?

A. No sir.

Q. When you were fishing down there did you ever see any boats from the old basin fishing down there too?

A. There used to be luggers that fished all about there.

Q. In the same place that you were fishing?

A. Yes, sir, but they never told me nothing.

By Col. ZACHARIE:

Q. Before the Civil war were you fishing oysters?

A. No sir.

Q. You were not?

A. No sir, I was fishing in the bay here and at Mobile but not in the marsh.

Q. Why did you then in 1865 commence going to the Louisiana marshes for oysters?

A. We used to fish oysters here and for the shops all about.

Q. Prior to that time you used to get your oysters from this neighborhood did not you?

A. Yes sir.

Q. Were there plenty of oysters in Back bay?

A. In those times there was.

Q. Were there plenty of oysters all around Deer island?

A. There were oysters all around.

Q. Now what is the reason that you stopped taking oysters from your immediate neighborhood and went off this long distance to get oysters from the marshes?

A. Because we thought that we could do better you know.

Q. Why could you do better?

A. Because there were a heap more oysters around there. Around Isle à Pitre and so on.

Q. This supply around here was not sufficient?

A. No sir.

Q. Why did this supply cease to be sufficient?

A. You know when they put up all of these factories here they wanted more oysters.

Q. There were no factories here in 1865, were there?

A. I don't remember when the first factory began here.

Q. Now was it not because these reefs of oysters around here were ruined by fishing all through the season. During the spawn-
1360 ing time. Was not that the reason that these reefs and fisheries gave out?

A. They were fished mightily.

Q. They were fished all during the summer?

A. They were fished in the summer and all. A poor fellow has got to do some thing to live.

Q. Was there any attention paid to culling oysters?

A. Yes sir, we had to cull them.

Q. Was there any law in Mississippi on that subject?

A. I never heard any at that time.

Q. Now is it not a fact that the ruin of these oyster fisheries in this neighborhood was attributable to the fact that the State of Mississippi did not protect her oysters during the spawning season, and because no laws in regard to the culling of the oysters on the banks was in force. Is not that true?

A. Yes sir.

Q. Then it was, after these fisheries in this immediate neighborhood were ruined that these people commenced to go to the Louisiana marshes?

A. Louisiana or Mississippi marsh. It was Grand marsh I used to call it.

Q. Well call it Grand marsh or Louisiana marsh. That is the reason that they commenced to go over there?

A. Yes sir.

Q. You did not have any canners here until way along '70's or '80's 1882 was the first, was not it?

A. Yes sir.

Q. So it was not because the demand was any greater for but because you Mississippians had ruined these fisheries?

A. We had to work to make our living.

Q. Answer the question. Was it not because you Mississi had ruined these fisheries here?

A. They were not quite ruined you know, but we though we would go out there and get some.

Q. The oysters became so scarce that you could not get the tity that you desired from the Mississippi fisheries?

A. Yes sir, that is it, but there were oysters here all of the The poor fellows had to scratch up the best that they could to a living.

Q. There were plenty of oysters in Back bay were not there

A. Yes sir.

Q. There were plenty of oysters to the eastward. Between and Pascagoula?

A. Yes sir.

Q. And all of these fisheries were ruined because there w attention paid to them by the State of Mississippi?

A. They have to cull them now.

Q. Is that so?

A. Yes sir, they have to work them now. You know tha poor fellows here have to fish oysters to make a living. That only thing that they have here to make something out of. Ye our poor fellows have to scratch the best they can in the o business.

Q. Now these schooners that you say that you fished in with were drawing about two or two and a half feet?

A. That is the schooner that I had.

Q. She was a skiff bottom?

A. A skiff bottom with a light draft.

Q. Center board?

A. Yes sir, a light draft you know.

Q. Do you know where the deep water channel is between Grand marsh or Louisiana marsh and Mississippi. Do you k where the deep water channel is?

A. There is a channel to the southward of Cat island.

Q. I am not speaking of to the southward of Cat island. I speaking of to the northward. Towards Pearl river?

A. Yes sir, there is a main channel all along there.

Q. How close to the Mississippi shore was this deep water cha about?

A. About four miles.

1461 Q. About four miles. Was not it in some places m closer than that?

A. In some places it is shallow you know and in some it is not.

Q. I am not speaking about the depth. I mean closeness to the Mississippi shore? I am speaking of coming from the mouth of east Pearl river and coming along the Mississippi shore. How far was it from the main land to the deep water channel?

A. In some places it is about four miles and in some places it is not that far.

Q. Now does that channel pass northward of the Malheureux islands, and the little group of islands lying in there?

A. That is to the southward of Pass Marianne?

Q. That is Marianne island and Grand island, and Round island. It passes to the north there does not it?

A. It passes to the north there I believe.

Q. Is not that the channel that all vessels drawing any great depth pass through?

A. Yes sir.

Q. It was not necessary for you with your little vessels to go through that channel?

A. No sir. We would go right on through, me.

Q. Now that deep water channel passing along close to the shore of Mississippi. After it passes those islands which way does it turn. Which way does it turn after that. Does it keep to the eastward, or does it go towards the southeast towards Cat island?

A. That is from Bay St. Louis you mean?

Q. I mean that channel that comes from East Pearl river close to the north of these islands. Close to the Mississippi main land. Where does it turn to get to Cat island. The pass between Cat island and Isle à Pitre. Which direction does it take?

A. You have to go around by Pass Marianne and strike about east southeast I believe.

Q. That channel passes between Cat island and Isle à Pitre does not it?

A. Yes sir.

FRANK FOUNTAIN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. MCCLUNG:

Q. How old are you Mr. Fountain?

A. I am 70.

Q. Where do you live?

A. Back bay.

Q. What county?

A. I live in Jackson county.

Q. What is your present occupation?

A. Gathering oysters.

Q. How long have you been in the oyster business?

A. I have been in the oyster business; I can not tell you the number of years. I stayed in it nine years I believe.

Q. What did you do before that time?
A. I was running to New Orleans.
Q. In what?
A. A schooner.
Q. Do you know the waters from Biloxi to New Orleans pretty well?
A. Not now. It has been long ago.
Q. How long ago?
A. 25 years ago.
Q. When did you first commence?
A. After the war.
Q. How long after the war?
A. Well not long. Two years afterwards.
Q. About 1867?
A. About.
Q. Do you know where that part of the country is that they call the Louisiana marsh?

A. I don't know nothing about the Louisiana marsh or the
1462 Mississippi marsh I know that marsh down there. I always heard what I heard from the old people.

Q. What did the old people say?
A. They said that the line was 18 miles south of Pearl river mouth. I don't know it though. I can not prove it.
Q. How long have you heard the old people say that?
A. Since I was about this high. (The witness indicates his size)
Q. How old were you then?
A. About ten years old.
Q. Do I understand you to say that since you were ten years old that you have heard that country down there that they call the Louisiana marsh or the Mississippi marsh, that it was in the State of Mississippi?
A. Of course they said it was in Mississippi. When I commenced fishing. We were fishing in Mississippi.
Q. Where was that?
A. No further than Jack Williams bay and South East bay.
Q. When you were fishing in these days down there what State were you in?
A. In Mississippi that far. I would not know of course the minute I got over in Louisiana.
Q. Why did you think that you were in Mississippi. Because the old people said so?
A. Yes sir, of course.
Q. You never read the law on that subject?
A. No sir.
Q. Do you know any thing about that deep water channel that we have been talking about?
A. No sir.
Q. Did the Louisiana officers ever bother you when you were down there in these bays?

A. I never was bothered by any body.
Q. When were you down there last. How long ago?
A. About ten years ago. Nine or ten years ago.
Q. You thought that you were then in Mississippi?
A. Yes sir.

By Col. ZACHARIE: The counsel for Louisiana objects to the question on the ground that it is a leading question.

Cross-examination.

By Mr. DYMOND:

Q. When was it that you were fishing oysters Captain. About the year?
A. 25 years ago I went two or three times and quit. Then I was going eight or nine years.
Q. You were fishing about eight or nine years?
A. Yes sir.
Q. About when did you commence fishing oysters?
A. I could not tell you. When these factories opened.
Q. That was about 1882 was not it?
A. I think that it was about 1883.
Q. Then you fished for nine years after that?
A. Yes sir.
Q. And that would be until about 1892 and then you quit fishing oysters?
A. I know that I quit about nine or ten years ago.
Q. Well that would be just about right. If you started fishing in 1882. Did you ever fish around here in Back bay and Deer island down along to Pascagoula?
A. I would fish once in a while around here of course just to eat.
Q. Why did not you fish around here for the factories. Were not there enough oysters around here?
A. We did fish for the factories.
Q. And then you used up all of the oysters and had to go to some other place?
A. Then I fished outside.
Q. Did not you use up all of the oysters first and then have to go to other places to get them?
1463 A. They were lost three or four times.
Q. What was lost three or four times?
A. The oysters by the fresh water.
Q. The fresh water killed them off?
A. Yes sir, certainly.
Q. When was the fresh water?
A. I have not got everything down and I could not say all of that exactly.

Q. Were the oysters lost in Pascagoula on account of the fresh water?

A. Yes sir, every where. I recollect that they were all lost in Southwest pass too.

Q. Where did the fresh water come from?

A. From the river.

Q. That came from the rain did it?

A. Yes sir from the rain.

Q. Too much rain?

A. Yes sir.

Q. The water out there in the marshes came from the Mississippi River crevasse did not it?

A. Yes sir, the Mississippi river. Pass Manshac.

Q. What did you do after the war. What sort of business were you in after the war?

A. After the war I commenced running to Ocean Springs.

Q. Where from?

A. Back bay or the river or any where carrying wood for the steamboats.

Q. Did not I understand you to say that you were running from New Orleans?

A. In our business here we made one month in one business and another month in another business. You can not always stay in the same trade.

Q. Right after the war did you run at all in a boat between New Orleans and the Gulf coast over here?

A. Yes sir.

Q. Did you own a boat?

A. Yes sir, a small boat.

Q. What sort of a boat was it?

A. A seven ton boat.

Q. How much water did she draw?

A. She drew two feet.

Q. You did not have any trouble in sailing her? You always found plenty of water for her?

A. Of course I did.

Q. You did not have to pick out a channel at all did you?

A. No sir.

Q. Do you know anything about the channel that comes out of Pearl river and runs north of Half Moon island?

A. No sir.

Q. Just wait until I finish the question and then answer it. You must not answer the question before you know what I am going to ask you. Wait until I ask you and you will be able to answer it. Do you know any thing about the channel that comes out of the mouth of Pearl river and runs kind of north to Half Moon island, and runs across Mississippi sound and goes south east between Cat island and Isle à Pitre. Do you know if there is such a channel as that?

A. No sir.

Q. Are you prepared to say that there is no such channel. Do you deny that there is any such channel?

A. No sir, I don't know any thing about that. I would go to New Orleans and come on back.

Col. ZACHARIE:

Q. Captain in your various trips going to New Orleans you would on your voyages backwards and forwards see larger vessels than your own would not you? You saw other vessels larger than yours did not you passing backwards and forwards?

A. Yes sir.

Q. Well now what channel did they pursue if any?

1464 A. Starting from this coast and going where?

Q. Starting from this coast and going into the sea?

A. Starting from this coast the channel goes from Pass Marianne to St. Joseph.

Q. Would they go north of these islands and close to the Mississippi shore?

A. South of St. Joseph, and come around Herron bay and come to the Rigolets.

Q. Did they pass north of Half Moon island and these islands?

A. Yes sir, north of Half Moon island.

Q. Did they come close to the Mississippi shore. The main land?

A. No sir, except they passed out past Grand pass.

Q. And when they passed to the north of these islands did they go close to the main land? To the Mississippi shore?

A. No sir, not at all. They come close to St. Joseph and Herron island.

Q. I mean the Mississippi shore. The Mississippi marshes there. Did they pass close to that?

A. Oh no sir, they came around out.

Q. How far away from it did they pass?

A. Well I think it was about nearly a mile, from the channel going to Isle à Pitre.

Q. I am not talking about that up there. I am talking about to the north. Between the islands and the main land. The Mississippi marshes?

A. Oh I understand you now. The north marsh?

Q. Did they pass close to the Mississippi shore along there?

A. No distance at all.

Q. How far do you suppose from the Mississippi shore?

A. About 200 yards from Long Point they passed. It is a good distance in there.

Q. Now is not that what is called the deep water channel. The main channel that is followed by deep water vessels?

A. You can go pretty close there.

Q. Is not that what is called the deep water channel. The main channel?

A. That is what they call it. Main channel.

Q. Now you heard the testimony of the preceding witness Mr. Grou did not you. The gentleman that was on the stand before you?

A. Yes sir.

Q. Is it or not true as he testified that there were plenty of oysters when you were young men all about here. In Back bay and Deer island and towards Pascagoula, and to the westward of here. Were not there plenty of oysters?

A. Sometimes there were plenty and some times there were not many.

Q. Now is it true or is it not that these Mississippi oyster reefs were destroyed by fishing all through the summer and by not culling the oysters. Knocking off the young oysters. In not doing that?

A. Well there was once.

Q. There was once plenty of oysters through here. Is that true?

A. Yes sir, that is true.

Q. Now is it not a fact that only after these Mississippi reefs of oysters were destroyed, and were exhausted in this neighborhood and along this coast that these Mississippi oyster men commenced to go to these Louisiana marshes for oysters?

A. Many a time when there were oysters there they would go there too, and many a time when there were none there.

Q. Now about what year did you commence. You said about 1883. Is that right. That you commenced fishing oysters?

A. Yes sir, I believe it was.

Q. Then there was a demand. A great demand for these canneries for oysters?

A. Not much then until they had commenced and then there was a right smart.

Q. Then when the canneries got well going there was a great demand for oysters as there is now?

A. Yes sir.

Q. And so that made a greater necessity for the Mississippi oyster fishermen to go to these marshes when they had no oysters left here in the Back bay and around in this neighborhood?

A. Certainly, of course.

1465 Redirect examination.

By Mr. McCLURG:

Q. Was there ever a time when there was not oysters in Back bay and around Deer island and all the way from here to Marianne island, except when they were drowned out by the fresh water?

A. Yes sir, that is right. There were oysters about Pass Marianne and about there, and the shoal banks.

Q. Up to Back bay?

A. In the Back bay. We have got some oysters there now.

Q. Do you know where Isle à Pitre is?
A. I think I do.
Q. Are there oysters about there?
A. Well I have not been there in about nine or ten years.
Q. When did you first go there. When did you first go to Isle à itre?
A. I quit since about nine or ten years fishing oysters in the marsh.
Q. When did you first commence. About when?
A. I have told you one time.
Q. Tell me again, please sir. About when was the first time that ou commenced taking oysters?
A. I forget.
Q. About how long ago?
A. I forget.

J. B. FOUNTAIN, a witness introduced on behalf of the State of ississippi, being duly sworn, testified as follows:

By Mr. MCCLURG:

Q. How old are you?
A. I am 67.
Q. Where do you live?
A. Across the bay.
Q. In what county?
A. Jackson county.
Q. What State?
A. The State of Mississippi.
Q. How long have you lived there?
A. Since I was born.
Q. Are you familiar with the waters between Pascagoula and Pearl ver?
A. Yes sir.
Q. What is your present business?
A. My present business is oysters.
Q. How long have you been engaged at that?
A. Ever since I was six years of age.
Q. You have been on these waters since that time?
A. Yes sir.
Q. That means about 61 years.
A. Yes sir, five years ago I quit.
Q. Well do you know where what they call Louisiana marshes e?
A. I always heard it called the Grand marsh.
Q. Where is the Grand marsh, Captain?
A. Well it is south of Cat island.
Q. South of Cat island?
A. Yes sir, down to the south west.
Q. What State is Grand island in?
A. I have always heard that it was in the State of Mississippi.

Q. Why?
A. Because they say that the State of Mississippi claims 18 miles south of Pearl river.
Q. Do you know where Isle à Pitre is?
A. Yes sir.
Q. In what State is Isle à Pitre?
1466 A. I would consider it to be in the State of Mississippi.
Q. Do you know where Three Mile bayou is?
A. Yes sir.
Q. Where is the north end of Three Mile bayou? In what State?
A. Well I never measured it but I concluded it to be in the same line.
Q. Within 18 miles of the Mississippi shore?
A. Yes sir, it must be in 18 miles.
Q. What do you say about Nine Mile bayou?
A. That is outside of my limit.
Q. Where is your limit?
A. Three Mile bayou. From there down to the north.
Q. Down to what?
A. Down to the eastward. To Isle à Pitre and all aronnd there. Jack Williams and all of those places.
Q. Well do you know the country east of Three Mile bayou?
A. Yes sir.
Q. Do you know where Grand pass is?
A. Yes sir.
Q. What State is Grand pass in?
A. Well I suppose that it is all in the same limit.
Q. What limit?
A. Well they say that it is within the limit of the 18 miles.
Q. How long have you known it as being within the 18 miles limit?
A. Well first since I was a boy 15 years old, and I used to hear the old people say all of the time that that was the limit of the line.
Q. Did you ever fish oysters down there about Isle à Pitre or Grand pass?
A. Yes sir, I have fished oysters there.
Q. How long have you been doing that?
A. Well I commenced in 1883.
Q. In 1883?
A. Yes sir, 1883.
Q. Do you know anything about this deep water channel that runs some where between Cat island and Isle à Pitre?
A. Yes sir.
Q. Did you ever hear any thing about that being the line between the two States?
A. I know that there is a channel there, but I never heard of that being the line.
Q. Where did you hear that the line was Captain?

A. I have always heard that the line was 18 miles south of Pearl ver. That is what I have always heard.
Q. Have you regarded it as being 18 miles south all of your life?
A. No sir, that is what I have heard, but I am not certain about

Q. How have you regarded it?
A. All of the old settlers used to tell me that that was the limit.
Q. Did you accept that as being correct?
A. That is the way that we had to take it.
Q. Has that guided you in all of your experience?
A. That has guided me all of the time as to the lines of the Mississippi sound.

Cross-examination.

By Mr. DYMOND:

Q. Captain you never had occasion to read the act of Congress ating the State of Mississippi did you?
A. No sir.
Q. You never had occasion to read the act of Congress creating State of Louisiana?
A. No sir.
Q. If the United States gave Louisiana all islands within nine les of her coast and gave Mississippi all islands within 18 miles ier shore, would there or would not there be a lapping over down ut Pearl river and Half Moon island?
A. I think that it would go a long way south of that.
Q. Do you think you understand. Suppose that Louisiana had all islands within nine miles of her coast and Mississippi all islands within 18 miles of her coast. Now where is Louisi's coast? Is not there a coast running from Malheureux point to Isle à Pitre. Is not there a coast out there. From Malreux point to Isle à Pitre, that marsh coast. Is not there a rsh coast along there?
A. Yes sir.
Q. Suppose you were to measure north nine miles from this marsh st and then measure south 18 miles from Mississippi's shore. uld not these two lines lap over one another?
A. I suppose they would.
Q. You did not know that Louisiana had been given all islands ain nine miles of her coast. You did not know that that was ler an act of Congress did you?
A. No sir.
Q. All of the authority you have for saying that the lines are n here is that people told you that Mississippi had 18 miles from shore?
A. Yes sir.
Q. Now as a matter of fact there are no marks down there to w where this 18 miles limit is?

A. No sir.

Q. You never were disturbed there at all when you were there?

A. No sir.

Q. You fished there and the Louisiana people fished there same time, did not they?

A. At the same time.

Q. And it is only within recent years that the people of sippi have been kept out. That is only recently is not it?

A. Yes sir.

Q. When you fished down there did the question ever come to whether you were in Louisiana or not?

A. No sir, it never came up.

Q. Nobody ever discussed it?

A. No sir, I stopped fishing there five years ago.

Q. Before that the question never came up in any way?

A. No sir, no question came up to hinder me from fishing I was fishing.

Q. Did any body come there and disturb you and say Louisiana?

A. No sir.

Q. Did any body come there and say "You have a right here because this is Mississippi"?

A. No sir.

Q. Before you went and fished oysters in 1883 were you coasting business?

A. I had just quit my coasting business when I came to th ter business.

Q. What sort of a boat did you have?

A. A very small boat.

Q. You could go any where in it?

A. Any where I wanted to I had water enough.

Q. You did not have to look for channels?

A. No sir.

Q. You saw other boats going out there that drew a grea more water?

A. Yes sir.

Q. Suppose a boat was coming out of the mouth of Pear and wanted to go down around to Martin's to the southward. did she do that?

A. They had gaps to go through. They had channels through the marsh.

Q. How deep were the channels through the marsh?

A. Some of the channels are pretty deep through there.

Q. Have you ever been through them?

A. Not in the marsh. Just in the edges.

Q. What is the general course that the big boats take that out of Pearl river and want to go to the southeast? What ro they take?

1468 A. They would take I suppose about east southeast.

Q. Well now let's follow the course. Would not they come out of the mouth of Pearl river and go south of — point and north of Half Moon island. Would not they pass through this channel?

A. It is one steady course from the mouth of the Rigolets due east.

Q. When you get opposite Cat Island pass which way would you turn?

A. You would turn a little to the southward.

Q. And go between Cat island and Isle à Pitre?

A. Yes sir.

Q. You have a good deep channel there?

A. Yes sir.

Q. Has not that channel been there ever since you knew this country?

A. Yes sir.

Q. Now about this Grand marsh that you have heard of. Is not that marsh 100 miles long or more?

A. I never went down to see how far it is. I have heard other people say that it is a big marsh.

Q. It runs way down in Plaquemines parish?

A. Way down to the mouth of the Mississippi river.

Q. That is 100 miles up there?

A. I don't know how far it is. It is a pretty good ways.

Q. Did not you call it Grand marsh because it is so big?

A. Yes sir that is it.

Q. Then you heard it called Louisiana marsh too?

A. Here lately I have heard a good many call it Louisiana marsh. I don't know why they call it Louisiana marsh.

Q. You have heard it called that right among these people. The Mississippians here call it that?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

By Col. ZACHARIE:

Q. When you were a young man there were plenty of oysters around here in the neighborhood of Biloxi were not there?

A. They did not grow near as thick as they are growing today.

Q. There were plenty of oysters to supply the trade here however were not there?

A. No sir, not one portion of the trade.

Q. What was the trade at that time?

A. In the oyster business mostly.

Q. I mean to say for what purpose were the oysters fished around here?

A. There were just a few shops.

Q. There was very little demand?

A. Very little demand. Just a few shipping.

Q. There were a good many more oysters around here then — there are now was not there?

A. No sir.

Q. What?

A. No sir.

Q. Do you say that there are as many oysters in Back bay and Deer island and along the coast to the east here now as there was then. As when you were a young man?

A. When they were not fished out yes sir.

Q. Were not they fished out?

A. No sir.

Q. Prior to the canners coming here and after the canners came here, were not those oyster beds here in this neighborhood pretty well exhausted?

A. Yes sir, pretty well exhausted.

Q. Were not the exhaustion of these bays attributable to the fact that the people fished them all the summer through when they were spawning?

A. Not much.

Q. Is it not a fact that all along this coast that oysters were sold all during the summer?

1469 A. A few, not so much. They did not use so many oysters during the summer.

Q. Did not all of these shops along here; have not they as long as you remember sold oysters to these visitors here in mid-summer?

A. Yes sir.

Q. Was there any law of Mississippi which compelled the oyster men to cull oysters, but was not it the habit of these oyster men to take the oysters ashore and cull them on the shore?

A. Not that I know of.

Q. Now is it not a fact that it was when these Mississippi oyster fisheries had become some what exhausted and these canneries were started here from 1882 on that the great majority of these Mississippians went over to this Grand marsh or Louisiana marsh for the purpose of getting oysters?

A. Well they had to go some where to get them.

Q. I asked you if it was not a fact. If it was not until after these fisheries were pretty well exhausted and the canneries were established that nearly all of these fishermen commenced to go to this Grand marsh as you call it to get oysters?

A. Well they had to go some where to get them. There were a good many of them working all of the time but the business could not supply them all and some of them had to go to other places.

Q. And that is the reason that they went to the marshes?

A. I guess some of them.

Q. You have had on this coast in the neighborhood of Biloxi both to the east and west going towards Pascagoula and Mobile. There were plenty of oysters in past times to supply the demand. There were plenty of them just after the war?

A. There was scarcely no use for oysters. Very little demand.
Q. You had plenty of oysters however to supply the demand?
A. Yes sir.
Q. It was this increase in the demand and the extension of your oyster fisheries along your immediate coast that led to these people going to this Grand marsh?
A. Yes sir.

Redirect examination.

By Gen. McCLUNG:

Q. You said that there were some gaps that led down into the Grand marsh. What gaps were they Captain?
A. Well sir Three Mile bayou is a good big gap that goes down into the marshes.
Q. What other gap?
A. Turkey bayou.
Q. All right. What other one?
A. Johnson.
Q. Any others?
A. Grand pass and Creole gap. That is all on the edge of the north marsh.
Q. Is Nine Mile bayou on the edge?
A. That is further west. I never went there.
Q. You have never been that far?
A. No sir, I never have been that far.
Q. Judge Zacharie asked you whether or not you all went into Grand marsh because the oysters had been exhausted to the eastward of Grand marsh. Were all of the oysters exhausted in this section?
A. They were exhausted by the water. The fresh water. They were exhausted at the other end of Grand marsh by the crevasse.
Q. Crevasse from what?
A. From the Mississippi river. They were exhausted twice in my knowledge.
Q. Where?
A. In all of the Louisiana marsh, and the Mississippi sound and all.
Q. All exhausted?
A. Every thing was killed out and has just grown up again.
Q. How long would it take them to recuperate after these overflows and freshets?
A. In two years the- would get so you could use them and in three years they would be all right.
Q. What exhausted them if they were ever exhausted from Pascagoula and about Horn island and Cat island. From Horn island to Cat island. Were there always oysters in here?
A. They did not grow there.
Q. Did they ever grow there?

A. Just here on the edge of the coast.

Q. Were they ever exhausted entirely on the edge of the between Pascagoula and Biloxi?

A. Yes sir, they were killed out twice.

Q. They were killed out in the bay of Biloxi?

A. Yes sir.

Q. Killed out all along the Mississippi sound?

A. Yes sir.

Q. When was this Captain?

A. I can not recollect what year it was, but I know very well it happened.

Q. About how long ago?

A. It has been a good many years ago. The last crevasse w New Orleans.

Q. Was not the last crevasse about 1897?

A. I believe that was when it was.

Q. That is six or eight years ago?

A. Yes sir.

Q. And then there was one about 1882 was not there?

A. Yes sir, I believe that there was.

Q. About twenty years ago?

A. Yes sir.

Q. Was there ever a time when the fisheries took them all ou made them scarce?

A. Not that I know of.

Q. You don't know of any time when the oyster catchers them scarce about Back bay and around Biloxi and Pass Christ

A. They thin the oysters out the last part of the season very but they grow up again.

Q. Has there always been a supply for the demand?

A. At Biloxi you could not furnish the demand because you to go all over these oyster reefs on the outside and Pass Chris There is the biggest part of the oysters in Mississippi.

Recross-examination.

By Col. ZACHARIE:

Q. Did you ever know prior to the Civil war of these Missis oyster fishermen going out to this Grand marsh or Louisiana m to fish oysters? Prior to the Civil war?

A. There were some of them doing it. Very few of them.

Q. Very few of them?

A. Very few of them. There was very little demand.

Q. Where did they take the oysters to; did they not take the New Orleans. They did not bring them back here?

A. There were some brought to the shops here.

Q. When did this change take place. The Mississippi oyster ermen on this coast commence going to Grand marsh or Louis marsh first. About what time?

A. Well I suppose that it must have been from about 1883 on.
Q. After these canneries were established here that created this great demand?
A. Yes sir.
Q. Well now you have spoken of these freshets in regard to these oysters about here, and over on this marsh. Is it not a fact that in two or three years after these freshets that the oysters became
1471 more abundant than they were before?
A. Yes sir.
Q. So that these freshets did not destroy the oyster reefs except for a year or two?
A. That is all.

JAMES TAPPER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. MCCLURG:

Q. About how old are you?
A. 64.
Q. Where do you reside?
A. I live in Biloxi now.
Q. How long have you resided here?
A. Well in Biloxi, I have been here off and on for about 30 years.
Q. Where did you reside before you came to Biloxi?
A. Mobile.
Q. What is your occupation now?
A. My occupation right now. Right now I am a watchman.
Q. What has been your occupation for the last thirty or forty years generally?
A. Mainly oystering.
Q. Where?
A. Well I have oystered a good deal in the Grand marsh. I have oystered in Mobile bay and I have oystered up around Biloxi.
Q. What do you mean by Grand marsh?
A. That is the marsh out here about the south west. They call it Grand marsh.
Q. South west of Biloxi?
A. Yes sir, that is what they call it.
Q. That is what is sometimes called Louisiana marsh, is it?
A. I have of late years heard it called Louisiana marsh.
Q. Do you know where Isle à Pitre is?
A. Yes sir.
Q. Turkey bayou?
A. Yes sir.
Q. Three Mile bayou?
A. Yes sir.
Q. And Nine Mile bayou?
A. I have gone through there once.

Q. And Karako bay?

A. Yes sir, I have been there.

Q. Where are these places. Are they in what you call the Grand marsh?

A. You go through the mouth of some passes in the north of the marsh.

Q. Into what?

A. Into the marsh. Through these different passes you can go into the marsh.

Q. In what State are all of these places?

A. I have always supposed that it was in the State of Mississippi.

Q. Why did you suppose that they were in the State of Mississippi?

A. Well about 15 years ago there were two men had an argument and it went so far that they went to a law book.

Q. Do you know what sort of a law book they got?

A. No sir, I don't know the number or any thing else, but it was settled between the two that it was in Mississippi. They read the part where the surveyors had come down from the north part of the two States and struck Pearl river, and they come down Pearl river and there they stopped. They went back to the north point again and went east. Took an east course.

By Col. ZACHARIE: The counsel for the State of Louisiana object to this line of testimony on the ground that this is a representation taken from a book by hearsay, which the witness has not thus far shown that he even read himself. That he has not named
1472 the book, nor the name of the surveyors with any sufficient certainty so that the counsel for Louisiana can rebut or contradict the testimony. And the State of Louisiana therefore reserves an exception to this testimony.

By Gen. MCCLURG: The counsel for Mississippi calls the attention of the counsel for Louisiana to the question asked the witness to wit:—"Why did you suppose that they were in the State of Mississippi," and submits that the witness may answer why he supposed that these places were in the State.

Q. Now, go ahead and answer it Captain. You say they started east?

A. Yes sir, the surveyors then; this is what they read in the book. I was listening to what they were reading.

By Mr. DYMOND: It is to be understood that Louisiana takes a similar objection and exception to all similar questions propounded to this witness, and Mississippi agrees that the exception may be so noted without it being repeated.

Q. Now go ahead?

A. When they got to the east as far as they were going east they come south.

Q. How far east did they go?
A. To where the boundary line was to go.
Q. What boundary?
A. Between Alabama and Mississippi.
Q. What did they do then?
A. That is how it was read. The line they got between the two States. They come down to the coast and measured it, and it said where it give six leagues from the main shore, and then turned due west. That is what they read in the argument when they got the book, and that is what made me always think that it belonged to Mississippi.
Q. Are those places that you have mentioned within six leagues of the Mississippi shore?
A. It is stated in the book that way.
Q. Do you know whether Isle à Pitre and Three Mile bayou and Turkey bayou and Johnson bayou are within six leagues of the Mississippi shore?
A. They are inside of it a good deal.
Q. Where are Karako bay and Jack Williams bay and those places?
A. Karako bay is about south from Grand pass.
Q. How far from the Mississippi shore?
A. From the Mississippi shore I would think that it is about 14 miles as far as I could judge. I could not judge exactly. I have never measured it.
Q. How long have you been familiar with these places?
A. I have run down there at different times. I run through to Mobile once.
Q. How long ago?
A. The first of my going to Grand marsh was in 1867.
Q. What part of it were you in then?
A. I was in Bayou Greecue once, catching a load of oysters for Mobile.
Q. How did you get into this bayou?
A. I went through Grand pass.
Q. You saw Grand pass then in 1867?
A. Yes sir.
Q. When did you see it last?
A. I seen it this last winter.
Q. Did you observe any material difference in its appearance and in its width the last time you saw it as compared with the first time?
A. Nothing much at all. Only I saw the camps that used to be down there were washed down. Some of the old posts are there yet. The ground is not washed away. The old posts of the old camps are there yet.
Q. What sort of camps?
A. Up on posts.
Q. Camps for whom?

A. For the fishermen that used to fish down there in the marsh.

1473 Q. Do you know anything about what they call the deep water channel?

A. There are two channels that I know about.

Q. Tell us what these two channels are?

A. One goes by Pass Christian, and another one goes by Pass Marianne.

Q. Where do they go?

A. Down by St. Joseph and into the Rigolets.

Q. Where do they go eastward from there?

A. From Pass Christian they fork. One channel comes out in what they call Cat Island channel, and the other one comes toward the black buoy.

Q. Have you ever heard anything about these channels being the dividing line between the two States?

A. I have this last year or two since this question has come up, but not before.

Q. This suit you mean?

A. This suit, and they have been trying to drive people out of the marsh.

Q. Who has?

A. Louisiana.

Q. They never did before that?

A. They never did before that.

Q. Have you ever had any trouble before that from the authorities from Louisiana. About going into Grand marsh?

A. Not a bit sir, not before that.

Cross-examination.

By Mr. Dymond:

Q. Now Captain as I understand it you were present at a discussion in regard to the line between Mississippi and Alabama?

A. It was both lines. Did not take Alabama any more than the other one. Both lines were surveyed at the same time.

Q. How do you know?

A. The way that they talked it. They got down to Pearl river first as I understood it and went back to the north point where they started from, and then went due east if I remember what I heard, and then they come south after they went far enough for the coast.

Q. Well now Captain, this is not so; you must have read?

A. I did not read it at all. I heard them read it.

Q. You must have read the act of Congress creating Mississippi. That description of Mississippi begins at the north west corner of the State, and that goes on to say that it comes over to Bear creek in the county of Washington, and then comes south to the shore and then westwardly including all of the islands within six leagues of the shore. That is probably the book that you read?

A. No sir, I never heard no such thing said. The only thing is t one of the surveyors made a new line coming down Pearl river. at is where it stated in the book. Where the surveyors took new line, and where they shifted the line I think it was through ke Borgne. Where they shifted the line. Was not the line shifted ne time?

Q. There was some additional territory added to Louisiana in 2?

A. That is where the line was drawn at that time.

Q. Mississippi was not created until 1817 five years afterwards?

A. This was stated in the book where the surveyor come down to mouth of Pearl river, and at the mouth of Pearl river, they ped and went back to the north point where they started from, went east, and when they went far enough to the Alabama line y come south to the coast, and there they stated six leagues from shore, and then due west.

Q. Now this six leagues from the shore and due west began at the bama and Mississippi line did not it?

A. That is the line coming this way.

Q. Did you understand the question, Captain?

A. Not thoroughly I did not.

Q. In your understanding of this book the first mention of six gues from the shore was in reference to the point starting at the bama line, then going west was not it?

A. At the end of this six leagues he would go west.

Q. In starting west it began at the Alabama line did not it?

A. Yes sir, when it ended at the west line of course it must have ped at the Alabama line.

Q. And going westward it started at the Alabama line and went t?

A. Yes sir, that is what it did.

Q. Because the State had the islands within six leagues from the bama line you think that she ought to have the islands within leagues of the Louisiana line?

A. I don't think any thing of that kind. I only just thought it what I heard was right because it happened to be the law.

Q. Well now Captain I take you to be an intelligent man and as have answered the question in the beginning I will repeat it to to see if you understand it. Was not it because Mississippi was et six leagues beginning at the Alabama line and going west- d that you thought she ought to get six leagues on the western ?

A. That is right. That is what I thought she ought to have.

Q. Now you don't know whether the islands on the westward in six leagues of the Mississippi line had all been given to Lou- na. You don't know that do you?

A. Well where are those islands?

Q. You don't know whether the islands on the westward within

six leagues of the Mississippi line had all been given to Louisiana. You don't know that do you?

A. No sir, I don't know that.

Q. Now are there any islands to the westward that are within nine miles of Louisiana, and yet within 18 miles of the Mississippi shore?

A. Well, I don't call the marsh islands. I never did think that marsh was an island.

Q. Therefore in this Grand marsh there are no such things as islands in there?

A. I don't think there are. I think there are settlements there and currents. In my experience and I know it from my experience that I have seen marsh grow. I can show in the Grand marsh now three different currents where there has been marsh grown there 300 yards from what I remember.

Q. What you consider islands are islands like Ship island and Cat island?

A. Yes sir.

Q. And this other stuff you consider marsh?

A. Yes sir.

Q. Now take Grand island. If the map calls that an island you disagree with the map? Grand island and Half Moon island?

A. I don't think that is an island. It has just been made by the marshes and drift.

Q. You were not there when it was made were you?

A. No sir, but I have seen some made since. I have seen such things as this that I can remember.

Q. Have you ever seen them disappear?

A. I have by currents.

Q. Washed away?

A. By crevasses.

Q. By storms?

A. More crevasses than storms.

Q. Crevasses would not ordinarily wash they away?

A. Yes sir, a heavy crevasse will *east* most any thing away.

Q. That is the current?

A. Yes sir.

Q. Produced by the crevasse?

A. Yes sir.

Q. What builds them up?

A. Why the tide.

Q. What has the tide to do with it?

A. Wherever there is a tide there is always some still water some where, and this still water is where the drift will go and settlements form.

1475 Q. What do you call drift?

A. Well there is always drift around on the top of the waters. There is grass and logs and different things that are drift, and settlements of mud.

Q. What is this Louisiana marsh?
A. I call it nothing but settlements.
Q. It is mud?
A. That is what it is. You can take a pole if you go there and et it through this hard crust and you can run it down 25 feet. here are places there now that you can stand on and shake it.
Q. That is what you call settlements that are brought there by evasses?
A. Brought there by currents. You will find it there in places. ere in Mobile and here in Pascagoula. Anywhere where there re two currents that come together that way. In between these vo currents there is a settlement.
Q. Well now Captain do you know the difference between the soil n Cat island and Isle à Pitre.
A. Yes sir.
Q. Have you ever noticed it?
A. Yes sir.
Q. Now Captain I show you two samples of soil. One marked mple No. 1, and the other marked sample No. 2, and I will ask ou to pick out of these samples the one that came from Isle à Pitre, nd which looks most like the Isle à Pitre soil?
A. Well this is sand. I never have found any of that on Isle à itre. That is sample No. 2.
Q. I repeat the question Captain. Which of these two samples most like Isle à Pitre soil?
A. Both might come from Cat island. There is a marsh on Cat land too. Any body can go on Cat island and get marsh land and ring it in here. That would not condemn me a bit.
Q. I am not trying to condemn you or to hang you either. I am ying to get you as an intelligent man. If you will *to* confine your- lf to the question that I have asked you I think we will get along etter?
A. I have heard the questions asked these other men and I see here they have been pretty badly run over by the questions.
Q. Well we will try and not take any advantage of you Captain, nd I repeat the question I have just asked you. Which of these vo samples, one marked No. 1 and the other marked No. 2, is most ke the soil of Isle à Pitre?
A. This is not soil at all. It is sand.
Q. I am not asking you that question Will you please under- and the question first. Do you know what the soil of Isle à Pitre oks like?
A. Well there are different kinds of soil.
Q. I am not asking you how many different kinds. I- there are thousand kinds or a million kinds. I am asking you the simple uestion. Do you know the soil of Isle à Pitre. If you do not I do ot want to ask you any more questions?
A. I have seen it. I have seen soil just like this here there.
Q. If you will keep your answers separate and make them re-

sponsive to the questions. Do you know the character of soil at Isle à Pitre. Do you know the character of the soil in a general way?

A. I will tell you about this marsh——

Q. I am not asking you that. Have you ever been on Isle à Pitre?

A. Yes sir, I have.

Q. Have you ever examined the character of the soil on Isle à Pitre?

A. I have walked on it from one end of it to the other.

Q. Have you ever paid any attention to the soil and looked at it?

A. Yes sir, it is something like this. I can not tell you any thing more about it. This sample No. 1, is something like the soil that I have seen out here some times.

Q. Now does this sample No. 1 look more like the soil of Isle à Pitre than sample No. 2?

A. It does in some places. There are different kinds on Cat island. You can get the same kind on Cat island.

1476 Q. Now does this sample No. 1 look more like the soil on Isle à Pitre than sample No. 2? If you would not jump at conclusions and go slow and answer the question I think we would do better. I don't want to get anything out of you except what is going to come willingly. I want you to understand the question and answer it in an intelligent way which I know you can do.

A. I am trying to do the best I can.

Q. I know you can Captain. If you will free yourself of the idea that I am trying to take any advantage of you we will get along all right. Let's go back to the subject again. I understood you to say that you knew the character of the soil on Isle à Pitre?

A. Yes sir.

Q. You know the character of the soil on Cat island in a general way?

A. Yes sir.

Q. If you will look at sample No. 1. Did I understand you to say that that looks more like the soil of Isle à Pitre than sample No. 2?

A. Yes sir.

Q. And sample No. 2 looks more like the Cat Island soil than sample No. 1?

A. Yes sir.

Q. You don't know where they come from?

A. No sir.

Q. Will you kindly look at this map marked map No. 59?

A. This is some thing that I am not much acquainted with is maps.

Q. If you will look at this map No. 59 you will notice in the north west corner the Rigolets, and just a little east of that Pearl river. You spoke a moment ago about the channel. Will you

please now notice Pearl river and follow eastward through what is called Grand Island pass?

A. I never heard it by that name.

Q. You call it what. Herron pass?

A. We call it the channel.

Q. You will notice then from there eastward that the channel forks, one going to the north east and the other going almost due east?

A. Yes sir.

Q. Is that the fork that you were speaking of a moment ago?

A. No sir, here is the fork that I was talking about at Pass Marianne, where the channel goes inside of Cat island and one went outside of Cat island. That is the fork that I was talking about.

Q. Do you know any thing about the fork that branches out immediately as the channel leaves the eastward of St. Joseph?

A. I think that I have sounded it.

Q. Have you ever sailed along this line running eastward from the St. Joseph channel towards the Southwest pass. Going between Cat island and Isle à Pitre?

A. Yes, sir, I have run that.

Q. Have you known that channel as long as you have been in the business?

A. Not since I have been going to Grand pass, I have not, but I have later on.

Q. And this channel you had reference to as forking is the one that goes up to Merrils shell bank, and branches, one going inside of Cat island and the other down between Cat island and Isle à Pitre?

A. Yes sir.

Q. The southern branch of this channel is not indicated on this map is it?

A. No sir. I guess there are some shoals in there between it, but there is deep water there too that the boats come up. Of course I have never used a chart. I have always done the soundings with a pole when I had to sound.

Q. Have you ever fished in Drum bay?

A. Yes sir.

Q. Did you ever fish in Indian Mound bay?

A. Yes sir.

Q. Did you ever fish in California bay?

A. I don't know it at all.

Q. Did you ever fish around Martins island?

A. Yes sir.

1477 Q. When you were fishing in Drum bay and around Martins island were you still fishing in Mississippi?

A. I suppose so.

Q. You thought that was within 18 miles of the shore?

A. I thought that it was inside of the 18 miles.

Q. If this is outside of the line now claimed by Mississippi and south of it you are mistaken about that?

A. Well the way that I understood it if it was on the outside it belonged to the United States.

Q. Then you think that any thing that does not belong to Mississippi belongs to the United States?

A. That don't belong to Louisiana or Mississippi either. I suppose that any thing outside of that is supposed to belong to the United States.

Q. Although Mississippi has 18 miles from the shore. No other State can have 18 miles from the shore except Mississippi?

A. I thought that Louisiana had nine miles.

Q. If Louisiana had nine miles why would you think that every thing else would belong to the United States? Did you not think that Louisiana would be entitled to the nine miles if the act of Congress said so?

A. Of course she is.

Q. Did you ever determine where this nine mile line would run?

A. It came from the main land the same as Mississippi I suppose.

Q. Do you know where the main land of Louisiana was in 1812?

A. No sir, I was not born then.

By Col. ZACHARIE:

Q. Captain what is your occupation now?

A. I am a watchman.

Q. How long have you been a watchman?

A. For six months.

Q. In whose employ?

A. I am in the employ of the Barataria Company.

Q. That is the Barataria Canning Company?

A. Yes sir.

Q. Located where?

A. At Point Cadet.

Q. That is an oyster cannery is it not?

A. That is what it is.

Q. It is considerable interested in this controversy is not it? From a money point of view?

A. There has been nothing said to me about it.

Q. I did not ask you that Captain. I asked you whether the cannery by which you are employed is largely interested in the result of this suit?

A. Of course it is interested.

Q. They get a large portion of their oysters from this territory?

A. They get most of their good oysters down there.

Q. This company is located at Biloxi in the State of Mississippi?

A. Yes sir.

Q. If they do not get these oysters they have to supply otherwise?

A. I would suppose so.

Q. They would have to stop if they could not get them would not ey?
A. I suppose so.
Q. And you would lose your job?
A. That would be certain, but that don't affect me at all; I have ner jobs that I could go to.
Q. I am not asking you that. I am asking you for the facts and t for conclusions. Where did this dispute or argument take place regard to this boundary line which you have narrated in your gument in chief?
A. About Bayou Pierre in the Grand marsh.
Q. About what time did it take place?
A. It was about fifteen years ago.
Q. Who were the parties that were disputing?
A. There was one party named Bill Smith and another called Paddie Burns.
78 Q. And they read the book there?
A. No sir.
Q. Where did they read the book?
A. They waited until they got down here.
Q. Where?
A. They come here. Right here. I don't know where they got s book. But Bill Smith stated that he knew where there was a ok that stated where the lines were.
Q. Do you know where they got this book from?
A. No sir, I do not except I happened to be there at the time of e argument and at the time they read the book. Because I was erested that far. I wanted to hear it.
Q. How did you happen to be present on the return from Bayou erre when the book was produced?
A. I was at the argument there.
Q. Did they send for you?
A. No sir, I was on one of the boats.
Q. I mean when you got back here to Biloxi?
A. I come on the same boat with one of them. I came from out ere in the marsh.
Q. Was the production of this book immediately after their return Biloxi?
A. No sir, not exactly. It might have been a week or two weeks erwards.
Q. And how does it happen that you happened to be present just actly when this book was produced and read?
A. I told you that I was running on the same boat.
Q. I understand that, but I am speaking of what occurred in oxi when the book was produced? Did you stay together in the ne house when you were ashore?
A. We did not hardly ever stay ashore. We were on the boat. e would come ashore and — right back on board of the boat again. e did not make no residence there.

Q. Was not this Bill Smith the man that kept the Hole in the Wall?

A. No sir, it was not him at all.

Q. It was another Bil Smith?

A. Yes sir.

Q. You can not tell us the names of any of these parties who were mentioned as having made this survey that you spoke of that was read from the book?

A. No sir, I don't think it mentioned the names of the surveyors. It only stated that they surveyed. I do think that it gave the head man's name, but I could not remember it.

Q. Was it Ellicut?

A. I could not remember that.

Q. Do you know by whom this book was published?

A. It was published either by Congress or the State, I don't know which.

Q. What State do you mean?

A. I could not tell you that. Now that is somethin*k* that I could not tell you, but it was the laws. I think that it was the laws of Mississippi, or some other law I could not tell you, but I know that they took the book out there and read this part. They turned the leaves until they found this part and they read it, and then they took the book back to the owner. I don:t know where the book came from. That is all that I know about it.

Q. You stated in your examination in chief that you first visited this Grand marsh as you call it in 1867?

A. Yes sir.

Q. Where were you then residing?

A. I was at Cedar point, in Alabama.

Q. Where is Cedar point, in Alabama. How far distant from Mobile?

A. About 35 miles.

Q. What did you go to this marsh for?

A. Oysters.

Q. Were not there plenty of oysters at that time on this coast in 1867 along by Pascagoula and between there and Mobile?

A. There were certain kinds of oysters, but not the kind of oysters that we wanted.

1479 Q. What particular kind of oysters did you want?

A. We were hunting what they call plants at that time. We were getting three dollars a barrel for them in Mobile.

Q. Are there not a number of bays and streams entering between here and Mobile in which there are plenty of oysters? Plenty of plant oysters?

A. Yes sir, but they are owned by owners.

Q. I understand, but were there no natural reefs at that time from which you could procure oysters?

A. Not big oysters. There were plenty of reefers.

Q. What do you mean by plant oysters?

A. The plant oyster is a big oyster.

Q. Do you mean that a plant oyster comes from the natural reefs an oyster that has been taken from the natural reefs and planted?

A. Well I will tell you. That name plant comes from the oyster that has been planted. But still we have found them naturally as big as they plant *plant*, and just as good oysters, in different places in the soft mud where they will grow fine.

Q. Is it not a fact that among oyster men, a plant oyster is known as an oyster that has been taken from the natural reefs and planted in a private bed for private persons?

A. I don't understand your question.

Q. I say is it not a fact that amongst oyster men the word from which plant oyster as used has been taken from the natural reefs and planted, and those plant oysters are the property of those who have planted them?

A. That is what I stated. I said that the first name came from oysters that had been planted, but we have found oysters that equal them and we have called them plants.

Q. You call them plants when they are not really plants?

A. They are not plants but the natural growth.

Q. Were there not at this time plenty of oysters of that description both to the east and the west, and from there to Mobile. Plenty of these plant oysters?

A. No sir, except those that were owned by owners.

Q. I mean these plant oysters that you say that you got from the natural reefs?

A. No sir, not for the market's demand at that time.

Q. You say you first went there to this Grand marsh in 1867?

A. Yes sir.

Q. How long did you remain there and how many trips did you make there?

A. Well I never counted the trips exactly. I have stayed there three or four months at a time.

Q. You have camped there?

A. Yes sir.

Q. When was this?

A. In 1880 that I stayed there for four months without coming home.

Q. When next after 1867 did you visit there?

A. Well I think that it was about 1880.

Q. So that there was an interval of 13 years was not there?

A. No sir, I had been off and on through the marsh, every winter a few trips, but I had not been steady going down there.

Q. Were you in business for yourself or did you go with the boat as an employee?

A. I went with the boat catching oysters.

Q. As an employee?

A. No sir, on shares.

Q. Are either of these men with whom you had this dispute or argument and who produced this book. Are they alive?

A. I think there is one of them, yes sir.

Q. Where?

A. In Mobile.

Q. Can you by any means ascertain for us before this examination closes *with* the name of this book is and where it can be found?

A. I will try sir.

By Mr. DYMOND:

Q. Captain will you look at this map that is No. 59 for a moment and direct your attention more particularly to Cat island.

1480 Are you familiar with that soil of Cat island?

A. I have been on Cat island, yes sir, and I have seen the soil.

Q. Is not the soil of Cat island most largely this white sand like Ship island and Horn island?

A. A good deal of it is yes sir.

Q. As a matter of fact is not Cat island the only island that has this white sand mound out there?

A. No sir, it is not.

Q. Has any other island on that coast a mound as big as that?

A. Not quite as large, but there is some. On the south side of this island you will find it as high as twenty feet high.

Q. Now Captain is it not a fact that Cat island is noted for its large white sand dune and you can see it for a number of miles off before you get to the island?

A. It is a fact that it is higher than any other place, but there are other islands out there with the sand on them.

Q. When you speak of the other islands you speak of Ship island and Horn island and Petit Bois and Dauphine island?

A. Yes sir.

Q. And all of these islands beginning at Petit Bois and taking in Horn and Ship island, Cat island is conspicuous for its high white sand dune?

A. It is higher than any other.

Q. Well now Captain is not that due to the fact that the southwest winds striking South spit, and coming up between it and the main body of the island, forces the wind into a narrow space and that carries the sand up into a pile?

A. I have stood on these islands and watched the sand move myself.

Q. Moved by the wind?

A. By the wind.

Q. Does not the conformation of these islands have an influence in making this high sand dune there?

A. It may between these trees where there are woods there, because there is a big bending to the southward, more so than there is right there. There is a space between the two woods where the sand hill

is. This sand moves by any wind, and it will get up about an inch from the body of the sand and keep moving until it gets to the top and then it will fall, just like the water falls.

Q. Well now Captain you did not find any of this character of sand on Isle à Pitre or down in the Louisiana marshes, did you?

A. No sir, I have not found any of it.

Q. You said awhile ago that perhaps sample No. 1, which it was claimed was taken from Isle à Pitre might have been taken from a part of Cat island. Will you please indicate on map No. 59 at what part of Cat island such a sample could have been gotten there?

A. Which, that sand?

Q. No, not the sand. This soil or mud?

A. That could have been taken from a place that they — Nigger point.

Q. Where is that on the map?

A. (The witness shows the location of Nigger point on the map.)

Q. Is that right up in the convexity of the South spit or main part of the island?

A. It is on the south part.

Q. It is called on the map Little bay is it not?

A. It is called here Nigger point.

Q. It has no name on the map. I think on the map it is called Little bay?

A. Yes sir, it must be way up here where they call it Little bay. It always went by the name of South bayou.

Q. Do you know a place called Middle spit?

A. Not by that name.

Q. Do you think that there is a soil of the character of sample No. 1 there?

A. Yes sir, I think there is.

Q. Have you ever examined it there?

A. No sir, not exactly, but I have seen just such soil.

Q. What is the character of the soil on South spit?

A. That is sand.

Q. Is not there soil out there near the light house of the same character as this?

1481 A. There may be because there are a few lumps like that that have been washed there by the current.

Q. Have you noticed to see whether it is white or not?

A. Some places are white and some places are bare where the sand is washed off as clean as that table, and there is nothing but a kind of dirty clay underneath.

Q. Where are these places. On this point to the west?

A. Between the point and the light house.

Q. Which point. East or west?

A. The west point.

Q. What is the character of the bottom from this Cat Island channel. Is it hard or soft?

A. In some places it is sand and shallow, and then a hard sticky

bottom, and reefs. There are oyster reefs on the edge of it, and there are the old shoal banks on the south of it. Old channel.

Redirect examination.

By Gen. McCLURG:

Q. Captain did I understand you to say that samples No. 1 and No. 2, which have been shown you by counsel for Louisiana may be found on either Cat island or Isle à Pitre?

A. It may be found on either one. Cat island has a marsh too. Marshy appearance like that.

Q. And sand?

A. And sand.

Q. Cat island has soil like muck No. 1 and sand No. 2?

A. Yes sir.

Q. And Isle à Pitre has both?

A. No sir, I could not say. There might be some fine shell but I never have seen any sand on Isle à Pitre. It might have been put there, but I have never seen any there.

Q. You have seen this *much* like sample No. 2 on Cat island?

A. Yes sir I have. I have seen it at both places.

The commission here adjourned until nine o'clock tomorrow morning.

1482 United States Supreme Court.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

Vol. 2, p. 304 to 610, incl.

1483 And thereupon the commission met this morning, June — at nine o'clock, there being present Hon. Wm. D. Bullard, commissioner, and Gen. Monroe McClurg, counsel on behalf of the State of Mississippi, and Col. F. C. Zacharie, counsel on behalf of the State of Louisiana.

J. B. MORAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you live?
A. Across Back bay sir.
Q. How far is Back bay from Biloxi?
A. Across Back bay it is very near a mile sir. Within a few hundred yards of it. Maybe 100 yards.
Q. By the Back bay you mean the bay of Biloxi?
A. On the other side of the bay.
Q. That is the bay of Biloxi?
A. Yes, sir, the bay of Biloxi. But I live on the other side of it. I was born and raised over there.
Q. How old are you?
A. I am 68.
Q. You were born and raised on Biloxi bay?
A. Yes sir.
Q. And near its entrance to the Gulf?
A. Yes sir.
Q. Are you familiar with the water between Back bay and Pearl river?
A. Yes sir, I have run schooners out there from New Orleans.
Q. How long.
A. Well it is thirty years ago since I quit.
Q. It has been thirty years since you quit?
A. Yes, sir, thirty years since I quit running to New Orleans on a schooner.
Q. When did you first begin running to New Orleans?
A. Since I was ten years old. I run there with my father when I was ten years old.
Q. Do you know what is called the deep water channel out of the mouth of Pearl river going eastward?

A. I never knew it until here lately. I have heard talk of it. I never run those channels. From here to New Orleans we passed on the inside channels.

Q. Did you ever engage in the oyster fishing business?

A. Yes sir, I fished some oysters. Here lately, about two years ago I quit.

Q. State whether or not you ever knew or heard of the deep water channel being the dividing line between the States of Mississippi and Louisiana?

A. Only here lately I heard some talk of it. I never heard anything before, but here lately I have heard some talk of it.

Q. Do you know where Isle à Pitre is?

A. Yes sir, I have been there.

Q. How long since you were there?

A. It is two years since I have been there.

Q. How long have you known Isle à Pitre?

A. I have been knowing it and I have heard of it for the last forty years.

1484 Q. When did you first see it?

A. About ten years ago. I went oystering and went around in the marsh and got some oysters. As far as Three Mile bayou.

Q. You went as far as *from* Three Mile bayou?

A. Yes sir.

Q. Did you ever go as far as Nine Mile bayou?

A. No sir, I never went in there.

Q. It was ten years ago that you were down there?

A. Yes sir.

Q. How did you go?

A. I went in a boat.

Q. What sort of a boat?

A. Flat bottom skiff; sloop that carried only fifty barrels of oysters.

Q. How much water did she draw?

A. A foot and a half.

Q. In what part of the marsh did you go?

A. I went as far as Three Mile bayou, and about Boudreaux, and down to Drum bay and Morgan harbor and such places as that, to get what they called plants.

Q. Going in there at Three Mile bayou how far could you go down with your sloop?

A. Down to the southward?

Q. Yes sir.

A. I could come out and see from there to American bay through the marsh.

Q. Was there plenty of water to go through there?

A. Yes sir, you could draw five feet of water there if you would follow the right places.

Q. Going through Three Mile bayou with a boat drawing five feet of water, to the southward could you pass down as far as Drum bay?

A. Yes sir.
Q. And California bay out into the sea?
A. Yes sir.
Q. Were you ever at Indian Mound bay?
A. Yes sir.
Q. How did you get there?
A. Well from going down through Three Mile bayou you would come right down into Indian Mound bay.
Q. Was there any trouble in that?
A. No sir, no trouble. Some times you would find shoal places, but if you followed the channel you were all right.
Q. How much water is there there?
A. I never sounded the bayou, but from the looks of it it looked like there was ten or fifteen feet of water at the mouth going in it.
Q. At Indian Mound bay?
A. No sir, Three Mile bayou. A good head of current goes through there and makes it deep.
Q. How about Turkey bayou?
A. Well the mouth of it is a little deep, but after you get on the inside it is a little shallow. Two or three feet of water is all that you can get in there.
Q. Did you ever go through Turkey bayou?
A. No sir, I have gone in there but never through it.
Q. Johnson bayou?
A. Yes sir, I was in there.
Q. How much water is there in there?
A. There is enough water at the mouth to go in there with
1485 a boat drawing five or six feet of water. If you do not follow the right channel though you will get on the shoals.
Q. About Grand pass. Were you ever through Grand pass?
A. Yes sir.
Q. Creole gap. Did you ever go through there?
A. Yes sir, I have gone through there many a time.
Q. With your boat?
A. Yes sir, and I have gone through Grand pass and Creole gap drawing five feet of water and never touched bottom.
Q. Were you ever in Johnson bay?
A. Yes sir.
Q. You have been — Bayou Grecque?
A. Yes sir, many an oyster I have caught out of there.
Q. Where did you first get oysters out of Bayou Grecque?
A. That is somewhere about 12 years ago, the first beginning 10 or 12 years ago.
Q. Were you ever disturbed in there by the Louisiana people?
A. No sir, I was not bothered by anybody at all.
Q. Do you know where West Karako and East Karako are?
A. Yes sir.
Q. Brush island. Do you know where that is?
A. Yes sir, that is right on the edge here. That is on the east side.

Q. Do you know where Raccoon island is and Little Raccoon?

A. Yes sir, you pass along by the side of it to go to Indian Mound bay. Right by the side of it.

Q. What sort of a country is that down there?

A. It is nothing but a marsh.

Q. What do you mean by a marsh?

A. It is low ground that you can hardly walk in it. You go in it and you will bog up in places. If the water is any ways high you cannot walk in it at all. It is nothing but mud and water.

Q. Does the tide submerge it?

A. Yes sir, the least tide goes all over it. It is nothing but bayous and waste and lakes.

Q. Is there any industrial life there such as farming and gardens and stock raising?

A. No sir, I never saw any at all down there.

Q. Nobody lived in there?

A. No sir, no one that I know of except there used to be a camp there.

Q. Is that down at Cat Fish pass?

A. Yes sir, they used to be eaten up by the mosquitoes and ground flies, and you could not hardly live down there. It was just these Cicilian kind of people that could live down there.

Q. What was their occupation?

A. Fishing. Catching fish and sending them to New Orleans.

Q. Well now in what State are those bayous and passes and islands that we have just been talking about?

A. Well I have always heard that they were in Mississippi as far as I know. We always thought that it was in Mississippi.

Q. Where did you first begin to take oysters. What part of the marsh?

A. Creole gap is where we began.

Q. Did you ever go in there around Half Moon island?

A. Well I have fished off there just in passing in going to New Orleans and coming back. Sometimes in a calm I would catch a few to eat, but I never fished there to sell them. On the schooner I had a pair of rakes and sometimes I would catch a few to
1486 eat. But the schooner that I have now has caught a good many around there. Dredged them.

Q. How much draft has your schooner?

A. Ten tons.

Q. How much water does she draw?

A. She draws two and a half feet light.

Q. And she goes all through these marshes?

A. Yes sir, come out of there with a load drawing four and a half feet of water.

Q. Could she go through Three Mile bayou drawing four and a half feet of water?

A. Yes sir, she could. I have come through there with her deep loaded.

. How long ago?
. Well that is some ten years ago.
. Have you noticed any material changes in these marshes since first went in there?
. Not at all. I think that it is grown up in some places. In e places where there is a current there is some dead water and marsh settles there. I know places that has grown up twenty in the last few years.
. Were you ever at Malheureux point?
. Yes sir, it is near St. Joseph is it not?
. Yes sir.
. I am not acquainted with the name. I have never heard that e, but I know that it is around there some where. It is to the thward of Herron island some where. I call that island Grassy nd. I never heard it by that name before.
. Do you know where the Marianne islands are?
. Yes sir.
. What has been your understanding as to the limits of the Mis-ppi boundary?
. I have always heard from my father when I was going to town h him, he told me from the mouth of Pearl river due south 18 es was the State limits.
. When was it that your father told you that?
. Well that is sixty years ago.
. How long did your father live here?
. He was born and raised here. Right across the bay. My ndfather was from Canada.
. Do you know when your grandfather came here. About what e?
. I don't know sir. My father never told me exactly.
. How old a man was your father when he died?
. He was 75.
. He was born here?
. Yes sir, raised and born here right across Back bay.
. And it was from him that you first learned that Mississippi ts run due south from Pearl River mouth 18 miles?
. Yes sir, he was the one that told me and I have heard it many es since.
. Can you say whether the people along the coast have to your wledge *have* regarded that as the limit of the State line?
. Yes sir, they always did from what I could hear.
. 18 miles from the shore?
. That is what I have always heard.
. And until recently there has been no molestation of any people oing within these limits?

A. Yes sir, since they sorter stopped people from going in these limits I have not been out on the boats any more.

Q. You have not been since that?

. No sir, my son runs schooners to the reefs at Pass Marianne.

Q. What is your regular business?

A. I used to follow the business of fishing oysters and farming some little.

Q. What are you doing now?

A. I am farming a little bit. I stay at home and farm a little for my own use. Not to speculate.

Q. Can you say whether or not the oysters are as plentiful in the neighborhood of Back bay and Biloxi and Cat island and Marianne island as they ever were?

A. Yes sir, I think they are. They have been caught up some but still they grow fast. As long as we don't have any freshets. They destroy them. Plenty of rain destroys them and then it is a couple of years before we have any more.

Q. The fresh water is death to them?

A. Yes sir, it kills them in Back bay and around here when we have heavy rains.

Q. What is considered the richest oyster country in this neighborhood?

A. Well I could not hardly tell you because there are places where they will grow better than others, and therefore I could not say exactly, but over in here they grow almost any where, but in some places they grow better oysters.

Cross-examination.

By Col. ZACHARIE:

Q. When did you first visit this disputed territory?

A. When did I hear about it.

Q. When did you first visit it. When did you go there first?

A. Well that is some where about ten or twelve years. I could not say exactly.

Q. Was that the first time that you were engaged in the oyster fisheries?

A. Yes sir, around in that limit. I fished oysters around in Back bay here, but not any out there.

Q. What is this territory commonly known as among the fishermen. What do they call it?

A. We have always called it Grand marsh.

Q. Have you not frequently heard it called among the boatmen Louisiana marsh?

A. Only here lately I have heard it called that. Since they stopped the people from going out there.

Q. Has it not been a common thing ever since these canneries have been established here in Biloxi, when you asked them where they got their oysters from they would tell them that they got them from the Louisiana marshes?

A. No sir, I have not heard that until lately since they had this dispute about it. I was in the marsh there but I never heard any thing about it.

Q. You spoke of plying in the New Orleans trade. What was the draft of your schooner?

A. I was running a schooner that drew five feet of water. Some times I could load her deeper.

1488 Q. What was the character of her build. Was she flat bottomed skiff built?

A. No sir, she was a round bottom boat.

Q. You have been speaking of a small sloop of about 50 tons?

A. No sir, 50 barrels. She would carry fifty barrels. She was only five tons.

Q. How much did she draw?

A. A foot and a half sir light.

Q. Is she the vessel in which you used to traverse the marsh?

A. Yes sir, and fishing oysters.

Q. Drawing one and a half feet?

A. Yes sir, and then I had a schooner after that that I went in.

Q. How much did she draw?

A. She drew two and a half feet.

Q. You never have gone through this marsh with any vessel drawing any more?

A. No more than four and a half or five feet of water. I never had any occasion to have a boat drawing any more water.

Q. You don't know much about the depth of these waters except in the mouths, and in the beginning of them?

A. No sir, there are bayous in there. You will find places in these bayous where you will find twenty feet of water or more.

Q. In spots?

A. Yes sir, in spots.

Q. You have mentioned that you have fished oysters as low down as Turkey bay?

A. Yes sir.

Q. Have you ever fished oysters as low down as Martin's island?

A. Yes sir, that is further north this way.

Q. Did you ever fish oysters in California bay?

A. Yes sir.

Q. Did you ever fish oysters back in Quarantine bay?

A. I don't know where that is.

Q. Back of the old Louisiana quarantine station?

A. No sir, I never went down there.

Q. What is the furtherest place that you ever fished oysters in to the south?

A. In California bay.

Q. Have you ever fished oysters down in American bay?

A. No sir, I have gone down there, but I never fished oysters down there.

Q. You say that you regarded this territory as Mississippi territory?

A. Yes sir.

Q. Do you mean to say that you regarded this territory as far

south as Martin island and California bay as a part of the Mississippi territory?

A. Yes sir, I do.

Q. What do you base that belief on?

A. From what I have heard of the whole business.

Q. That is mere hearsay testimony of others?

A. Yes sir.

Q. That is their opinion?

A. Yes sir.

Q. What year was it if you can fix it approximately when you first visited this territory?

A. This marsh?

Q. Yes sir?

A. Well I don't exactly know, the year exactly but it was somewhere between ten and twelve years. I could not say exactly
1489 the year that it was in. I don't hold such things as that in my mind.

Q. Then how long did you continue to visit this territory and fish oysters?

A. Well I suppose it was somewhere along eight or ten years that I did it, and then I quit here as soon as I heard about this dispute about this limit.

Q. Now when you first commenced fishing oysters in this territory did you ever hear any discussion or dispute as to what State this territory belonged to? These marshes?

A. No sir, I never did.

Q. You never heard that?

A. No sir.

Q. You only heard the rumor talked about that in the opinion of some it was Mississippi territory?

A. Yes sir.

Q. You never took the trouble to examine any books?

A. No sir, I have very little learning, and I never read but very little. In my days I could not get any schooling. I had to work very hard for a living.

Q. I believe that you have stated that one reason why you believed that to be Mississippi territory; that one of your grounds for believing that was that you were never molested or interfered with by any officers from Louisiana?

A. No sir, no one at all. No one whatever.

Q. Is it or is it not a fact that at one time there was a large abundance of oysters in the neighborhood of Biloxi and along this Mississippi coast?

A. Well I don't know. There are plenty of them here now. As many I think as when I was a child. I will tell you where they are now though. They are in deep water.

Q. Were not there in your young days a large amount of natural reefs in Back bay?

A. Yes sir.

Q. And along Deer island?

A. Yes sir, there are oysters growing all about in places like that.

Q. In front of Biloxi along the channel?

A. Yes sir, along there.

Q. Between the shore and the channel?

A. Yes sir, along the shore. In the channels there were very few.

Q. How was it to the west ward running up. Were not there a great many natural oyster reefs running south west of Pass Christian?

A. Yes sir around in there.

Q. Were not there a great many natural oyster reefs to the eastwards towards Pascagoula and even further?

A. Yes sir in shore there and down as far as Alabama and Portersville and along in there.

Q. Now when to your knowledge did the oyster men in this neighborhood first commence in any quantity to go to *to* these marshes for oysters?

A. Well I could not say exactly as to the time. It has been some years but I could not say how many years, since they began to do it exactly. I do not keep a record of such as that.

Q. Now has not it been the custom and habit of the oyster fishermen along this coast for many years to fish oysters indiscriminately during the summer time when they were spawning?

1490 A. Yes sir, they have done it.

Q. Now has it not been their custom for many years, say prior to 1886 not to cull the oysters on the banks but to cull them on the shore?

A. No sir, I never heard of it I always culled them on the reefs where I caught them myself.

Q. I am not speaking about you, but the general custom and habit?

A. Yes sir, as far as I know that has been the habit.

Q. It has been the habit of these people when they got a load of oysters and when the wind was favorable to go home to cull them as they went along and to cull them after they got home?

A. I never have seen that. I have always stopped and culled them where I caught them.

Q. Is it not a fact that up to a comparatively recent time that the State of Mississippi has had no oyster commission and no laws regulating the oyster fisheries?

A. She tried to do it here lately.

Q. No, but I mean for a long time back?

A. Not that I know of for a long time back. They culled their oysters generally where they fished them.

Q. I am speaking of the laws. Was there any commission here in Mississippi or any laws regulating the taking of oysters?

A. I don't think that there was at that time.

Q. Now is not it a fact that this habit of fishing these oysters

during the spawning season, that they culled all of the oysters in transit and on shore, and with the great demand that has been created by these canneries, that your oyster fisheries here in the immediate neighborhood of Biloxi and this immediate vicinity have been almost ruined by this constant drain?

A. This dredging?

Q. And is it not also a fact that owing to this fishing out of season and not culling on the banks and this great demand of the canneries, that for the first time the fishermen along here commenced to go to these marshes to get oysters because the supply was limited here?

A. No, there were oysters here and have always been. That was for the raw oysters and not the canning.

Q. I say, was not it attributable to these three causes which made the supply insufficient, and to supply the demand these Mississippi fishermen for the first time began in any number to go to these marshes for oysters?

A. Well I don't think that they went there until they got these canning factories.

Q. Can you tell us what year these canning factories here first come into operation?

A. No sir, not exactly I can not.

Q. Was it along early in the '80's.

A. Some where along there I think. I could not say exactly though because I never kept no record of it.

Q. Now you have spoken of freshets. The fresh water which from time to time you say have destroyed the oysters?

A. Yes sir.

Q. Did you or not state that it destroyed the oysters. That it utterly destroyed them?

A. Yes sir. For a year or so it would kill them out.

Q. In a year or so would not there be a fresh supply of oysters on these same reefs and banks?

A. Yes sir. It is nearly two years ago that they killed
1491 them in the Back bay. We have now as many as we ever had. We have plenty of oysters here in Back bay in the deep water. It is only with 22 or 30 foot rakes that we can get them though.

Q. You have stated that prior to your going into the oyster business that you were running in the carrying trade between Biloxi and New Orleans. General freight?

A. Yes sir, and after I quit that I went into the oyster business.

Q. What was the character of the vessel in which you were doing this freight trade with New Orleans?

A. Something like 15 tons or something like that. The schooner Salena was her name. I don't know whether she is living now or not.

Q. What was her draft?

A. She drew six feet of water loaded deep.

Q. Was this loaded?
A. Yes, sir, she drew that water when she was loaded.
Q. Was she a round bottom or a flat bottom?
A. Yes, sir, she was a round bottom.
Q. Was she a center board?
A. Yes, sir, she was a center board.
Q. She was a center board in addition to being a round bottom?
A. You have seen the way that these schooners are made here.
Q. Almost a false keel?
A. No sir, a regular center board.
Q. Did you follow any channel in going to New Orleans?
A. Yes sir, from here going through Pass Marianne to St. Joseph and into Pontchartrain.
Q. Is that channel what is known as the deep water channel?
A. I understand that it is. Inside of here it is.
Q. I mean as you approach the mouth of East Pearl river. Is that known as the deep water channel through which vessels of great draft pass?
A. I don't know anything about that channel. I have crossed backwards and forwards through this channel.
Q. Have you not in your various trips to New Orleans met vessels under way drawing much more water than your schooner?
A. Not on that way, but I have met them in the new basin.
Q. Well now is it not a fact that these vessels could only pass through a deep water channel?
A. They could pass through where I did drawing eight or nine or ten feet of water.
Q. I am now speaking of the particular portion of the channel near the mouth of East Pearl river?
A. I have heard of that channel lately, about this channel running out that way, but I don't know where it is myself.
Q. Have you not seen large lumber vessels. Vessels going to East Pearl river to get lumber traverse that deep water channel?
A. No sir.
Q. Vessels engaged in foreign trade?
A. No sir, I never have met them. I have met schooners coming out of Pearl river and going to New Orleans, but I never met any big outside boats.
Q. Then so far as you know there is no deep water channel there?
A. Not that I know of. I have heard of it lately. Since these boundary laws I have heard it that there was a deep water channel there, but I never went into one crossing north and south.
Q. Now all of these various bayous that you have named and penetrate these marshes about which you have testified, is it or is it not a fact, that while there is a good deal of water at the
1492 mouth of these bayous, there are many shallow places where a vessel drawing two feet or two and a half or three feet of water could not pass in low water?
A. Yes sir, there are plenty of places that come out of the water.

There are some reefs that come out of the water, but then there are gullies that you can go through them.

Q. There are deep spots?

A. Yes sir.

Q. But as a rule these various bayous that you have mentioned are not traversible by vessels drawing more than two or two and a half feet of water in low tide?

A. Drawing five feet, I have gone through them in low tide. There are gullies that you can follow.

Q. Do you mean that you can go clear through from the north side of this territory to the south side on the Gulf in vessels drawing four or five feet of water?

A. I never have gone that far.

Q. Then you don't know?

A. No sir.

Q. You only know that in certain places you can go in a vessel drawing four or five feet of water?

A. I don't know about that far. I never went through that far sir.

Q. You have spoken of certain portions of this territory in dispute growing?

A. Yes sir, I have seen it.

Q. Well now is it not a fact that in many places, especially at the mouths of these bayous it has been cutting away?

A. There are little washes in the edges. We get heavy northers in the Three Mile bayou. In three years it would not wash more than a foot or a foot and a half, but right inside I have seen it growing up, more than twenty feet in a year.

Q. During that ten years' experience that you were engaged in this business has not there been a great change in the mouths of these different bayous?

A. I did not notice it so very much myself.

Q. Well now for instance what do you know by tradition or otherwise from what you have heard about the formation of Creole gap. Do you know how this gap was formed?

A. Not exactly. I have heard of some men cutting a gap there at the time the smack Creole was blown up on the shore in a storm. I have heard some fishermen talking about that.

Q. You have heard that prior to that that there was no gap there at all?

A. No sir, they cut one there to get her out.

Q. How wide is this gap now?

A. Well I could not say how wide it is. I have not been out there in three or four years.

Q. When was the last time that you were there?

A. It is something like three years since I was there last I think.

Q. You could not say how wide it is?

A. I could not say exactly. Maybe fifty feet wide and maybe 40. I could not say exactly.

Q. Is it not nearly a quarter of a mile wide?

A. No sir.

Q. Is it not wide enough for a schooner to tack going through there?

A. Yes sir.

Q. To go about?

1493 A. Yes sir.

Q. If it was only fifty feet a vessel could not go through there?

A. I have tacked through there a many a time with my little boat.

Q. Could you tack in a space of fifty feet?

A. Yes sir, and turn around just like a top in there. It is very seldom that you have to tack through there no matter how the wind blows.

Q. And you are going into a gap that is only fifty feet wide?

A. It may be more or less. I could not say exactly.

Q. Well let's take you at your word. About fifty feet. You would have to make a very short tack would not you?

A. Yes sir.

Q. Well now in that space of fifty feet would you get space enough to go about?

A. Yes sir, you fill the sails and luff about and go again.

Q. Would you acquire headway enough to go about or would not you be caught up by the what the sailors call irons?

A. I would take a pole and push her over then.

Q. You have never taken the trouble to post yourself in any way about this boundary line question have you. Either by reading or consulting documents?

A. No sir.

Q. You have simply testified to what you have heard?

A. Yes sir, from the old citizens.

Q. Now did you ever hear any question or discussion about this matter in any way until this present suit was started?

A. No sir, I never did.

Q. You never did?

A. No sir.

Q. Then what you have said about hearing the old people here talking about this boundary line was mere rumor and talk. They did not profess to know any thing about it from a legal point of view?

A. When I was with my father going to New Orleans on the boat. When we got that far he said to me "We are going in Louisiana territory."

Q. Is it not a fact that up to a very recent time there has been a very great diversity of opinion amongst the fishermen and the people as to exactly where the line was?

A. Yes sir, I have heard some talk of it. The reason I heard of that, some Cicilians and such people as that were talking about it. I

have heard them talk about the Louisiana lines and such as that. I told them that I did not know where it was only from what I had heard. I used to run to New Orleans with lumber and charcoal and wood.

Redirect examination.

By Gen. McCLURG:

Q. You say that your father was 75 years old when he died?
A. Yes sir.
Q. How long has he been dead?
A. I don't know sir exactly. Something like 12 or 15 years. I could not say certainly unless I was at home and could see some papers there.
Q. If he was living now he would be some where in the neighborhood of ninety years old?
1494 A. Yes sir, he would.
Q. And he was born and raised on Biloxi bay?
A. Yes sir.
Q. And your grand father came from Canada there?
A. Yes sir, he did.
Q. Judge Zacharie asked you about fishing oysters in Grand marsh after these canneries started. Do you mean to say that the people of Mississippi never fished there before the canneries started?
A. Oh yes sir, I think they did, some of them, I did not.
Q. You did not?
A. No sir.
Q. The establishment of the canneries along the coast shore created a greater demand for oysters?
A. Yes sir.
Q. And a great many more people engaged in the oyster business?
A. Yes sir.
Q. And there were a great many more boats of different kinds?
A. Yes sir, of different kinds.

EUGENE TIBLIER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. How old are you?
A. 63.
Q. Where do you live?
A. In Jackson county.
Q. How far from Biloxi bay?
A. About two miles, right on the edge of Biloxi bay on the north part.
Q. How long have you lived there?
A. I was raised there in the State of Mississippi, in Jackson county and on this coast.

Q. Is your father living or dead?
A. He is dead.
Q. How long has he been dead?
A. Twenty years.
Q. How old was he when he died?
A. 72 years.
Q. How long did he live there before he died?
A. Well he lived in New Orleans a part of the time and then in Alabama and all around, and in Mississippi. My father was a turner by trade.
Q. A worker in wood?
A. Yes sir, a turner in wood and copper and so on.
Q. He was a Frenchman?
A. Yes sir.
Q. What is your occupation now?
A. Well farming. A little farming and raising vegetables.
Q. Are you familiar with the waters between the bay of Biloxi and Pearl river?
A. Yes sir.
Q. How long have you known these waters?
A. Well since I was ten years old. I used to run aboard of a little schooner when I was ten years old.
Q. Where did you run on this schooner?
1495 A. I used to run on Mr. Fountain's schooner when I was ten years old. When I was ten years old was my first trip to New Orleans.
Q. What was this schooner doing?
A. Carrying wood. Lightwood.
Q. Did you ever engage in the oyster business?
A. Yes sir.
Q. When?
A. Well since 1867.
Q. What was your business while you were engaged in the oyster business. Fishing them?
A. Yes sir, fishing them. I was fishing at Back bay at first and around Biloxi, and carrying them some times to New Orleans. I made a couple of trips to New Orleans, and then again I would fish in Grand marsh, and carry them from Grand marsh around the coast here such as to Bay St. Louis and Pass Christian and Biloxi.
Q. What part of the marsh did you fish in?
A. Well the first part of Grand marsh that I went in was Grand pass it is called.
Q. Grand pass?
A. Yes sir.
Q. What other places if any?
A. Well I went down as far as Jack Williams?
Q. You went from Grand pass into Jack Williams?
A. Yes sir, and then into what they call Bayou Grecque.
Q. How far down did you ever fish?

A. Well as far as Martin island and Cat Fish pass it is called.
Q. Did you ever go as far as Three Mile bayou?
A. Yes sir.
Q. Did you ever go through Three Mile bayou?
A. I went as far as Cat Fish pass.
Q. In what kind of craft did you go there?
A. It was a light draft boat drawing a foot and a half of water light.
Q. How much would she draw loaded?
A. Three and a half.
Q. Could you go through Three Mile bayou loaded?
A. Yes sir.
Q. When did you first go through Three Mile bayou loaded?
A. About 18 years or more ago.
Q. When you were fishing in Grand pass and Cat Fish bay and at Martin island in what State were you fishing?
A. Well I thought I was in the State of Mississippi all of the time.
Q. Was there ever any interference with you by any body?
A. No sir.
Q. Why did you think you were in the State of Mississippi Captain?
A. Because the old people in running from here to New Orleans, some times in talking on board the vessel backwards and forwards would say well this is Pearl river, and this is the dividing line between Louisiana and Mississippi. It runs due south 18 miles from Pearl river.
Q. How long had you been here before?
A. I suppose 15 years backwards and forwards on the schooner.
Q. You mean 15 years ago or that you were 15 years old?
A. I was 15 years old. That is what I meant to say I was getting a small salary then.
Q. These people would talk to you about it, and the boatmen understood that the Mississippi line run 18 miles due south from the mouth of Pearl river?
1496 A. Yes sir, that is the way I got it. I was on the schooner with old man Fountain. I was an orphan and I started out at three dollars a month. That was a right small salary was it not.

Cross-examination.

By Col. ZACHARIE:

Q. You stated that you first come into these waters on schooners carrying light wood?
A. Yes sir.
Q. From Biloxi to New Orleans?
A. Yes sir.
Q. When did you first visit what you call the Grand marsh?

A. In 1867.

Q. What was this marsh known as then and now amongst the people generally. Were not they called the Louisiana marshes?

A. No sir, not in those times. I always heard the people say Grand marsh. They would say "I am going to Grand marsh, or I am going to the marsh."

Q. Is it not a fact that amongst you old creoles here that you called it Grand marsh, but is it not a fact that the large majority of the fishermen, and the American boatmen called it the Louisiana marsh?

A. No sir, not in my time when I was there.

Q. You continued in this oyster business from 1867 how long?

A. I stopped ten years ago.

Q. Ten years ago?

A. Yes sir, but if you please my children went on the vessel. I was an old fellow to go on the water then.

Q. How far south did you fish on these trips. Did you fish as far south as California bay?

A. No sir I did not.

Q. American bay?

A. No sir.

Q. Quarantine bay?

A. No sir.

Q. You did fish as far south as Martins island?

A. Yes sir.

Q. And you say that you considered that in together with the adjacent territory to be in Mississippi?

A. Yes sir.

Q. And that you simply derived that impression from what you heard certain old people say?

A. Yes sir.

Q. That Mississippi extended 18 miles south from the mouth of Pearl river?

A. Yes sir.

Q. When you first went there to this disputed territory in 1867 is it not a fact that there was a large abundance of oysters in the neighborhood of Biloxi and around this coast here?

A. Yes sir, there were oysters all over this coast not only in Back bay, but Pascagoula and Deer island and Pass Christian.

Q. Well what was the habit of the oyster fishermen at that time and for several years afterwards. Did they fish these oysters during the spawning season. In the summer time?

1497 A. Well very few.

Q. Is not it a fact that all of these boarding houses and hotels, and oyster stands etc., were abundantly supplied with fresh oysters all through the summer?

A. Yes sir.

Q. Then there was no difficulty in getting plenty of oysters here during the summer as well as during the winter?

A. Well what they did get through the summer here it was j to furnish the families, and it did not amount to any thing: had to bring good oysters and culled oysters. If you were bring oysters here that were not culled they would not rece them, and they were culled out on the reefs and the shells w thrown back.

Q. Is not it a fact that it is only recently that the State of Mis sippi has adopted any oyster legislation to protect her oysters?

A. I don't believe they did then, because it was not necess then.

Q. Is it not a fact that when these oyster smacks got a load oysters and had a fair wind to get to their destination that th would hoist sail and would not stop to cull, but would cull on way, and even wait until they got to land before they commen culling. Was not that the case in many instances?

A. That was the case sir with the New Orleans luggers. I ha seen a New Orleans boat fish on Isle à Pitre reefs and north p of Cat island and over to Pass Marianne and started to New leans with a heavy load of oysters on board and cull as th went.

Q. Was not this common among the Mississippi fishermen well as the Louisiana fishermen in order to take advantage of wind home?

A. Yes sir, some times, yes sir.

Q. Now this fishing out of season, and this not culling, did that have a very bad effect in the way of destroying your Mis sippi fisheries in this neighborhood?

A. Well in the summer time it did not hurt because there w hardly any oysters caught to hurt. Those little reefs out th would furnish this coast.

Q. But would not they go all along this coast at Pass Christi and all along here at all of these places and also to the east of h and do this same thing?

A. I know of nothing to hurt, no sir.

Q. Now is it not a fact that these canneries were established h in the 80 '2?

A. I believe they were some where around there sir.

Q. Now did not this create a much greater and larger demand f oysters than there was before that time?

A. Yes sir, the business was that much larger, and they ha to get more labor and more boats to furnish the factories.

Q. Well now prior to the establishment of these canneries the were very few of the Mississippi fishermen that went over to Gra marsh as you call it to fish oysters?

A. Well there were a good many boats running there.

Q. I mean compared to the number of vessels that go the now?

A. I can not hear you very well. You will have to talk loud to me.

Q. I mean this. Did not this falling off of your home fisheries about here and the great demand created by these canneries lead to a much larger number of the fishermen going to this Grand marsh?

1498 A. Yes sir, of course.

Q. Well now did you ever hear of any discussion or dispute as to where the boundary line was between Louisiana and Mississippi?

A. Yes sir, I have heard that. What Louisiana claimed. That Louisiana claimed this marsh. They said that she claimed it.

Q. Now was not there a great diversity of opinion among these fishermen on this subject where ever you heard it talked about?

A. As far as I could see and hear here they were all surprised that Louisiana was claiming this marsh here, and keeping us from going in there where we had been making our living.

Q. Did you or did you not know that prior to the passage of the Louisiana act of 1886, that the Mississippi fishermen had as much right under the Louisiana law to fish in this disputed territory as the Louisiana fishermen. Do you know that to be a fact?

A. No sir, I do not.

Q. You did not know that the act of 1886 was the first act prohibiting non residents of Louisiana to fish in Louisiana waters. I merely ask for information to see whether you knew that fact?

A. What I know is when Louisiana passed these laws prohibiting Mississippians from going into the Grand marsh.

Q. Before that there was no law that prohibited the Mississippian from going there?

A. No sir, there was no law of that sort.

Q. Therefore your idea that this territory was embraced in the lines of Mississippi was largely based upon the fact that prior to 1886 Louisiana allowed Mississippi fishermen to fish in these waters without molesting or interfering with them?

A. That I don't know. I never followed that. I have very little learning and I have never read much.

Q. Did you ever fish down as far as Drum bay?

A. No sir, I did not.

Q. Did you consider Martin island and those fisheries adjacent to Martins island as a part of Mississippi?

A. Yes sir from the line of Pearl river. The 18 mile line.

Q. Now when you were in the carrying trade and freight trade between this coast and New Orleans carrying lightwood and other things of that sort, what was the draft of the vessel that you were aboard of?

A. Well when I was a boy ten years old I was on board of the schooner Julian. She would draw six feet of water loaded.

Q. Well now what channel did you persue or follow in going to New Orleans?

A. Well we went through Pass Marianne channel.

Q. You went through the Pass Marianne channel?

A. Yes sir.

Q. Do you know Grand island and Grassy island and Round island and St. Joseph and those islands?

A. Yes sir.

Q. Where did you pass. To the northward or the southward of these islands?

A. North of St. Joseph island and north of Grassy island.

Q. How close in following this channel as you approached the east mouth of Pearl river did you go to the Mississippi shore, whether the main land or marshes of Mississippi. How close did you go?

A. We passed about two miles I suppose from the land of Mississippi out, and struck the Rigolets.

Q. Now is that what is known as the deep water channel for vessels of some considerable depth and build?

1499 A. Well there is a channel that we cross from Cat island going to Grand marsh. There is a channel there but I never followed the channel.

Q. I am now speaking of a channel as you approach the mouth of East Pearl river, as you have said within two miles of the Mississippi shore. Was this channel known as the deep water channel?

A. The deep water channel that I know of is Pass Marianne.

Q. The same channel that you have spoken of?

A. Yes sir.

Q. Now going eastward from this channel. When you pass the square handkerchief. Do you know where that is?

A. Yes sir, I know where the square handkerchief is.

Q. That channel forks, one going east and the other going southeast?

A. One goes east and there is another channel that runs north east.

Q. Or southeast?

A. There are three branches or channels. There is north east. This Pass Christian channel passes right in shore there.

Q. Then there is another one going due east towards these places on this coast is not there, running towards Mobile?

A. There is a channel running by Pass Christian, and another channel that I never went through that comes from St. Joseph, and through by Isle à Pitre and Cat island.

Q. The channel that branches comes down between Isle à Pitre and Cat island. That comes down southeast does not it?

A. Yes sir, south east from St. Joseph like that.

Q. Now south of these islands that you have spoken of the water is quite shallow is not it. It is not passable for large vessels is it?

A. In the channel or marsh?

Q. No, I am speaking now of the waters lying south of these islands, Grassy island and Round island and St. Joseph island. The water there is shallow is not it and does not admit of vessels of large draft going in there?

You can draw from six and a half feet of water to seven feet.
is according to how you stand out in Lake Borgne. If you
l further out at Grassy island you find a little more water.
How long since you were there in this territory at these
ds?
1867.
You have not been there since that?
Yes sir, I have been there since.
How long since you were there the last time?
About ten years ago. That is before I quit running on the
r.
Do you know what changes if any have taken place in St.
ph island?
Well St. Joseph is a little round island. It was washed down
he heavy blow and current.
Do you know an island that is called Round island?
Well I don't know. I am not acquainted with that island.
You have not been there in ten years you say?
No sir.
Well then you would not know any thing about the recent
changes?
A. No sir.
Q. If there were plenty of oysters here in this neighbor-
l of Biloxi and to the eastward and to the westward, none of
e Mississippi fishermen would go as far as Grand marsh to get
ers would they. They would go and get oysters near at hand?
I suppose they would if they could get them plentifully. They
et them plentifully, but some times if you please by going to
nd marsh I will tell you the difference there is. When you get
Grand marsh you are in harbor, especially with small boats.
can work all of the time there. There is Pass Christian and
à Pitre and St. Joseph. There are plenty of oysters. By going
these marshes you are in the harbor and can work better.
Is it not true that they can get a load of oysters there more
kly?
Yes sir.
Then they go there because the oysters have gotten scarse about
That is on account of the demand of these canneries?
Well I don't know sir. My boys tell me there are plenty of
ers.
You don't know that of your own knowledge?
No sir, I have not been out there in 16 years.

JOHN GOODIER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. MCCLURG:

Q. How old are you?
A. 45 the 18th of this month.
Q. Where do you reside?
A. In Biloxi.
Q. How long have you resided in Biloxi?
A. About 35 years.
Q. What is your occupation?
A. Oysterman. Boatman.
Q. How long have you been in that business?
A. Well since 1876.
Q. Are you familiar with the water between Biloxi and Pearl river?
A. Yes sir.
Q. And with what we know as the Grand marsh?
A. Yes sir.
Q. Are you familiar with Isle à Pitre and Grand pass?
A. Yes sir.
Q. And Johnsons bay?
A. Yes sir.
Q. And Three Mile bayou?
A. Yes sir.
Q. And Nine Mile bayou?
A. Yes sir.
Q. And Malheureux point?
A. Yes sir.
Q. How long have you known these places?
A. I first started it there in the year 1876.

Q. How far down into Grand marsh have you been?

1501 A. I first started fishing in American bay and California bay in 1876. That is when I first started.

Q. Were you ever in Drum bay?
A. Yes sir.
Q. Like Oak bay?
A. Yes sir.
Q. At Martins island?
A. Yes sir.
Q. Southwest pass?
A. Yes sir.
Q. Indian Mound bay?
A. Yes sir.
Q. Treasure bay and False Mouth bay?
A. Yes sir, you know I am not familiar with all of these names but there is not a place in there that I have not been in. But there are lots of these names that they use now that we did not use them at

l. What you call Southwest pass in my days we called it Crazy
ss. We called it Posa Loca, and that meant Crazy pass in Italian.
Q. How did you go through this Grand marsh in 1876?
A. I was on a sloop.
Q. How much water did she draw?
A. Four and a half and five feet when we were loaded. We used
load to about four and a half feet.
Q. State please sir what part of Grand marsh you could go through
h this boat?
A. Well we fished in California bay and American bay and used
go over on the inside of Mussell bayou, down the Nine Mile bayou.
as running to New Orleans at that time.
Q. You would go from California bay to this Grand marsh at
e Mile bayou?
. Yes sir.
. Drawing four and a half feet?
. We used to load on the voyage about four feet. Sometime a
e more and sometimes a little less.
. How long have you been running through this marsh. Since
?
. I have been running pretty steady. It has been 12 or 13 years
I have not been through that portion of the marsh, but the other
Drum bay and Martin island. I am through there every year.
is my business.
. You have been through Three Mile bayou, and Johnsons
a?
Yes sir.
And Turkey bayou?
Yes sir, I have been to the mouth of Turkey bayou here lately.
me 10 or 12 years that I have not been inside of it.
Did you ever go down through Turkey bayou?
Yes sir.
What sort of a boat did you have?
Well the boat, when I was running through there then, she
draw about two and a half or three feet of water loaded.
You have been through Grand pass I suppose?
es sir, I have been through there, but not lately.
Were you taking oysters in there?
es sir, here of late I have not. I have been running on the
t. Ten or twelve years back I was running oysters.
what State is Grand marsh. What State is that in. Is it
siana or Mississippi?
hat I could not say.
Q. Do you know where the lines of Mississippi are?
A. No sir.
Q. Have you ever been troubled by any body down there
fered with?
sir.

Q. Have you observed any difference in the general conformation of these places of which you have spoken in the Grand marsh?

A. No sir, you find the same depth of water there now. The same trouble to get through there that there was when I first went there.

Q. Are there any material changes in the bayous. Nine Mile and Three Mile and Turkey bayous and Grand pass?

A. I found the mouth of Three Mile bayou washed away a little and also Grand pass.

Q. Can you say as to whether these islands or this marsh is any lower or higher than it was in 1876?

A. No sir, there is no difference. Not on the inside. There is no material difference.

Q. Is there any industrial life in there of any kind such as farming and gardening and stock raising. Any body living in there?

A. There is some way on the inside towards the woods but on the outside where we fish oysters there is nobody living there to amount to any thing. Down on California bay there are some camps down there, put there by these people in the oyster business.

Q. What kind of camps do they live in?

A. Some thing on the order of these bath houses. They are built up on high posts.

Q. Occupied by the fishermen?

A. Yes sir, just the oystermen.

Q. How much draft. A boat drawing how much water can go through Nine Mile bayou down as far as Treasure bay?

A. Well I can go down there drawing four and a half feet of water.

Q. Has that been its condition ever since you have known it?

A. Yes sir, it is about the same thing.

Q. Can you say the same thing as to Three Mile bayou?

A. Yes sir, the trouble in going there in low tide — that you can not get the water, but on an average tide it is about what you want to go through there with.

Q. And the same is true of Turkey bayou and Grand pass?

A. Yes sir.

Q. Grand pass is larger?

A. Yes sir, there is more water in Grand pass.

Q. How wide is Grand pass?

A. Well the deep water is about 100 yards wide on an average.

Q. How wide is it from bank to bank?

A. Well I suppose a half a mile in some places.

Q. How far is it if you know from the south west side of Cat island to the north east point of Isle à Pitre?

A. I would judge about four miles across. Between three and four miles as near as I can state.

Q. How far is it do you think from the northern shore of Cat island to Pass Christian?

A. I don't know. About nine miles.

Q. What is your idea about the distance Captain from Gulfview
e Waveland and along there to Grand marsh?
A. I would think about 12 miles.
Q. How far is it do you think from St. Joseph to Three Mile
ayou?
A. Between 12 and 15 miles I would say.
563 Q. How far is it from Three Mile bayou down to South-
west pass?
A. It is about eight or ten miles.
Q. What do you think that the distance is from the northern
outh of Nine Mile bayou to the southern part of Treasure bay?
A. It is about six or seven miles.
Q. Now in travelling from Pearl river to Cat island. Do you
ow what channel in there is deeper than the other part of the
und?
A. No sir.
Q. You say that you don't know where the boundary line is be-
en these two States?
A. No sir.
Q. Have you ever heard it discussed. Mentioned?
A. No sir, only about five years ago here they had the oyster com-
sioners here. They came out there one time and I was fishing on
chooner at Sun Down island, and they said that we would have
ssissippi, and I did pay the license and was fishing at Brush
nd at the southward of Door point.
. You paid the license to what State?
. To the State of Mississippi.
. To whom did you pay it?
. I paid the license to Mr. Howes at Mississippi City. I went
e and got a license.
. That is for the right to fish about British island and Door
t?
Yes sir.
And at what other points did you fish under this license?
I was fishing in Drum bay, and what they call Cranetown
Under this license that you got for these bayous and passes?
Yes sir, we have made use of these passes. It would depend
how the year was. We would go through these passes down
Where would be your objective point down there?
Drum bay.
And when you left there where would you be going?
To Biloxi.
Could you say whether other fishermen had licenses from Mis-
pi as well as yourself?
Yes sir.
To fish in there?

A. Yes sir, a good many of them.

Q. About how many of them. Do you recall?

A. I could not tell you. Some dozen or more I suppose. I never paid any attention. I know that I was delivering the oysters to Back Bay factory to Mr. Young at that time. He was the man that saw the commission and saw about these things. He came out there and said "You will have to get a license." I says "Can you say whether I am fishing in Louisiana or Mississippi and he said Yes, you are fishing in Mississippi, and he showed me the charts and I went and got the license.

Q. Did he tell you how far out the lines of Mississippi extended?

A. No sir, he told me that I was fishing in Mississippi.

Q. Do you think you were within 18 miles of the Mississippi shore?

A. Yes sir, I could not tell you how far it was exactly. The same day that he served notice on me he served notice on two schooners running to New Orleans. One was the Mary, and I don't know the name of the other one, and they told them that they would have to leave those waters.

Q. That was about five years ago?

1504 A. No sir, it is longer than five years ago. That was in 1893. When he first boarded me it was in the winter of 1892 and in 1893 he came to me again out at Brush island and I was on a different schooner then. I was on the Queen of the Fleet.

Q. Who was this?

A. Placeda Lozana I think is his name.

Q. Have you any of these licenses that you got then?

A. No sir, the license I got at that time was lost on the schooner in the 1893 storm.

Q. Your schooner was lost in the 1893 storm?

A. Yes sir.

Q. And the license went down with her?

A. Yes sir. The ones that we had on the other boat I don't know what went with it. We generally burn those things up.

Q. How much water did this other boat draw?

A. Four and a half feet and this other schooner drew five feet. Her name was the Santa Marie.

Q. Did you use her in going in these places in the Grand marsh that you have been talking about?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Where do you live?

A. Biloxi.

Q. How long have you lived here?

A. About thirty five years.

Q. You say that you first visited this territory in 1876?

. Yes sir.
. That is the first time that you commenced being engaged in oyster business?
. Yes sir.
. You have stated that you fished as low down as American bay California bay and Crazy pass and Martin island?
. Yes sir.
. Did you fish as low down as Quarantine bay?
. I have been in Quarantine bay but I never fished any oysters re. I have been through the bay.
. What is your business now?
. Oyster fishing, sir. Bedding.
. I understood you to say that you were at present engaged in e thing else?
. In the fall of the year I run the ice boat to go out and buy imp for the factories, and then in the winter time I am in the ter business.
. Then you are regularly employed off and on by these canies here?
. Yes sir.
. When was the last time you visited this disputed territory?
. I was out there last November. Up until the first of Decem-
. You have stated certain distances in your testimony in chief he counsel for Mississippi. Do you pretend to any accuracy in se distances or is it simply an off hand estimate?
. Just an off hand estimate yes sir.
. You have never measured these distances either on the map or on the water?
5 A. No sir, I never did.
Q. What are these marshes about which you have been ifying generally called by the fishermen. What name do they r?
. Grand marsh is the principal name used.
. Do not a great many and perhaps a majority of the fisherm call it the Louisiana marsh?
. Some of them call it Louisiana marsh, but Grand marsh is t is generally used.
. Now you have spoken about the depth of the water in Three e bayou and Nine Mile bayou and others. Have you ever passed ough these bayous from the north to the south all of the way ough?
. Yes sir.
. You say that the depth of the water is about the same in se bayous. About four or four and a half feet?
. We were speaking about going through these places. We not figure on the bayou. We figured on the mud flats on the side. The bayou is deep enough but the trouble was in keeping of the mud flats.

Q. Then you met occasionally mud flats?
A. Yes sir.
Q. In low water what is the general depth of these mud flats?
A. We would just heave these vessels with a foot and a half or two feet of water.
Q. Under those circumstances it would not be possible for a vessel drawing more than a foot or a foot and a half to pass through there?
A. To make a regular thing of it. Whenever we were loaded down we would have to wait for the tides to get through.
Q. You say that the Grand pass now is about a half a mile wide?
A. Yes sir.
Q. How wide was it when you first entered it?
A. It was about the same thing. I don't see any difference that I can notice.
Q. And you say that now it is about four miles down here?
A. Yes sir, from Cat island to Isle à Pitre.
Q. And you say that this pass has not grown any wider since you have known it?
A. No sir, not that I can see.
Q. How is it in regard to the mouths of these three bayous. Have they enlarged?
A. On the outer surface some of them have, maybe a few feet, but on the interior I don't see any difference in them on the inside.
Q. Is it not a matter of fact that a great many changes have taken place on the interior owing to the storms and so on during your knowledge, or are you really acquainted with the interior on this point?
A. Yes sir, I have been there as I told you since 1876. I have been running through there steady until 12 years ago. I don't see any difference in it today and the first day that I went there. That is on the interior.
Q. When was it that these Mississippi authorities first demanded a license from you?
A. That was in 1892 as near as I can recollect. In 1892.
Q. You mentioned about having lost a schooner in the 1893 storm?
A. No sir, the schooner was lost, but I did not have her at the time she was lost.
Q. About where was this schooner lost. Do you remember what point?
A. She was anchored outside of Grand pass.
1506 Q. Do you know the islands. Grassy island and Grand island and St. Joseph and Marianne island, and that group of islands lying between this disputed territory and the shore of Mississippi?
A. Yes sir.

Q. Do you know of any changes and if so what changes have taken place since you have known them?

A. No sir, I have not seen any changes there at all.

Q. Do you know Round island?

A. Yes sir.

Q. Is Round island still in existence there?

A. There used to be some grass on the top of it but the grass is washed away. The island is there yet.

Q. Is it not a fact that in high tide it is entirely covered?

A. It is covered in high tide.

Q. How about St. Joseph island?

A. The old St. Joseph island is washed away.

Q. Are there any other changes in this group of islands?

A. None that I can see. What they called Grand island is what we used to call Half Moon. It is about the same that I have always seen it and Grassy island is also.

Q. Prior to 1876 were there any men or oyster fishermen frequenting this Louisiana or Grand marsh?

A. I could not say because I was too young then to pay any attention to it.

Q. You don't know anything about any claim on one side of the other in regard to this boundary except what Mr. Young told you in taking out the license?

A. Yes sir.

Q. Do you know what is called the deep water channel between these marshes and the main land. The marsh land and the Mississippi north shore?

A. Well we call it Cat Island channel. Some of them call it south channel and some call it the deep water channel, but that is all I know about it.

Q. Starting from the mouth of East Pearl river, where does this deep water channel run?

A. The deep water comes in at Goose point.

Q. Let's take it in the reverse order coming out of the East Pearl river?

A. There is no channel coming out of there. It is about all one depth. The deep water starts in about south of Pass Marianne light.

Q. Is it not a fact that just east of the mouth of East Pearl river there is a deep water channel running close to the shore where large vessels go?

A. There is about an average of nine feet of water.

Q. Is that north of Half Moon island and these other islands?

A. Yes, sir, it is north of Half Moon island.

Q. Do you mean to say that south of these islands there is as much deep water as there is north of it?

A. No sir.

Q. Is it not a fact that the channel that runs close to the Missis-

sippi shore is known as the deep water channel through which vessels of large draft pass?

A. No sir, I have never heard it called that.

Q. How deep is the deepest draft vessel that you have ever been on board of in passing through these waters?

A. Well six feet is about our average depth.

Q. Then you have never concerned yourself out there about this deep water channel?

1507 A. No sir.

Q. That channel which passes from the mouth of East Pearl river down to the eastward, it forks when you get nearly opposite to Cat island does not it?

A. Yes sir.

Q. And then it turns to the south east?

A. Yes sir.

Q. And it passes in between Isle à Pitre and Cat island?

A. Yes sir.

Q. And there is another fork of that channel that continues eastward down this coast?

A. Yes sir.

Q. After you got your license from Mr. Young did you fish as low down as Martins island?

A. Yes sir I went to Martin island one trip.

Q. Did you fish as low down as American bay?

A. No sir, as far as I went under this license was what they call Martin island that is to the southward of Crane Town pass.

Q. You considered that you had the right to fish there because Mr. Young had told you that the Mississippi boundary extended 18 miles from the Mississippi river?

A. Yes sir, he told us that it extended three leagues. Now I did not ask him how many miles that way but he pulled out the chart and showed us. I told him where I was fishing and he pulled out the chart and said you are in Mississippi waters.

Q. Did he measure this six leagues upon the chart?

A. No sir, he did not measure it. He just showed me.

Q. Did he tell you that you could fish as far south as Martin island?

A. No sir, but he told me that I was in Mississippi waters down there.

Q. You were at Martin island?

A. Yes sir, just to the north of Martin Island point.

Q. Now you have mentioned Brush island. Where is Brush island?

A. It is just to the south of Door point.

Q. What relative position has Door point and Martins island and Drum bay?

A. Well there is some distance between the points.

Q. I understand, but I mean by the points of the compass. What

relative position by the compass does Brush island occupy to Drum bay?

A. Well Drum bay is on the inside of the marsh and Brush island is on the outside. Brush island is about seven or eight miles north of Drum bay.

Q. You mentioned Sun Down island?

A. That is down here.

Q. Tell me if you can. Cat Island channel. That you have just spoken of. How does it bear according to the point of the compass to the Mississippi main land?

A. That channel does not run straight. It makes a turn at Cat island.

Q. I know that it does. But how does it bear relatively to the main land of Mississippi?

A. It bears south from it.

Q. Due south.

A. Yes sir.

Q. About what point on the Mississippi shore would it strike?

1508 A. It would not strike the Mississippi shore. That is it would not strike the main land at all. When it comes to Cat island it takes a south west direction.

Q. I understand it takes to the south west, but running north through to the Mississippi main land, where would it strike?

A. It strikes in the mouth of Pearl river.

Q. I am speaking of the Cat Island channel. The channel where it passes between Isle à Pitre and Cat island. Now that particular part of the channel. Where would it strike the Mississippi main land. That is the northern shore?

A. It would not strike any where. It runs to the west-ward after you get to Cat island.

Q. Suppose that you run northward?

A. You can not take the channel and go northward.

Q. I am not speaking of following the channel, but I am speaking of following the points of the compass. Now please follow me on this map. You are being shown map Exhibit "A" of Mississippi, now you see this line outlined on this map running between Cat island and this point here which is supposed to be Isle à Pitre?

A. Yes sir.

Q. Now running due north from there. Where would it strike?

A. It would strike to the east of Pass Christian.

Q. Do you know what county Pass Christian is in?

A. Harrison county.

Q. What is the dividing line between Harrison and Hancock counties. Do you know.

A. Some where down about the Bay St. Louis bridge. I don't know exactly where. I could not say.

Q. I believe that you stated you have no knowledge of the boundaries between Louisiana and Mississippi except what you derived from Mr. Young?

A. That is all yes sir.

Q. You have never at any time heard the matter discussed except since this suit was instituted?

A. That is all.

Q. You have stated that in navigating these passes and bayous in the interior of this disputed territory that you had about the same trouble in passing through all of them. What is the trouble that you allude to. Running up against these mud flats in low water?

A. Yes sir, it is about the same now that it was when I first went in there. I don't see any difference at all.

Redirect examination.

By Mr. McCLURG:

Q. You mentioned awhile ago that the oyster commissioner pointed out to you that you were in Mississippi waters and that he said that the line was three leagues south of the Mississippi shore. Did you mean to say three or six?

A. At the time I said three. I don't remember. I paid no attention to it at all. He pulled out the chart and showed me where the line was but I did not pay any attention to it. I says If that is the case I will go and get my license. I was kind of angry at that time. I says "Never mind showing me any charts or any thing like that, and I went to Mississippi city the next day and got the license from Mr. Hewes.

1509 Q. How much did the license cost you?

A. I don't remember that either.

Q. You paid whatever was demanded?

A. Yes sir, I paid whatever was demanded but I don't remember what that was.

Q. When was this?

A. It was in 1892. The following year I had the Queen of the Fleet, and Mr. Lazenda boarded me outside at the Sundown island.

RICHARD LANUS, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. McCLURG:

Q. Where do you live?

A. In Biloxi.

Q. How old are you?

A. Sixty.

Q. How long have you lived in Biloxi?

A. About 57 years.

Q. What are you doing for a living now?

A. Right now I have a fishing craft.

Q. What has been your occupation during your live?

A. Boating.

Q. For how long?
A. Since about 1866.
Q. Right after the civil war?
A. Yes sir.
Q. Where have you been boating?
A. From here to New Orleans and out in the marsh.
Q. What sort of boating did you do?
A. Carrying lumber and charcoal and wood to New Orleans.
Q. Did you ever fish oysters?
A. Yes sir.
Q. Where?
A. At Grand marsh.
Q. When did you first fish oysters in the Grand marsh?
A. About 1879 or 1880.
Q. What places did you fish oysters in Grand marsh?
A. Now the names we had for it were Drum bay and Karako bay
d Bayou Greecue and Creole gap, and all around there. We never
go much further than Martin island.
Q. Did I understand you to say that you have fished in there since
first started?
A. Until about four years ago. I have not been in the marsh in
ut four years.
Q. When you were fishing in Grand marsh what State were you
. I always heard that it was the State of Mississippi as far down
went.
. Down as far as what they call Southwest pass?
. Yes sir.
Was there any license ever required of you for fishing in there?
One time there was, but I don't recollect. It is the latter part
I got a license one time. That is to fish in Mississippi.
Where did you get the license?
A. I got them from Mr. Hewes.
Q. At what place?
A. Mississippi City.
Where did you fish under this license?
I was fishing at Pass Christian.
Did you fish in Grand marsh while you had this license?
I fished one or two trips I guess. I don't remember now. It
he latter part of the season and I never went out more than one
after I got the license. Just about one trip after I got the
e.
What was the draft of your boat?
oaded she drew four feet and four inches of water.
In what part of the Grand marsh did you travel with this boat
?
came through Drum bay and through South pass, and
h Catfish pass and out through Three Mile bayou, four feet
ur inches of water.

Q. When did you first make this trip. About when?
A. Between 1893 and 1894. I bought a boat in 1893 and this was about the second year after I bought her.
Q. I forget when you stated that you first went in there?
A. 1879 or 1880.
Q. And the last time that you went in there was when?
A. It is about four years. I cannot recollect exactly.
Q. About four years ago?
A. Yes sir, I know that I lost my wife and I have not been out there since. It was about four years ago. I have got it at home, but it is about four years this coming August that I lost my wife.
Q. Now you say that you considered that part of the Grand marsh that you fished in Mississippi?
A. Yes sir, I always did.
Q. Why did you think yourself in Mississippi?
A. Well I was always told it. I heard it from other people. That is how I knew it. I did not know it only by hearsay.
Q. You never read any laws on it?
A. No sir.
Q. Were you ever as far west as Nine Mile bayou?
A. Yes sir, but I never did go through Nine Mile bayou. I have been as far west but I never went in it. I have passed both mouths of it.
Q. You have been out through Three Mile bayou?
A. Yes sir.
Q. When you made this trip how much water was your boat drawing?
A. She was drawing just about four feet of water.
Q. Do you know where Johnson bayou is?
A. Yes sir.
Q. Did you ever go there?
A. Yes sir, I went there with about three and a half feet.
Q. How about Turkey bayou?
A. I never went through it. I have been in it but I never went through it.
Q. Grand pass. Have you ever been through it?
A. Yes sir.
Q. How much water will Grand pass let a boat draw?
A. Five and a half feet of water at a pretty low tide. After I got into Grand pass I did not know what water they had in there 10 or 12 feet I guess. Outside you get five and a half or six feet of water at a pretty low tide.
Q. Did you ever fish around Sun Down island?
A. Yes sir.
1511 Q. Door point?
A. Yes sir.
Q. Brush island?
A. Yes sir.
Q. When you were fishing in this section what State were you in?

A. From what I always heard I was in the State of Mississippi.

Q. State whether or not you have noticed any material changes in these waters and islands in the Grand marsh since you first went there?

A. Very little if any at all.

Q. Very little?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. I understand you to say that you only visited this disputed territory in 1879 and 1880?

A. Yes sir.

Q. That is the first time that you ever visited that territory?

A. Yes sir.

Q. And you have fished as low down as Drum bay and Martins sland?

A. Yes sir.

Q. Have you ever fished below there as far as California bay?

A. No sir, I have freighted oysters from there but I never fished ny.

Q. Have you ever fished or freighted oysters from Quarantine ay?

A. No sir, I don't think so. I have been down in American bay ere I think, but these bays and passes are connected together so at I *know* know which is which?

Q. You quit about four years after the death of your wife?

A. Yes sir.

Q. You have called this marsh Grand marsh. Is it not a fact at generally amongst the boatmen it has been known as the Lou- ana marshes?

A. No sir, not until here of late, and now some of them call it e Louisiana marshes. I have always in my young days heard it led the Grand marsh.

Q. Well now as a matter of fact I have been told that 15 years in visiting this coast and asking where they got their oysters n they would state the Louisiana marshes. Do you swear posi- ely that you never heard these marshes spoken of as the Louisi- marshes until very recently?

. Well four or five years ago.

. Not longer than that?

. Not longer than that no sir. It was always known as the nd marsh.

. When did you first take out this license of which you spoke?

. I could not tell you now what year it was in.

How long was it before you quit. I understood you to say you only visited this marsh once or perhaps twice after taking your license. Am I correct in that?

A. I went there yes sir, a good many times.
1512 Q. I did not so understand you. Could not you g
about the time. We are not asking the time exactly?
A. The time that I got the license I think was either 1894 o
that I got the license.
Q. Now what you have stated about this boundary. You
nothing about it except the vague rumors and talk that you
heard from time to time?
A. That is all.
Q. You never have taken the trouble to look into the mat
all?
A. No sir.
Q. But from what you had heard you thought when you
fishing as low down as Martins island and American bay that
were still in Mississippi territory?
A. I never fished in American bay.
Q. Well you freighted oysters from there?
A. I was on a schooner that freighted oysters. I was not run
the oysters. I was one of the hands.
Q. You still thought that you were in Mississippi territory
you?
A. No sir, not when I was in American bay because I alw
heard that it was as far down as 18 miles, but when I fished oys
down as far as Martin island I thought that I was in Mississ
territory.
Q. Well now in regard to this boundary. You have heard v
ous expressions have not you from time to time amongst the l
men in regard to what was the proper boundary between Mississi
and Louisiana. You have heard a good deal of discussion fr
time to time about that have you not?
A. Not until the year before I quit running.
Q. That is within the last four years?
A. Yes sir.
Q. Now you have spoken about going there through these marsh
and bayous and so on, and you have given the depths which the
vessels drew. Have you ever passed from the north shore of t
marsh clear through to the south?
A. I have passed through Drum bay and Three Mile bayou is t
farthest that I have passed.
Q. Have you passed through any of the other bayous?
A. Grand pass and Three Mile bayou.
Q. Now can you give us an idea of what the average of thes
vessels in which you passed through. What was the greates
depth?
A. Four and a half feet. Four feet and four inches I mean.
Q. What has been the stage of the tide when you would pas
through. Would not it take a high tide to go through?
A. Yes sir, pretty much all of the time. Ordinary tide any way.
Q. Well at an extreme low tide what would be the average depth?

A. About two or two and a half feet. That is on these mud flats.

Q. In passing through with a vessel drawing four feet and four inches you would have to take your time and the stage of the tide to get through there would not you. Otherwise you would be stuck on the mud flats would not you?

A. Yes sir, if it was loaded.

Q. Did I understand you to say that she drew four feet and four inches when she was loaded?

A. Yes sir.

Q. Then if there was on these mud flats only about two feet you would have to take your stage of the tide to get there. Otherwise you would get stuck on the mud flats would not you?

1513 A. Yes sir, if you were to get on the mud flats yes sir, but I was not so awfully well acquainted with the marsh. I did not know the marsh like some of the boys. I never went through the marsh except through Drum bay and Three Mile bayou.

Q. Now you have stated that you have been engaged in the freight business between this coast and New Orleans?

A. Yes sir.

Q. Do you know what is called the deep water channel between the northern coast of this marsh and the main land of Mississippi. Do you know such a channel as the deep water channel?

A. That is what I have always heard the Cat Island channel. The one to the southward.

Q. How close to the Mississippi shore does that channel run when it approaches East Pearl river?

A. About a half a mile. It comes out by Grassy island. About a half a mile to the main land.

Q. It runs north of Grassy island and Half Moon and Round island and the other little islands there. St. Josephs. It runs north of that does not it?

A. Yes sir.

Q. Is that channel traversed by vessels drawing considerable depth?

A. Of course. They have to go the same way to get outside too.

Q. It would not be possible would it for vessels drawing six or seven or more feet to pass through these waters by any other channel?

A. No sir, I don't think it would.

Q. Do you know how far back the Mississippi fishermen commenced going to this Grand marsh or Louisiana marsh for oysters. When did they commence going there?

A. I could not tell you. I went in there about 1879 or 1880.

Q. Is it not a fact before the Civil war between the States and after the termination of the war there was a large quantity and abundance of oysters in the neighborhood of Biloxi and along this coast?

A. No sir, I don't think there were very many oysters around here.

Q. Were not there plenty of oysters in Back bay?

A. Yes sir, there were a few. Very few.

Q. Were there not oysters along Deer island. Were there not oysters running out to the channel coming into Biloxi?

A. No sir, I never heard tell of any.

Q. Were not there oyster reefs, natural reefs existing to the east and west of Biloxi and running to Pascagoula and beyond there?

A. Right at Pascagoula there were some.

Q. Well was not the home supply for this coast supplied from these reefs?

A. Well there was only a local business then.

Q. Well was not it the habit of the fishermen fishing these reefs, that they fished all during the summer for the local supply during the spawning season?

A. Well I don't recollect that part before the war.

Q. After the war I am speaking of. Were not all of the hotels and the families and the oyster saloons supplied with a daily supply of oysters during the summer and during the spawning season. The hotels and the families and the boarding houses and the oyster saloons all along this coast. Were not they supplied from these reefs?

A. Around Pass Christian and Pass Marianne?

Q. Yes sir, I am speaking of in this vicinity. Back bay and Deer island, and all along this coast from east to west?

1514 A. They got oysters on the outside there, on Pass Marianne in the summer time. What they supplied the hotels with.

Q. Don't you know as a matter of fact in the past when oysters were needed here for consumption in Biloxi that they just went out here in this bay fishing them up with the tongs?

A. There never were any oysters here. Between here and Pas Christian.

Q. Are there not oysters out here in front of the yacht house here and all along there?

A. There may have been but I don't recollect it. I never saw any body that did know that there were any there.

Q. Now is it not a matter of fact that during the time I have just mentioned that the fishermen were not particular where they culled the oysters, if they happened to be out in boats and the wind was fair to go to their homes that they would not stop and cull upon the reefs, but they would cull as they sailed along homeward, and in some instances culled them after they got on the land?

A. They culled them then better than they do now I think.

Q. Don't you know of instances in which they culled while they were sailing home?

A. No sir.

Q. The demand for oysters increased very much after the establishment of the canneries here along this coast did not it?

A. Yes sir.
Q. Now is it not a fact that it was only with the establishment of ese canneries that this large number of Mississippi oyster men sorted to these Louisiana marshes for oysters?
A. No sir.
Q. It is not so?
A. No sir.
Q. Do you suppose that at any time prior to the establishment of ese factories and canneries that you could see at one time 150 hing smacks in the neighborhood of Isle à Pitre, on that coast olging for oysters, or has not that been since the canneries were ened?
A. I have seen a great many yes sir, fishing in these reefs there.
Q. Before the establishment of the canneries?
A. Oh no sir.
Q. Then it is only since the canneries have been established that larger portion of these Mississippi oyster men have resorted to se marshes to get this great quantity of oysters to supply these neries. Is not that a fact.
A. I don't know whether they caught them all in the marsh. st of them caught them outside on Pass Christian and Pass Mari- e and around there.
Q. Did most of the oysters that they caught for the canneries e from off the coast of this very disputed territory. Lately s Christian reefs have not a large quantity of oysters?
A. Yes sir.
Q. Well why did all of these fishermen or nearly all of them go in these oyster reefs in the neighborhood of this disputed terri- Why is it if they can get them from Pass Christian and from reefs there, why should they go on a further distance over to coast of these marshes to get these oysters?
A. It must be better I guess. I never did go there to fish them.
Q. You never did go where?
A. I never run steam oysters.
Q. What do you mean by steam oysters?
A. Canning oysters.
Q. You never did go where?
A. To the disputed territory that you are talking about.
Q. Have not you just testified to it?
A. In the marshes. I thought that the disputed territory was out- f the marshes.
Q. No, I am speaking of these marshes. Grand marsh as you call l called by others Louisiana marsh. If they got a supply and icient amount of oysters from Pass Christian fisheries here why l these oystermen go over there to these marshes to get oysters?
A. I don't know sir.
Q. You could not say?
A. No sir.
Q. Is it not very natural and probable that if they could supply

themselves from the Pas. Christian reefs that they would not go over there to get oysters. What have you to say about that?

A. What is the question again.

Q. I say why would they go over there to get oysters if they could get them closer here?

A. I guess that they would not if they could get them here.

Q. Then does not that show that the supply of oysters from the Pass Christian reefs is entirely insufficient to supply the demand from the canneries?

A. I guess so.

Q. You have no knowledge as to where the boundary line is between Mississippi and Louisiana except what you have heard from time to time?

A. No sir, no more than I have heard the people say. That it was from the mouth of Pearl river running six leagues to the south from the main land. That is what I have heard the people say.

Q. Did you ever hear people say that under the act admitting Louisiana into the Union in 1812, five years prior to the admission of Mississippi that the State of Louisiana was granted all islands within three leagues or nine miles of her coast?

A. No sir, I never heard of that.

Q. You never heard of that?

A. No sir.

The commission here took a recess for the noon hour and reassembled with the same attorneys, and the commissioner present as this morning.

GEORGE BILLS, being duly sworn on behalf of Mississippi, as a witness, testified as follows:—

By Mr. McCLURG:

Q. How old are you?

A. 39.

Q. Where do you live?

A. In Biloxi.

Q. How long have you lived in Biloxi?

A. For thirty nine years.

Q. What is your present occupation?

A. Oysterman.

Q. How long have you been in the oyster business?

A. I suppose some where around 26 years.

1516 Q. Are you familiar with the waters between Biloxi and the mouth of Pearl river?

A. Yes sir.

Q. How long have you been familiar with those waters?

A. Well sir, about as near as I can tell you, between here and Pearl river for about 14 years.

Q. Are you familiar with what is called Grand marsh?
A. I am sir.
Q. How long have you known Grand marsh?
A. Well I suppose somewhere around 19 or 20 years.
Q. Do you know Cat Island?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Turkey bayou?
A. Yes sir.
Q. Johnson bayou?
A. Yes sir.
Q. Three Mile bayou?
A. Yes sir.
Q. Nine Mile bayou?
A. Yes sir.
Q. Malheureux point?
A. I don't know anything about that place unless it has a different name.
Q. Petit pass. Do you know that?
A. Yes sir.
Q. As I understand it Malheureux point is south of Petit Pass island and Petit pass is between Petit Pass island and what is called by the Louisiana people Malheureux point?
A. Yes sir, I am familiar with that.
Q. And Malheureux point is nearly south of Pearl river?
A. Yes sir.
Q. So you know that country?
A. I know that coast yes sir.
Q. Well to the south of these places that I have just asked you about is what I understand the Mississippians call Grand marsh?
A. Yes sir, some claims Grand marsh and some Louisiana marsh and some the marshes. I don't know what they call it.
Q. It has been called by different names?
A. Yes sir.
Q. I wish you would tell me if you have ever fished oysters south of a point extending from the north east point of Isle à Pitre around to Nine Mile bayou. If you fished south of that line. South of that line is what we understand to be the Grand marsh or Louisiana marsh or the marshes. Have you been in there?
A. Yes sir, I have been all through there. Bayou Greecue and Jack Williams and Karako bay, and Bayou Boudreaux and Johnson bay. I have been all through there.
Q. For how long?
A. I have been going there off and on for 19 years I guess.
Q. Have you ever been down as far as Drum bay?
A. Yes sir, I have fished oysters in Drum bay.
Q. Have you ever been in the Lake of the Mound?
A. Yes sir, we call that Indian mound.

Q. Have you ever been in False Mouth bay. Sometimes called by some other name?

1517 A. If you will mention some other name I might know it.

Q. It is right to the south of Nine Mile bayou?

A. No sir, I have not been south of Nine Mile bayou. I have been east of south from Nine Mile bayou.

Q. Were you ever in Treasure bay?

A. Yes sir.

Q. Well you know where Pirate point is?

A. Yes sir.

Q. You know where Raccoon island is?

A. Yes sir.

Q. And Little Raccoon island?

A. Yes sir.

Q. And Crooked island?

A. Yes sir.

Q. Mud island?

A. Yes sir.

Q. Brush island?

A. Yes sir.

Q. Door point?

A. Yes sir.

Q. Bayou Greecue?

A. Yes sir.

Q. In what State are those places?

A. In Bayou Greecue I fished there last November or December 1903 I fished there some eight years ago and it seems to me that there is less water coming through the mouth of Bayou Greecue towards Grand pass than there was eight years ago.

Q. Well tell me in what State all of these places are. Whether they are in Mississippi or Louisiana?

A. I could not say sir I don't know whether they are in Louisiana or Mississippi.

Q. Were you ever disturbed by any body in either State in your fishing there in the last twenty years?

A. No sir, I never have been.

Q. You seem to have misunderstood my question by asking you the State. You started to tell me the state of the land between Bayou Greecue and Grand pass?

A. Yes sir.

Q. Tell me about that please sir?

A. Well sir about eight or nine years ago I used to fish on an oyster boat drawing three feet four inches with about 80 barrels.

Q. Where?

A. In Bayou Greecue.

Q. How did you get into Bayou Greecue?

A. From Grand pass. You have to go in that way and then into Bayou Greecue.

Q. That is about eight or nine years ago?

sir.
ur boat drew how much water?
out twenty inches I told you.
w much did she draw loaded?
out three feet eight inches loaded, but I could only put
nty barrels on her. That made her draw about 3 feet and
es.
ld you get from Bayou Greecue into Grand pass with
rrels of oysters and your boat drawing three feet and four

very well unless I waited for a full tide.
could go out in a full tide?
A. Yes sir.
Q. When did you see this bayou last?
A. Last December.
was it then?
l with my boat then she was drawing about two feet and
hes. We had to heave her out in the night time.
derstand you to mean by that that the passage between
ecue into Grand pass had been filling up?
ems that way to me sir.
at your best judgment about it?
sir.

Col. ZACHARIE:

t did you say you had to do with her?
re her out with a windlass.
t do you mean by heaving her out?
t we mean by heaving her out is that we run a pole out
le and heave her out with our windlass.

Mr. MCCLURG:

draw her out?
ir, drag her through the mud.
it as deep last November and December as it was eight
ars ago?
uld not seem that way to me no sir.
about the general contour of the balance of the marshes?
all seem alike to me.
have not seen any material change in any of them?
r, there is not but one place that I could see any change.
he mouth of Three Mile bayou. There used to be a kind
there at the mouth of Three Mile bayou and now it is

you ever paid any license for fishing in there?
ir.
Mr. Bills?
ast two winters.
hom did you pay the license?

A. To the Louisiana commission.
Q. How much did you pay them?
A. I paid them $7.50.
Q. For fishing where?
A. They claimed in the Louisiana marsh.
Q. Any where in Louisiana?
A. Yes sir.
Q. That is since this controversy arose that you paid the license?
A. Yes sir.
Q. Did you ever pay a license or licenses before that time?
A. No sir.
Q. I understand you to say that you have been fishing in this marsh for the last 19 or 20 years?
A. Yes sir, for the last 19 or 20 years off and on.
Q. You fished from Biloxi?
A. Yes sir.
Q. And the oysters that you took were brought to Biloxi?
A. Yes sir. Except the last two seasons.
Q. Have you ever paid to the State of Mississippi any license to fish?
A. No sir, I have never fished in Mississippi since this dispute has been going on.
1519 Q. You respected the agreement made between the two commissions did you not to fish west of Grand pass?
A. Well you see my oystering is supposed to be in the marshes altogether. I never fished in this sound at all. This is disputed ground.
Q. You never fished up in the sound?
A. No sir. I have been fishing in the marshes since this dispute has been going on.
Q. Do you know where the line is dividing Louisiana and Mississippi?
A. No sir, I do not.
Q. When you were fishing at Brush island and Door point. Did you ever fish down there?
A. Yes sir, right there at Brush island.
Q. Sundown bayou?
A. Yes sir. I don't know where that is.
Q. Right south of Grand pass?
A. I know where Sun Down island is.
Q. That is right southeast of Grand pass is it not?
A. It is about east southeast or something like that.
Q. What State were you fishing in when you were in there?
A. Well I was fishing there. I don't know whether it was Mississippi or not, but I was fishing there.
Q. Well tell me about any material change that you have noticed in there at any point except the mouth of Three Mile bayou?
A. That is all I know of sir.

Q. Have you noticed any subsidence or sinking in any of these slands out there in the last 18 or 20 years?

A. No sir, if there was I never noticed it. If there was any hange at all I could not see it.

Q. Are you acquainted with St. Joseph or Grassy island?

A. Yes sir.

Q. Has there been any change up there?

A. No sir, none that I could see. With the exception of the old t. Joseph light. There used to be a kind of a little spot there and has washed away.

Q. What was the character of the land that formed that island?

A. No more than marsh. That is all that I saw there.

Q. The same kind of soil that forms Isle à Pitre and the other lands down there in the swamp? In the marsh?

A. I could not say anything about that.

Q. You never examined that soil?

A. No sir, I never went ashore there.

Q. Now have you ever made any trips there about Drum bay or lifornia bay and through this marsh towards Three Mile bayou?

A. Yes sir, I have made a many a one.

Q. How did you travel?

A. Through Cat Fish pass into Indian Mound bay and Dutch ss and from Dutch pass to Pirate point, and from Pirate point to ccoon island, and from Raccoon island into Three Mile and Nine le. Just anyway we wanted was suitable for me to go through re.

Q. How long have you been making these trips?

A. I have been fishing around Drum bay for the last six or eight rs.

Q. You would come out through Three Mile bayou?

A. I would when I was running to Mississippi. To Biloxi.

Q. Could you go through Drum bay and Indian Mound bay down there through Three Mile bayou drawing three feet and eight inches of water?

A. Yes sir, unless it was a very low tide. A dead low tide.

Q. How much in Drum bay would it be in low tide?

A. You take a low tide there in Drum bay and in some places I 't suppose that it would be over two feet wide.

Q. At mean tide or average tide?

A. About three or three and a half feet or some where along re.

Q. Well now aside from making these trips on this particular that you have mentioned, up through the marsh, and coming of Three Mile bayou could you travel on other places through marsh?

A. Yes sir, I have travelled all through there with the same

Q. Drawing from three feet to three feet and eight inches?

A. Yes sir.

Q. And you had no trouble?
A. No sir.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Bills, could you state at what time you took out this license to fish oysters in Louisiana?
A. Yes sir, my first license was taken out in last October was a year ago.
Q. You say your first license. Have you taken out two licenses?
A. Yes sir, I have taken out two licenses.
Q. Why did you take both of these licenses out from Louisiana?
A. Well sir my last boat that I have been running is small and I did not think that I could make a living by fishing in the reefs oysters and therefore I thought that the marsh was better for me.
Q. Did not you take out a license from Louisiana because you considered that the marsh was Louisiana territory in which you proposed to fish?
A. No sir, not exactly. I took out a license to keep out of trouble. To keep from being arrested.
Q. You never made any application to the Mississippi authorities for a license did you?
A. No sir, I did not.
Q. Now is it not a matter of fact that as far as you can remember back that these marshes have been generally called amongst all of the fishermen Louisiana marshes?
A. Not all sir.
Q. Well I say generally?
A. Some of them call it the Louisiana marshes and some the ma-shes and some the Grand marsh.
Q. What do the majority of them call it?
A. Well the marshes is all that I could state on that.
Q. Suppose you were to go out here and ask these people that bring in oysters for the canneries, where did you get these oysters from, would not all of them answer the *the* Louisiana marshes?
A. He would not answer that way. He would say from the marshes.
Q. I am speaking about the generality of these people. Would they not answer Louisiana marshes?
1521 A. No doubt some of them say it yes sir.
Q. Now you speak about not having perceived any changes in 19 or 20 years that you have been in the oyster trade?
A. I have been in the marshes about 19 or 20 years. I have been in the oyster business. I have made my living with oysters about 26 years.
Q. You have been in the marsh for 19 years?
A. Yes sir, between 19 or 20 years.

Q. Have not you observed that the mouths of these passes have idened very much?
A. In deep water yes sir.
Q. Have they not all widened a great deal in extent?
A. No sir, they have not widened in the last 12 or 15 years. Not at I know of.
Q. Do you know Creole gap?
A. I do very well.
Q. Has that not widened?
A. Yes sir, it has.
Q. Has not Three Mile bayou widened?
A. Not that I know of sir.
Q. Has not Nine Mile bayou widened?
A. No sir, it don't seem so to me. You just asked me about reole gap widening. It is just Creole gap since I have known it.
Q. Has it not widened?
A. No sir, I told you that it did, but I cannot say that it has dened any at all, because it looks the same to me that it did 19 20 years ago.
Q. Do you know an island that formerly existed by the name of ound island, which lay between these coasts and the main land of ississippi?
A. Round island?
Q. It was between the coast line of these marshes and the main nd of Mississippi, Do you remember such an island?
A. I remember a little island between Petit pass and Grassy and. It is there yet.
Q. It is there yet?
A. Yes sir.
Q. Have any of these islands lying between this coast line of the arshes and the main land of Mississippi disappeared in the last y years?
A. Not that I know of sir.
Q. I believe you have stated that St. Joseph island has been shed away?
A. That is near to the main land. The old St. Joseph light at is way inside.
Q. Well that is to the north of the coast line of these marshes?
A. Yes sir.
Q. That is in the group of islands. There are several islands re. Three or four or five?
A. Yes sir.
Q. Have not a portion of Grassy island and Half Moon island n washed away?
A. Not that I have noticed.
Q. Have you noticed it carefully?
A. I never was ashore there. I have fished oysters there and ed all around it.
Q. There was how much water in Bayou Greecue?

A. That is just like I say. Eight or nine years ago I used to run a boat called the Castello, and she drew three feet and four
1522 inches with about 80 barrels of oysters, and I used to go out there with my boat. This boat that I have now only draws two feet and eleven inches. That is about as much as she will draw deep loaded, and often times this winter we had to use the windlass to draw her out.

Q. You had to take a rope and windlass and warp her out?

A. No sir, I rolled her out. Heaved her out.

Q. You were then dragging her through a mud flat were not you?

A. Yes sir.

Q. You never bothered your head about the boundary much did you?

A. No sir.

Q. Did you ever hear this boundary question discussed at all until this boundary suit came up?

A. No sir, I never did.

Q. You never heard any talk about any 18 mile limit?

A. No sir, I fished oysters out there and I did not notice anything like that. I was not notified in any shape or form.

Q. Did you ever go through any portion of this marsh from the north coast of it to the south. To the Gulf?

A. I went through it from the north as far as Kaliko bay.

Q. Where is that?

A. It is just about a half a mile on the inside of the marsh on the west side.

Q. You never went through the marsh to the south?

A. Yes sir, I have been through Nine Mile bayou, down about to the southwest I told you, and Karako bay, and Gardeners point. That extends out into the Gulf.

Q. What is the depth of this water going through there?

A. There are the flats that we call Little Bay flat and another called the Big Bay flat, and at times the water there is very shallow.

Q. What do you call shallow?

A. A foot to two and a half feet. They are never more than that.

Q. Well how much did this vessel draw that you were going through there with?

A. Two feet and ten inches.

Q. Well then how did you manage to go through these mud flats?

A. We heave through there. There is more mud there than there is water.

M. MARTINEZ, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. How old are you?
A. About sixty years old.
Q. Where do you live?
A. I live in Biloxi.
Q. How long have you lived in Biloxi?
A. About eight years.
Q. Where did you live before you came here?
A. In St. Bernard parish.
Q. That is in the State of Louisiana?
A. Yes sir.
Q. How long have you lived there?
A. Since 1867.
Q. Where did you live before you went to St. Bernard parish Louisiana?
A. I come from Mobile. I stayed there about 15 days and went from there to New Orleans.
Q. And then you went over into St. Bernard?
A. Yes sir.
Q. What did you do for a living when you went over there in Bernard?
A. I was in the trapping business and the fishing business.
Q. Do you know where Terre Bœuf is?
A. Yes sir.
Q. I want to ask you Captain something about the country lying th of the east mouth of Bayou Terre Bœuf. Do you know that ntry well?
A. Very well. I stayed there about twenty five years. All the e I was down there.
Q. Out east of Terre Bœuf is California bay?
A. Yes sir, I know California bay.
Q. Now let's look to the north. Out through the marsh and the sissippi sound?
A. It is about 100 miles here and the old quarantine is about 40 es.
Q. Well about 1867 did you ever go in any of the bayous. Up in Nine Mile bayou or Three Mile bayou?
A. Yes sir, I come through there some times to kill alligators and ed both of them. I came in there about Bayou Loutre.
Q. How did you ever travel in that country down there about ou Bœuf in a boat up to Three Mile bayou and Nine Mile bayou? you ever go up there?
A. Yes sir.
Q. How deep did your boat run in the water?
A. Three to three and a half feet.

Q. Did you make it through there often in the boat. A good many times?

A. Yes sir.

Q. You have known that country ever since 1867?

A. Yes sir.

Q. Did you ever notice any changes in it?

A. No sir, there are no changes.

Q. When were you there the last time?

A. It has been about nine years.

Q. Now from 1867 up to nine years ago have you noticed any changes in the rise or fall of any of these islands or lands and if so tell us what it is?

A. I don't know. I have been twenty five years through there, and I saw every thing all the time just the same. Some times the sea washes a little bit by being heavy in eight or ten years.

Q. Washes away an island?

A. No sir, in four or five or ten years it would wash away about ten feet.

Q. Did you notice in this time some places that would grow larger and higher?

A. Yes sir.

Q. It was not sinking down any lower?

A. No sir.

Q. It was just washing a little around the edges?

A. That is all.

Q. No body ever arrested you or disturbed you when you were fishing around in this country?

A. No body did not worry me any.

Q. Do you know where Grand pass is?

1524 A. I have passed two or three times over there.

Q. At the east end of Isle à Pitre?

A. I pass there some times.

Q. When did you first go through Grand pass?

A. About one year ago.

Q. Is that the first time?

A. No sir, the second time. I went through there about two years ago.

Q. You know better down in the other part of the Terre Beuf country. You know that the best?

A. Yes sir, that is my country. Plaquemines parish and St. Bernard. I know that best.

Q. What place did you live in at St. Bernard?

A. On the Island Bayou Terre Beuf.

Q. How far from the shore, from the water?

A. You mean my house.

Q. Yes sir?

A. About ten feet.

Q. Then how far is it from there to the Gulf?

A. About Terre Beuf. They call it Lamouth too. Bayou

Lamouth is about 27 miles long, and it has 15 or 14 f[illegible] of water and in some places 20. In the mouth of a lake that they call Nigger lake there is about six or seven feet of water in high water, and in low water four or five, and the mouth in high water has seven feet and in low water four or five feet.

Q. Bayou Lamouthe runs north?

A. Yes sir, Bayou Lamouthe and Bayou Terre Beuf are the same bayou. The Frenchmen call it Bayou Terre Beuf and the Spanish call is Lamouthe. That is the difference.

Q. Have you been out Southwest pass?

A. I pass there some times.

Q. Greecue bayou?

A. No sir. I have been by there some times.

Q. Raccoon bay. Do you know where that is?

A. I pass by there some times.

Q. Well in going up through the marsh up Three Mile bayou ow did you go there?

A. I went through Lake Borgne.

Q. Were you ever at Brush island out east?

A. No sir.

Q. You don't know about that?

A. I don't know about that place.

Q. How many times do you suppose since 1867 have you gone ou down there about Bayou Terre Beuf up to the Mississippi und in your boat?

A. In the winter time I am going through there all the time for sh.

Q. Every winter?

A. Every week I would go through there. I fished in California ay even.

Q. Did you ever go through California bay up to Nine Mile ayou?

A. And Bayou Lamouthe.

Q. Did you ever come up through Three Mile bayou from wn there?

A. No sir, I came up Bayou Loutre.

Q. And you went in a boat that drew three and a half feet of ater?

A. Yes sir.

Q. And you had no trouble?

A. No sir.

Q. And you have noticed no difference there?

A. No sir.

Q. And the conformation of the land there now is just the me that it was in 1867?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Do you mean to say sir that this territory in the marshes has not undergone any changes at all from these storms?

A. Over there, no sir, it never changes.

Q. Have not the mouths of these bayous widened?

A. Well, maybe a little more wide. Not much.

Q. How many years is it since you last visited this place?

A. 1867 is when I went over there.

Q. How long ago is it since the last time you went there?

A. Nine years.

Q. You don't know any thing about the condition of the ground there now?

A. No sir, not in the nine years.

Q. Did I understand you to say that you were catching oysters there, or that you were trapping and killing alligators?

A. In the winter time I fished over there for fish and in the summer oysters and took them to New Orleans.

Q. What did they call this territory. What kind of a marsh. Did they call it Louisiana marsh?

A. Louisiana marsh.

Q. Did you ever hear any talk of this marsh belonging to Mississippi in St. Bernard parish down there?

A. St. Bernard parish and Plaquemines parish all belong to Louisiana.

Q. And they were called the Louisiana marshes?

A. I don't know what they call them. They call them the marshes.

Q. Did not the fishermen call all of these places, Three Mile bayou and Nine Mile bayou and Creole gap and all of these places. Did not they call them Louisiana marshes?

A. I did not fish over there.

Q. I am asking you what the fishermen called the places over there. Did not they call them the Louisiana marshes?

A. They called it the Louisiana marsh here.

Q. Where they catch the oysters in that territory. Where you come out from the river in St. Bernard parish out to Isle à Pitre. Did not they call all of this Louisiana marshes?

A. I told you that I went to Isle à Pitre to fish.

Q. What did they call them?

A. Called it St. Bernard down there.

Q. Was this all considered a part of St. Bernard parish. All of these lagoons and places in there?

A. St. Bernard parish.

Q. You never heard it called any thing else did you?

A. No sir.

Q. Are not you mistaken. Is not Bayou Lamouthe the bayou that runs into Terre Bœuf?

A. Of course not. They are the same. One is a French name and the other is Spanish.

1526 Redirect examination.

By Mr. McCLURG:

Q. When you speak of the St. Bernard marshes you mean that marsh country along the Terre Beuf don't you?
A. Yes sir.
Q. All of these marshes between Bayou Terre Beuf and Lake Borgne and Nine Mile bayou. How about that?
A. No sir; I don't know anything about that.
Q. You don't know anything about that?
A. No, sir, I was talking about Point Chico and the country here.
Q. Did you ever hear this country north of Bayou Terre Beuf between there and the Mississippi sound up there called Grand Marsh?
A. Some times they call it Grand marsh.
Q. There is more water than land in there is there not?
A. They have not got too much water. Three or four or five feet.
Q. When you look at it here it looks like it is more water?
A. Some places they have.
Q. I understand you to say that you had noticed no subsidence sinking in any of these islands. None of the islands have been sinking down?
A. No, sir, I have not seen any.
Q. Not since 1867?
A. No sir.
Q. You have been in there ever- week?
A. Every week fishing all around in the winter.

F. W. ELMER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. McCLURG:

Q. How old are you?
A. 57.
Q. Where do you live?
A. In Biloxi.
Q. For how long have you lived here?
A. 57 years.
Q. What is your occupation?
A. I am mayor of Biloxi.
Q. Biloxi is in Harrison county I believe?
A. Yes sir.

Q. You have represented this county in the State senate?

A. In the house on three occasions.

Q. Mr. Elmer, this is a controversy between the State of Louisiana and the State of Mississippi as you know over the location of the boundary between the two States to the waters of the Gulf. Louisiana claims that the true line is what is now known as the deep water channel coming out of the mouth of Pearl river to the Rigolets eastward near the Mississippi shore until it comes up in the neighborhood of Gulfport, turning thence southward into the Gulf east of the Chandeleurs, while Mississippi claims that under the acts of Congress admitting Louisiana and Mississippi into the American Union, that Mississippi's line follows the meandering of the shore between the Alabama line and Pearl river, and that it extends 18 miles south of it at every point from the shore and
1527 with the meanderings of the shore including all islands within that reach, and within this limit claimed by Mississippi is Grand marsh. I want you to state to the commissioner if you please what you know about this territory in dispute, as I have in a general way described it to you?

A. Well all that I know in connection with this matter is that the State of Mississippi, the description is definite, and that our western line where the State joins Alabama and extends out six leagues, meandering with the coast, including as you have stated to me the islands within the territory which would entirely take in that portion of the Grand marsh claimed by Louisiana.

Q. Do you know where Isle à Pitre is?

A. I don't know much about that country out there no sir.

Q. Were you ever engaged in the oyster and fishing trade?

A. I believe I was one of the pioneers in this industry?

Q. When was this?

A. I think that it was in 1877 that I commenced shipping fresh oysters from this territory.

Q. From what portion of the territory were your oysters taken?

A. Pretty much all of the oysters that I shipped came from Grand marsh.

Q. From 1877?

A. Yes sir.

Q. There has been a good deal said about the exhaustion of the oysters from Back bay, and that the Mississippians have gone into the marsh because of the destruction of the natural reefs at other points. We would be glad if you would tell us what you know on this subject?

A. The only natural reefs that we have here are in Back bay and off Pass Christian, and the supply was always limited and the oysters were small, and we always went to the Grand marsh to get our large stock, plants, always. From the first time I went into the business the quality around here was not such as the trade demanded, and we naturally had to go over there to get that kind of stuff.

Q. In doing so state whether or not you understood that you were
oing out of the limits of your State?
A. It was naturally understood by any one who understood the
ws of the State of Mississippi that it was included in our territory,
d no question was raised until this question came up several years
go. They began to interfere with our people out there and tried
run them off.
Q. That is since this controversy arose out of which this suit
ew?
A. Yes sir, but I never have been in the marsh so I don't know
ything about the lay of the land, except I do know that schooners
n there for me at that time, and they would tell me that they
re bringing oysters from Creole gap and Nine Mile bayou and
ree Mile bayou and all of these points in controversy.
Q. Did your ancestors live on the coast?
A. My father settled here in Biloxi in 1835.
Q. Have you any knowledge or information at all to the effect
at this deep water channel, which I assume you have some knowl-
edge of passes out of the mouth of Pearl river to the Rigolets
28 eastward and to the north I believe of St. Joseph, and Grassy
and Half Moon islands and turning southward a little west of
t island. Have you any information to the effect that that chan-
l has ever been recognized as the dividing line between the States
Louisiana and Mississippi?
A. I never heard that question raised, nor questioned. Never.
Q. Have you any knowledge or information of any kind what-
r, traditional, historical, or personal knowledge as to there ever
ving been any dispute as to Mississippi's claim to the jurisdiction
sovereignty over the waters within 18 miles of her shore?
A. No sir.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Mayor, have you ever examined the text of the act admit-
g Mississippi into the Union?
A. I have read the act.
Q. Do you remember about this description of the southern bound-
as near as I can repeat it; "Starting from a point near Pasca-
la and then westwardly to the mouth of East Pearl river, includ-
all islands within six leagues of the shore"?
A. That is not my understanding of the description of the State.
understanding is that it starts at Pearl river and runs up to a
ain paral-el and then to the Mississippi and to a certain paral-el
nd comes down on the Alabama line and runs out from there.
Q. I am speaking of the southern boundary of Mississippi?
A. I thought you meant the boundaries of the State.
Q. Do you remember the language to be westwardly from a point
r Pascagoula?

A. I think it says westwardly.

Q. Mississippi was admitted into the Union in 1817?

A. Yes sir.

Q. Louisiana was admitted in 1812 was not it?

A. Yes sir.

Q. Did you ever examine the act admitting Louisiana into the Union and see the description of her eastern boundary so far as these waters were concerned?

A. My understanding about Louisiana was that it was first formed from the Louisiana territory as purchased by the Government from Napoleon, and he did not sell anything except what has been given here and that is that portion west of the Mississippi river. All of this portion on this side was reserved and constituted Florida is my understanding.

Q. Don't you know that the French as well as the United States Government claimed that the Louisiana purchase extended to Mobile?

A. No sir, I am not familiar enough to answer that question.

Q. Do you not know that Congress passes a secret act authorizing Mr. Madison to take possession of this country as far east as Mobile with the privilege of keeping this act secret until such time as the President saw fit to promulgate the act?

1529 A. No sir, my reading of history was that the people voluntarily moved to abruptly take possession of this territory, and after that time that Congress took some action.

Q. Have you ever looked at and examined the boundary line of the State of Louisiana as admitted into the Union?

A. I have read it yes sir.

Q. Do you remember that clause in it which embraces and includes the islands of the coast of Louisiana? within three leagues?

A. Yes sir.

Q. Well would there not be a conflict there as it approaches the mouth of East Pearl river?

A. In reading the boundary line of the State of Louisiana it occurs to me that the act of Congress goes on and states where it comes through Manshac that it runs on through Lake Pontchartrain and to the Rigolets, and it is lost right there and does not go any further, and the second description runs out to East Pearl river. But the first description loses itself at the Rigolets.

Q. Undoubtedly it did, because a month or two later Congress passed an act annexing what are now four or five Florida parishes to Louisiana, and leaving it to Louisiana whether she would accept this addition to her territory, and if she did then the line should be down to East Pearl river to the mouth of it. Do you remember that?

A. Yes sir.

Q. And Louisiana accepted that addition to her territory?

A. I don't know what Louisiana did. I know in the description of the State that is the way that the boundaries are defined.

And then the act admitting Louisiana was amended in order brace that territory, and the boundary was fixed at East Pearl going down to the mouth of East Pearl river, and thence to ulf of Mexico, including all islands within three leagues of the iana coast. Now is there not a conflict there between these escriptions. One of Mississippi and the other of Louisiana?

I cannot answer that question, because in reading the descrip- f Louisiana this second act that you speak of, I did not notice further than to carry the line to East Pearl river, and said ng about any islands within three leagues in my reading of it.

Mr. McCLURG: The State of Mississippi by her counsel reserves ception to this question on the ground that it calls for an on of the witness as to the construction of an act of Congress ting these States, and the witness is not competent to testify s point.

How long have you been a resident of Biloxi?

57 years.

Is it or is it not a fact that so far as your recollection extends his marsh territory has been almost universally called the iana marshes?

Not originally. When I first went into this line of business ey frequently called it Grand marsh. Here lately they have calling it Louisiana marsh.

Q. Since when?

A. In the last seven or eight or ten years. Possibly a little longer than that.

You have stated that there were oyster reefs here in Back bay t Biloxi and also in front of Pass Christian. Were there not oyster reefs to the east of here, between here and Pascagoula, hen on in the different bays and inlets to Mobile?

Yes sir, there is quite a large reef opposite Pascagoula river, has only come into the market in the last eight or ten years ly of much value.

Well now is it not a fact that until quite recently the fisher- n this coast were in the habit of fishing from these reefs all g the summer when the oysters were spawning. Pass Christian nd at Pascagoula and in this neighborhood?

I think that it has been customary for the most of the people un a retail trade here in oysters to get them from the outside

What do you mean by that?

On the Grand marsh and outside of Pass Christian.

Has it not been the habit of the people here in regard to the n the vicinity of Biloxi both to the eastward and the westward, ting the oysters from these reefs to fish them in the summer the oysters were spawning?

Well they fished in the year round, but a very limited quan- n the summer time.

Q. Well there is a large aggregation of strangers here in the summer is not there?

A. Yes sir.

Q. Along this coast?

A. Yes sir.

Q. Are not the boarding houses and the hotels and the oyster shops along this coast. Have not they been supplied with oysters during the summer?

A. Those oysters don't come from this section hardly at all.

Q. Was there any law in Mississippi regulating and concerning the fishing of oysters until quite recently?

A. Well I don't know how far back I can go in relation to that business. The boards of supervisors of this county and of all of these coast counties have had jurisdiction over this matter for a number of years. They have exercised it for a number of years back, but I cannot say how far.

Q. Can you point me to any regulation or give me the year in which the supervisors of Harrison, Hancock or Jackson counties have established any rules against fishing oysters during the spawning season in the summer?

A. Well not particularly, but to show you that they did exercise some authority over this matter, in 1882 I leased from the board of supervisors this planting ground on the bar there opposite this town. It has been 22 years ago.

Q. Now Mr. Mayor, was there until quite recently any law or regulation as to the culling of oysters on the beds. On the reefs?

A. No sir, I don't know how many years back now that that regulation was passed.

Q. Was there any law on that subject?

A. I can not answer that question.

By Mr. McCLURG: I think perhaps the first culling law was in 1896.

1531 By Col. ZACHARIE:

Q. Were not there oyster reefs on that portion adjoining Deer island out in front of Biloxi?

A. There was never an oyster reef on Deer island to my knowledge except possibly some stray oysters scattered along on the shore. I never knew of any oyster reefs except some private reefs around Deer island. I don't know of any.

Redirect examination.

By Gen. McCLURG:

Q. You spoke in answer to questions propounded by the counsel for the State of Louisiana of the boards of supervisors having the authority to enact ordinances and rules regulating the oyster business. Can you tell us how far down from the shore the boards of these coast counties undertook to exercise jurisdiction?

A. I could not tell you. I would naturally suppose that it would be to the limits of the State.

Q. You mean to say six leagues from the shore?

A. Yes sir, I would naturally presume so.

Q. You have also stated that your information was that the people abruptly took possession of this territory and that Congress afterwards acted on it?

A. That is my understanding from reading history. That is where I got my information.

Q. Do you refer to that part of our own State history in which this territory was formed into Jackson, and Hancock counties after December 1812, long before she was admitted into the Union and before this proclamation was issued by Madison?

A. About that period yes sir.

Q. That is true is it not, and introduced in evidence in this case?

A. Yes sir, to the best of my knowledge the counties were formed in 1812. Harrison coun'y was carved out of Hancock, between Bay St. Louis and Biloxi bay in 1841.

The commission here adjourned until tomorrow morning at nine o'clock.

The commission met this morning, June 10th, at nine o'clock, there being present Hon. William D. Bullard, commissioner. Hon. Monroe McClurg, counsel for the State of Mississippi, and Hon. F. C. Zacharie, counsel for the State of Louisiana.

CHARLES WILLIAMS, a witness introduced on behalf of the State of *Louisiana*, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Mr. Williams, how old are you?

A. 38 years old.

Q. Where do you reside?

A. In Biloxi Mississippi.

Q What is your occupation?

1532 A. Oystering and fishing.

Q. How long have you resided in Biloxi?

A. 38 years.

Q. How long have you been engaged in the oyster business?

A. Well I have always been in the oyster business. For about 15 years I have been running on a boat.

Q. The 15 years last past?

A. Yes sir.

By Col. ZACHARIE:

Q. You say that you have always been in the oyster business?

A. Yes sir, off and on.

Q. You have been in it all of your life?

A. Yes sir ever since I was big enough to work.

By Gen. McCLURG:

Q. On what part of the coast have you been engaged in the oyster business?

A. The Mississippi coast.

Q. Are you familiar with the Mississippi coast between Pearl river and Pascagoula river?

A. Yes sir, and over to New Orleans.

Q. All of the way to New Orleans?

A. Yes sir.

Q. Have you ever taken oysters in those waters during the last 15 or 20 years?

A. Yes sir.

Q. Tell us please sir, going west from the Bay of Biloxi where you were in the habit of fishing oysters?

A. Well I have fished them all of the way from Cat island to Half Moon to the westward and to the southward from there to what they call American bay. That is down back of Neptune.

Q. Have you ever fished oysters about Isle à Pitre?

A. Yes sir.

Q. Bayou Greecue?

A. Yes sir.

Q. About Turkey bayou?

A. No sir, I never come in Turkey bayou.

Q. Have you been through Turkey bayou?

A. No sir.

Q. Were you ever through Three Mile bayou?

A. Yes sir often.

Q. Often?

A. Yes sir.

Q. Have you ever been through Nine Mile bayou?

A. Yes sir.

Q. Do you know where Raccoon island is?

A. Yes sir.

Q. And the Karako bayous?

A. Yes sir, I have been all through there.

Q. Indian Mound bay?

A. Yes sir.

Q. Southwest pass?

A. Yes sir.

Q. You have been in all of that country?

A. Yes sir, in all of that country.

Q. Taking fish and oysters?

A. Yes sir, all through there.

1533 Q. In what State were you please sir were you when you were in that section?

A. Well I could not exactly state what State I was in.

Q. Well how far south from the Mississippi shore if you know does the State of Mississippi extend?

A. Well I have always heard that it was three leagues.
Q. Three leagues or six leagues. How many miles if you know?
A. 18 miles I have always heard it.
Q. 18 miles?
A. Yes sir.
Q. When were you in this pass and about these islands about hich I have interrogated you. State whether you considered your-lf then within 18 miles of the Mississippi shore then or not.
A. Yes sir, in pretty near all of them. That is as far down as rum bay.
Q. As far down as Drum bay?
A. Yes sir.
Q. I understand that you considered that you were in the State of ississippi. Is that correct?
A. I considered myself within 18 miles of the Mississippi shore.
Q. Now what sort of a boat did you use Captain. Have you been ing?
A. Well at first a boat 42 feet. The last one that I used was a all one drawing three and a half feet loaded.
Q. How much did your first boat draw?
A. Four and a half feet loaded.
Q. I want you to state please sir where you went through the marsh ith your first boat that drew four feet loaded?
A. Well we went pretty much all over it, but we has to wait for e tide. In a light tide we could not get through there with it aded. We had to wait for the tide. That is through the main sses. There were plenty of passes that we could not get through ere at all.
Q. Through the main passes you could?
A. Yes sir.
Q. How about Nine Mile bayou?
A. We could go through that on the west side, but on the south d east side we had to wait for the tide. In low tides we had to it for the tide to rise.
Q. Could you travel at mean tide, or average tide through Nine ile bayou and False Mouth bayou and as low down as Indian ound bay?
A. No sir, not loaded. We had to wait for an extra high tide.
Q. An extra high tide to make it down there. How about going wn through Three Mile bayou?
A. There is plenty of water at the mouth of Three Mile bayou, t when you get inside it is the same thing. You have to wait for e tide.
Q. How about Johnson bayou?
A. You can go through there with a loaded boat. In the inside outh.
Q. How much water could you draw in Johnson bayou?
A. With a low tide you could get in there about two feet.

Q. I believe you stated that you had not been through Turkey bayou?

A. No sir, I never was through Turkey bayou.

1534 Q. Have you ever been through Grand pass?

A. Yes sir.

Q. How much could you draw through this pass?

A. Well at the east mouth with a low tide you get about four and a half feet with a dead low tide.

Q. And Grand pass about four feet?

A. Yes sir.

Q. Do you know Creole gap?

A. Yes sir.

Q. Have you ever been through there?

A. Yes sir, often.

Q. Do you known Sun Down island?

A. Yes sir.

Q. Jack Williams bay?

A. Yes sir.

Q. You have been all through there?

A. Yes sir, all through there.

Q. When was it that you first went into this marsh?

A. About 15 years ago. I don't know the year exactly.

Q. Have you ever been regularly in it since?

A. Yes sir, up until last winter. I was not there last winter; not in there.

Q. About how often would you go into this marsh prior to last winter?

A. Well in the winter time we would make three or four trips there a month.

Q. Three or four trips a month?

A. Yes sir.

Q. Have you ever observed the general formation of these islands and the mouths of these bayous of which we have been speaking and can you say whether you have noticed any material changes within the last 15 years?

A. No sir, there has been no change, only maybe a little washing. Maybe they have gotten a trifle wider. That is all the change that I see.

Q. At what point, Captain have you noticed these insignificant changes?

A. Three Mile bayou is about the only one as near as I can remember.

Q. Have you noticed any subsidence, any sinking in the general surface of the marsh since you have been in there?

A. No sir, it has always been just the same since I have been running in there.

Q. Were you called upon to buy a license to go into this country?

A. No sir. The last two years I have run in the marsh, what I mean by that, I have no license from Louisiana, because for the

ast few years I have not run in Louisiana, that is in the marsh, I nean by that since I was paying license in the marsh I was running in the marsh.

Q. What did they call that marsh Captain?

A. Grand marsh is what I have always heard it called.

Q. Have you known it as Grand marsh for the last 15 years?

A. Yes sir, we always spoke of it as Grand marsh.

Q. How far west did you understand that marsh to extend?

A. Well it is all Grand marsh to me.

Q. How far west.

A. We would say Grand marsh and we would mean it all.

535 Cross-examination.

By Col. ZACHARIE:

Q. Mr. Williams, you say that you have fished oysters as far south s Drum bay? And American bay?

A. Yes sir.

Q. Have you ever fished them as far south as California bay?

A. No sir.

Q. You mentioned one point I believe, American bay, as being ack of Neptune?

A. Close to Neptune. That is close to the factory. Mr. Lopez has factory there that he calls Neptune and this American bay is close o that.

Q. What is Neptune. Is not that a little settlement in the parish f Plaquemines?

A. Yes sir, that is what I understand it.

Q. Did you consider American bay as being within 18 miles of he Mississippi shore?

A. No sir, I said when I was in Drum bay that I considered myelf within 18 miles of the Mississippi shore, and from there on down was of course further.

Q. As I understand your general testimony in regard to the navigation of these bayous and passes it is that at the mouth of the passes here was a good deal of water, but in going through from north to outh and in low water there was hardly over two feet, and you could ot get through if you were loaded?

A. No sir, you can not go through there with loaded boats on the outh side in low water. You have to wait for the high water.

Q. Did you not find yourself grounded very often on Mud flats nd you would have to heave your vessel off with a windlass and opes?

A. Yes sir, often.

Q. In order for you to get through with a vessel drawing four or our and a half feet of water you would have to wait would not you or the high tide?

A. Yes sir, in nearly all of the passes except Grand pass. In

Grand pass with an ordinary tide you could go through there easy but with a low tide you could not.

Q. Now Mr. Williams is it not a fact that these marshes are generally known and called by the fishermen the Louisiana marshes?

A. I have heard it called Grand marsh and Louisiana marsh both.

Q. Suppose prior to this dispute I went out as I have done here and asked these people where they got their oysters from, would not they almost universally reply as they have done to me, that they got them from the Louisiana marshes?

A. Some of them would yes sir.

Q. Well now you say that there has not been much change in this territory in the last 15 years during which time you have been engaged in this business. Did you ever pay particular attention to know the changes?

A. If there had been any change of note at all I certainly would have noticed it running through there so much. If there is any change at all it is very lately.

Q. Then if a number of witnesses have testified that the mouth of Nine Mile bayou, Three Mile bayou, Johnsons bayou, Creole gap and Grand pass have widened to double the amount of width. I say that if a number of witnesses have testified to that they have not testified correctly have they?

1536 By Gen. McCLURG: The counsel for the State of Mississippi reserves an exception to this question on the ground that it calls for an opinion from this witness as to the truthfulness of other witnesses who have testified in this case, and whom it has not been undertaken to impeach. The counsel for the State of Mississippi knows of no rule of evidence or practice that authorizes or justifies a question of this character. Let the witness testify to what he knows about these facts and let the court determine upon the weight and the sufficiency of the whole testimony upon these points.

Q. Then if a number of witnesses have testified that the mouth of Nine Mile bayou, Three Mile bayou, Johnsons bayou and Creole gap and Grand pass have widened to double the amount of width. I say, that if a number of witnesses have testified to that they have not testified correctly have they?

A. They have not widened to no double. I am confident of that Since my time they have not.

Q. How much have they widened?

A. It has been very little, and we can not notice it except Three Mile bayou has widened a little since I can remember.

Q. How about Creole gap?

A. Of course that has widened a little, but it has been such a little since I have been running there. I don't suppose that it has been fifty feet.

Q. How wide was Creole gap when you first knew it 15 years ago?

A. Well I cannot say exactly.
Q. No, I don't want you to say exactly?
A. It was not very wide and it is not very wide now.
Q. About how wide was it?
A. Well it was perhaps 300 feet.
Q. When you first knew it?
A. Yes sir, at the narrowest place.
Q. How wide is it now?
A. It looks like to me that it is about the same yet. I can not see any difference.
Q. Do you know the history from tradition or hearsay as to how this gap was created?
A. Yes sir. I have heard that there was a boat the Creole got ashore there around there in a lagoon and they dug there to get her out.
Q. Now Mr. Williams in regard to the shore along the coast of these marshes. Has not that shore been washed away a good deal at times within your knowledge?
A. Well on the east side there has been a little washing, and on the south side, but on the west side I can not see any change at all. The mud down there is more like putty and the water don't have much effect on it.
Q. Do you know the islands lying north of this shore commonly known as the Malheureux islands. That is Grassy and Half Moon and Round islands, and St. Joseph and those other islands?
A. Yes sir.
Q. What change has taken place in those islands if any within your knowledge?
A. Well there was a small one there that had grass on it and now it is nothing more than a shell heap. The grass is gone off of it.
Q. What is that; Round island?
1537 A. It is a little island standing southwest.
Q. Do you know it by the name of Round island?
A. No sir.
Q. Do you know what changes have taken place in St. Joseph island?
A. Yes sir, that has done the same. It has washed. It was very small when I remember it.
Q. Have not Round island and St. Joseph island entirely disappeared under the tide?
A. Yes sir, in high tide they are covered.
Q. What change has taken place in regard to the Half Moon and Grassy islands?
A. I can not see any at all.
Q. There is no washing away at all?
A. No sir, none that I can notice, no sir.
Q. Now Mr. Williams, do you know what is the deep water channel which vessels of considerable depth follow in going from Cat Island to the eastward through the Rigolets?

A. Yes sir, I know that pretty well.

Q. Where does that channel pass in relation to these islands that we have been talking about?

A. It passes on the north side of Half Moon island, and then it passes next to the main land and comes on down to the Rigolets.

Q. Now as you approach the mouth of East Pearl river how close does the channel run to the Mississippi main land?

A. It passes in less than a quarter of a mile at what they call Heron Bay point, and then of course as it goes on down it hauls off a little further and comes close to the mouth of the Rigolets.

Q. You mean that it hauls off a little to the southward?

A. Yes sir a little to the southward.

Q. Is that the channel that larger vessels and of greater depth always pursue?

A. Yes sir, that is the main channel for them going in there.

Q. Coming from the mouth of East Pearl river towards the east where does this channel branch off from the channel which continues to the eastward?

A. It is just after you get past Half Moon.

Q. St. Joseph?

A. Yes sir, and then it comes a little more to the right, and the other one goes to the left.

Q. You mean that it runs to the southeast?

A. Yes sir.

Q. Where does it pass in relation to Cat island and Isle à Pitre?

A. It passes south of Cat island and north of Isle à Pitre, and closer to Cat island than Isle à Pitre.

Q. Now in regard to Grand pass. That is the pass that is between Isle à Pitre and the marshes is it not?

A. Yes, sir, there is one south of Creole gap. South and west.

Q. How wide was this pass when you first knew it?

A. Well I could not say exactly. I don't see any change between now and then.

Q. I want an answer to my question. I am asking you about how wide this pass was at the time that you first knew it?

A. Well from one marsh to the other; from one point to the other it is may be 400 yards. I don't know that it is quite that.

Q. Not quite that?

A. No sir.

Q. How wide is it now?

A. I can not see any change. It is about the same thing.

1538 Q. Have you ever paid any particular attention to any changes as you were passing along there?

A. No change I saw, and if there had been any material change I would certainly have seen it.

Q. Now it has been claimed in this case on behalf of Louisiana that there has been a sinking going on, a gradual subsidence or sinking of these marshes. Did you ever pay any particular attention to know?

A. No sir, not exactly, but I have been walking there over the rsh and I have not seen any change in it at all.

Q. Have you ever noticed from the pilings; the pilings on which camps were erected; the poles and posts driven in the ground, ther or not the marsh soil is going down?

A. No sir.

Q. You have never noticed that?

A. No sir.

Q. Then I understand your general testimony to be that during r 15 years' experience in this section that you have noticed no nges except the widening of the mouth of Three Mile bayou and sibly a small change at Creole gap?

A. Yes sir, but if there is any change at Creole gap you can not e it at all. There has been so little.

Q. I understand you to say that you have been fishing and ghting oysters from this territory. Where to?

A. To Biloxi.

Q. To whom did you carry these oysters. To the canneries?

A. To the canneries yes sir, and to what we call the raw oyster ers too.

Q. Who are the raw oyster dealers?

A. They are the ones that open the oysters and ship them raw the States.

Q. Is that a distinct business from the canneries?

A. Yes sir.

Q. Have you ever investigated this boundary question or have not just gone along without bothering your head about the ndary?

A. Well I have not investigated it no sir.

Q. Now prior to the institution of this suit and just immediately re the suit was instituted was there any question or discussion ng the fishermen so far as you know about where the boundary between Louisiana and Mississippi was?

A. Not as I ever heard any thing of.

Q. They were allowed heretofore to fish in all of the territory out objection so far as you know, and they never bothered their s about the boundary question. Is not that so?

A. No sir, they never bothered us only way down. In Plaquemes parish it has been so for a good while that a man had to get ense there. That is down close to what they call Neptune. It been that way for the last five or six years.

Q. They did not bother you before that?

A. No sir.

Q. You say that you have not at any time taken out any license shing in this territory either in Mississippi or Louisiana?

A. No sir.

1539 Redirect examination.

By Gen. McCLURG:

Q. Counsel for the State of Louisiana asked you Mr. Williams about the deep water channel, passing out of the Rigolets and Pearl river to the eastward, and on out between Cat island and Isle à Pitre. I want to ask you whether you have ever considered; or if you know by history or tradition whether that line, the deep water channel has ever been considered the line dividing Louisiana from Mississippi?

A. Not that I know of no sir.

Q. You never heard of it?

A. No sir.

Q. You also answered that you walked over the marshes. I want to ask you if you encountered any musk rats in walking over the marshes?

A. I never saw one in my life that I remember of.

Q. Could you say whether or not they have made any depredations in this marsh?

A. I never saw any signs of that.

Recross-examination.

By Col. ZACHARIE:

Q. On that last question. Did you find places that had been burrowed in and that were soft and would give away under your feet?

A. Well I have found small islands in the marsh to the southward. I know one place, but what caused that I don't know. I know that I was walking in the marsh. That is down close to American bay. I suppose that is what you speak of.

Q. Your feet would give away and sink into these holes?

A. The holes were already there.

Q. Was there any thing about these holes to show burrowing?

A. No sir.

J. S. WENTZELL, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. McCLURG:

Q. How old are you?

A. 47 years old.

Q. Where do you live?

A. In Biloxi.

Q. How long have you lived in Biloxi?

A. I was born and raised here in Biloxi.

Q. What is your occupation now?

A. Fishing, and oystering and terrapin hunting.
Q. How long have you been so engaged?
A. Ever since I was big enough to go out.
Q. About what age were you when you began?
A. I began fishing and oystering around Biloxi here, and then
ien I started out for the marshes I guess that I was 25 or 27 years
old at that time.
40 Q. You have not visited the marsh since when?
A. It has been about twenty years since I was in the marsh.
Q. You have been there for about that time constantly?
A. Yes sir.
Q. About how many times a year did you go there?
A. When I would go out there I would generally stay there 20 or
days at a time.
Q. How often did you go?
A. I am very near all of the time in there except these hot sum-
er months, and then up to a couple of years ago I was terrapin
nting in the summer time too.
Q. Do you know where Isle à Pitre is?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Creole gap?
A. Yes sir.
Q. Johnson bayou?
A. Yes sir.
Q. Turkey bayou?
A. Yes sir.
Q. Three Mile bayou?
A. Yes sir.
Q. Nine Mile bayou?
A. Yes sir.
Q. Petit pass?
A. Yes sir, I have been in there a couple of times.
Q. You are familiar with the lands in there?
A. Not Petit pass. I have gone down to Isle à Pitre and that
ie as far as Three Mile bayou.
Q. Did you ever go south through Three Mile bayou in a boat of
y kind?
A. Yes sir, I have been down as far as Taylor's pass.
Q. How far is Taylor's pass south of the entrance to Three Mile
you from the north?
A. I could not tell you. Taylor's pass is way off by Neptune.
aylor's pass is abreast the salt works down the Mississippi river.
Q. You have gone by boat through Three Mile bayou down
rough the marsh and Taylor's pass?
A. Down through the marsh into Broad bay and through Nigger
ke. Some times we would go through the marsh and some times
the outside.

Q. Through Three Mile bayou?
A. Yes sir, through Three Mile bayou.
Q. When did you first do that?
A. About twenty years ago. First I was oystering and then I was terrapin hunting. When I went oystering I went through there, but when I went terrapin hunting I never went through there at all. I kept on down to the southward.
Q. What kind of a boat were you in?
A. A small boat and then a large boat.
Q. How much draft?
A. About 22 inches light.
Q. Were you ever in Treasure bay?
A. No sir.
Q. Indian Mound bay?
A. Yes sir.
Q. Do you know where Mud Island is?
A. Yes sir.
1541 Q. Karako?
A. Yes sir.
Q. The Raccoons?
A. Yes sir.
Q. You know where these islands are?
A. Yes sir.
Q. Bayou Greecue?
A. No sir, I never was in Bayou Greecue.
Q. Were you ever in Grand pass?
A. Yes sir.
Q. You have been in the neighborhood of Sundown island?
A. Yes sir.
Q. Brush island?
A. Yes sir.
Q. And about Door point?
A. Yes sir.
Q. Down as far as Martin island?
A. Yes sir.
Q. Now when you were in these places about which I have just asked you state if you know whether you were in Louisiana or Mississippi?
A. Before this dispute arose I always thought that it was in Mississippi, when I was in Grand pass and around those places, but here lately I have had to pay taxes in Louisiana.
Q. Within what time have you been paying taxes to Louisiana?
A. For the last couple of years.
Q. Before that time did you ever pay any. You mean a tax license?
A. No sir, I never paid them no tax license before two years ago. There were taxes paid in Plaquemines parish but not in St. Bernard. They never charged no taxes there.
Q. Did you ever pay a license to the State of Mississippi?

A. Yes sir.
Q. When did you pay the first one?
A. I don't know that they used it *for* five or six years ago.
Q. You paid one five or six years ago.
A. Yes sir.
Q. To Mr. Hewes?
A. No sir, it was a man by the name of Young here was an oyster lector. He collected the taxes.
Q. You paid the taxes five or six years ago to him?
A. Yes sir.
Q. Do you remember about how much you paid him?
A. It was fifty cents I think a ton for the boats.
Q. Where did you take oysters and fish under this license?
A. We fished in Grand pass and all of those places.
Q. All of these passes that I have asked you about?
A. Yes sir.
Q. You went through this marsh under this license did you?
A. I fished in Grand pass and Creole gap and on Cabbage reefs d all of these places.
Q. Did you go into Three Mile bayou?
A. No sir. Yes sir, I believe I did go into Three Mile bayou. I not sure.
Q. Have you noticed any change in the conformation of these ters and islands down there in Grand marsh since you have been ing in it?
A. No, sir, very little. There is a change in Three Mile bayou.
Q. What places have you noticed any change in Captain?
A. In Three Mile bayou it is washed there a little.
42 Q. Any other place?
A. Not that I know of.
Q. Have you noticed any subsidence, rising or sinking of this nd?
A. No sir.
Q. Or waters?
A. No sir.
Q. Have you ever been out on these islands?
A. Yes sir.
Q. How long ago?
A. Well we go every summer except this last summer. Go out ere terrapin hunting in the summer time and go by this country.
Q. Have you ever encountered any musk rats out there?
A. No sir.

Cross-examination.

By Col. ZACHARIE:

Q. I understood you to say that you had been engaged in the ster fishing and trade ever since you were able to work?
A. Yes sir, oyster fishing.

Q. And you are 47 years of age. When did you first visit these marshes that we have been talking about?

A. About 20 years ago I suppose.

Q. About 20 years ago. What were these marshes known by. By what name generally amongst the fishermen?

A. Grand marsh.

Q. Were not they also known to a very large extent under the name of the Louisiana marshes?

A. Yes sir, but at that time I was working for a Pascagoula firm and whenever they wrote letters they styled it Grand marsh.

Q. I am asking you amongst the fishermen were not they generally known as the Louisiana marshes?

A. Yes sir.

Q. Prior to that time you fished around Biloxi did not you?

A. I used to catch oysters for a man in Ocean Springs. Catchard I believe was his name.

Q. You fished in Back bay?

A. No sir.

Q. Where did you fish around Biloxi?

A. All around Biloxi. I used to go to school and on Saturdays I would go with my uncle.

Q. Were you and other fishermen at that time fishing generally all through the summer to supply fresh oysters?

A. No sir, I never.

Q. Did not the fishermen generally?

A. Yes sir, they used to catch oysters in the Back bay for the shops some times.

Q. Were not all of the boarding houses and oysters shops around Biloxi and Ocean Springs and these other coast places furnished with these oysters all during the summer. In the spawning season?

A. I don't know sir, I could not say.

Q. You could not say?

A. No sir.

Q. Do you know what was the habit of fishermen in those days in fishing oysters in regard to culling?

1543 A. They culled the oysters then a great deal better than they do now.

Q. Where. At what particular place did they cull them. Did they not cull them as they were sailing along, or wait until they got to the land and then cull them?

A. They generally culled as they sailed along unless they had too many. If they were over loaded they would wait to cull some of them.

Q. You say that you fished down as far as back of Neptune and the salt works?

A. No sir, I have been down there but I never fished down there.

Q. Did you freight oysters there?

A. No sir.

Q. You stated that the boat in which you generally went drew about 22 inches?
A. Yes sir, 20 to 22 inches.
Q. She was a skiff. Flat bottomed boat?
A. No sir, round bottomed.
Q. With a center board?
A. Yes sir.
Q. In going through this marsh. These different sheets of water in the marsh. Did you at any time find any trouble with your boat. Say in low tide?
A. Yes sir, in low tide.
Q. You run upon flats?
A. Not much trouble when I was light. It was when I was loaded.
Q. How much did you draw when you were loaded?
A. About three & one half feet.
Q. Your trouble was that you were running upon mud flats?
A. Yes sir.
Q. And you had to heave your boat off did you not with a windlass & cables?
A. Yes sir.
Q. That is the way you forced her through the mud. Now did not you have trouble also when you were light in a very low tide. In striking mud flats?
A. Yes sir.
—. ——.
A. Yes sir, in one place there. In Catfish pass they call it. Going through there we have had to wait for the tide to rise.
Q. You have testified in your examination in chief that you have not seen much change if any since you have been fishing in this marsh?
A. Except very little.
Q. Well now how about Creole gap?
A. I very seldom go through Creole gap.
Q. You don't know much about it?
A. No sir.
Q. Is it or is it not a fact that the shore line of this coast has washed away a good deal in storms and so on?
A. Well I don't know sir. I have not noticed much about that.
Q. Why did you take out a license in Louisiana?
A. Because I was compelled to take out a license in Louisiana. I fished oysters way down to the southward, and the patrol boat told me that I would have to take out a license there.
Q. They did not tell you that you had to take out a license for fishing in these marshes or in the neighborhood of these marshes?
A. No sir, I went out terrapin hunting out there and they told me that if I come oystering that I would have to have a license, so when I went oystering I took out a license.

1544 Q. You simply took out a license in Louisiana because you proposed to fish in Louisiana below this territory?

A. Yes sir.

Q. Do you know what is called the deep water channel between the coast of these marshes, the northern coast and the main line of Mississippi to the north?

A. No sir, I never bothered around these places at all.

Q. I suppose the reason for that was that your boat was of such light draft that you never made use of them?

A. No sir, when I left here I went right to the marshes. I never oystered any steam oysters.

Q. Do you know the islands St. Joseph and Round island and Grassy island?

A. No sir, I know nothing about them at all. I passed there a couple of times year before last.

Q. Are you still engaged in the fishing of oysters?

A. Yes sir.

Q. To whom did you deliver these oysters?

A. I sold my oysters to the steamboat out there running to New Orleans.

Q. Have you or have you not at times supplied the canneries here in Mississippi?

A. No sir.

Q. When did you first commence fishing oysters around Biloxi and in this neighborhood? At that time were there many Mississippians engaged in going to this Grand marsh or Louisiana marsh?

A. Yes sir, they used to go there for the raw oysters.

Q. A great many of them?

A. Pretty nearly all of them.

Q. Now is it or is it not a fact that the great body of Mississippi fishermen along this coast commenced going to these marshes after these canneries were established here along this coast and then there began a great demand for oysters?

A. Before the canneries were here all of the raw trade was here. The boats used to get the raw oysters. The raw oysters are bigger oysters than the cannery oysters.

Q. I want to get at the relative trade at these marshes. Is it or is it not a fact that a large proportion of these who are fishing just now down about the Louisiana marshes; that that has all grown up since the establishment of the canneries along this coast and the great demand for oysters?

A. Yes sir.

Q. There were a few that went there for raw oysters. You said something just now about going there for raw oysters. Did you say that they were better oysters?

A. Yes sir, the oysters in the marshes were better.

Q. Well now did not the oysters in this neighborhood and the oysters to the eastward from here enjoy equally if not a better reputation in the market than the oysters that come from the marshes?

A. I don't know sir.
Q. For instance the Back Bay oysters and the Pascagoula oysters, nd the oysters coming from towards Mobile. Don't they enjoy a ery high reputation and command a very high price in the narket?
A. Yes sir, the Back Bay oysters are usually considered the est oysters.
Q. Well what is the reason then that these people instead of going to the Back bay and other places in the neighborhood of Biloxi for the purpose of getting their oysters. Why is it 1545 that they would go way off to the marshes to get their oysters?
A. Because there were not enough in the Back bay to get.
Q. Now were not there other oyster reefs off to the eastward?
A. No sir, they were all scarce there. They could not get enough.
Q. Were not there oyster reefs off of Pass Christian?
A. Yes sir.
Q. Were not there small reefs off of Deer island?
A. Off the inside or outside?
Q. Both?
A. There were a few on the inside.
Q. I am now speaking of when you first commenced oyster fishing. Is it not a fact that on account of fishing oysters in your neighboring reefs here all during the summer, all during the spawning time as well as the not culling the oysters on the reefs, created a great falling off in the oyster reefs in this neighborhood and helped to destroy your oyster reefs here?
A. Yes sir.
Q. Do you know when the State of Mississippi or your board of supervisors here first commenced to enforce any regulations about fishing oysters during the summer?
A. No sir.
Q. Or about the culling?
A. No sir, they made the laws but they never enforced them.
Q. They made the laws but they never enforced them?
A. No sir.

J. M. RITCH, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. How old are you Mr. Ritch?
A. 53.
Q. How long have you lived in Biloxi?
A. I might say all of my life.
Q. What is your present occupation?
A. Well at present time I am doing nothing at all.
Q. What has been your occupation since you lived in Biloxi?

A. Carpentering and oystering.
Q. When did you begin oystering?
A. 32 years ago.
Q. Where did you oyster then?
A. Down in Alabama near Cedar point.
Q. Did you ever do any oystering between Biloxi and Pearl river?
A. Well not near the main land.
Q. At what place?
A. Cat island and around the immediate neighborhood of Cat island.
Q. Did you ever go south of Cat island?
A. Yes sir, to the southward and the westward of Cat island, mostly to Grand pass and Bayou Pierre and Creole gap and out in the neighborhood of southwest of Martin island.
Q. What state were you in then. The State of Louisiana or Mississippi?
A. I don't know sir.
Q. Have you any information at all as to the limits of the State of Mississippi?
A. Nothing more than hearsay.
Q. What is that?
A. Well I have heard that it was six leagues.
1546 Q. From what?
A. From the State line. Pearl river, that is what I have heard.
Q. You don't know of your own personal knowledge?
A. No sir.
Q. How long have you been hearing that?
A. I would judge anywhere from 12 to 20 years.
Q. When were you first about Isle à Pitre and Grand pass and Martin island?
A. About 1871 or 1872.
Q. When were you last there?
A. I was there about 1896 or 1897.
Q. Did you notice or not any material changes anywhere in that section that you frequented and were familiar with between the first time you were there and the last time? If so what was it?
A. Yes sir, I have noticed some. Principally at Creole gap.
Q. What other changes?
A. Well none to amount to anything except at Creole gap.
Q. What was the change in Creole gap?
A. A deepening of the water.
Q. Was there any change in the widening?
A. Very little. I think there was some but I won't be positive.
Q. Were you ever as far west as Three Mile bayou?
A. Yes sir.
Q. Did you ever go through Three Mile bayou to the southward?
A. I have been to the west from the southward coming out this way from the north.

Q. What sort of a boat were you in?
A. A small boat. About 38 feet I guess.
Q. How much draft?
A. About four and a half feet.
Q. You say that you have gone in and out of Three Mile bayou?
A. We have gone through. Going through to the southward when we were light.
Q. How far down did you go?
A. Well I really don't know the distance. It is down what they call Chimney bayou. I don't know the name of it really from the map. We did not use any maps at all. We used a sounding pole as a rule.
Q. Do you remember anything about Raccoon island and Karako bay?
A. I never have been ashore on Raccoon island.
Q. You know where they are?
A. Yes sir.
Q. Did you pass them when you went down there through Three Mile bayou?
A. Yes sir, we left them to the southward of us as we come through Three Mile and Nine Mile bayou. In fact it has the same mouth at the south side. You go to Nine Mile bayou and turn to the northwest and come down Three Mile.
Q. How is that?
A. It was the same mouth. We would go to Nine Mile bayou and turn to the north east if we were coming to Biloxi, and if we were going to New Orleans we would keep to the northward and go through Nine Mile bayou.
Q. Do you know where Door point and Brush island are?
A. Yes sir.
Q. Did you ever make a trip from these points through Three Mile bayou?
A. Yes sir.
Q. In your four and a half foot boat?
1547 A. No sir, not in that one.
Q. What draft?
A. About three feet.
Q. You say that you have been to Nine Mile bayou the same way?
A. Yes sir, that is the same entrance at the south entrance.
Q. Coming to Biloxi you would come out of Three Mile?
A. Through Three Mile because it was closer.
Q. And to New Orleans you would go out of Nine Mile?
A. Yes sir.
Q. What would you be loaded with?
A. Oysters.
Q. Where did you get those oysters?
A. Well at different places. Some come from Karako bay, and we have gotten them from what we call Jack Williams bay.

Q. Could you make a trip from Jack Williams bay around through Nine Mile bayou?

A. No sir, from Jack Williams you would go through Grand pass, and from the other side you would go through Nine Mile bayou.

Q. Did you ever fish oysters in Drum bay?

A. Very few. Not a great many. I never fished a great deal on the inside of the marsh. That is not any distance in. We fished about Karako bay mostly.

Q. Were you ever on any of these islands?

A. Yes sir, I have been on some of them.

Q. What islands were you ever on in there?

A. I have been on Brush island.

Q. Were you ever on any of the other islands?

A. Yes sir, different places through the marsh but I don't know the names of them.

Q. When were you first on these islands?

A. Well I could not say. We were on these islands when I first began to run down there to the marsh. When I first went down there I went from Mobile, but in bad weather we fished on what is known as the Shell Banks reefs, and bad weather we would go into the Grand pass, and then we were liable to go ashore there after coons. Different parties would ask us to catch them a coon and carry them to them.

Q. Where did you catch the coons?

A. All through the marsh land. There were plenty of them when I first went down there. There was no trouble to catch a coon after you got there. You would find a dozen of them there at a time.

Q. Where were the coons most plentiful. To the east or the west of Grand pass?

A. They were the most plentiful to the west. You could find one almost any where there.

Q. Do you know where Isle à Pitre is?

A. No sir.

Q. Do you know any thing about where it got its name?

A. No sir.

Q. Some of the witnesses have testified in this case that its name came from Isle à Pied. Isle of the tracks. That Cat island got its name from the French when they first came there and they saw a great many coons and they thought they were cats. In looking for coons on these islands have you ever encountered any musk rats?

A. No sir.

Q. Have you ever noticed since the first time you went in there any difference in the height of these islands. Has there been any subsidence, or sinking or rising?

1548 A. No sir, I have never noticed any difference in the height of them. There have been some small hills that would be probably as long as from here to the wall that have disappeared, washed outside, but outside of that I have not seen any disappear, the grass on it has been burned a great many times, and a great

many people would say that it is lower because the grass is burned, and the top of it on that account would look lower. We used to go hunting there shooting ducks and geese and things of that kind and were often ashore.

Q. Do these islands get under in high tides?

A. At high tide I have seen the water over the ground there but not over the grass.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Ritch, when did you first commence fishing oysters?

A. Well I could not say exactly. Along about 1870.

Q. I believe you stated that you first commenced fishing oysters here to the eastward. Alabama?

A. Yes, sir, down in Alabama, in what is called Cedar point.

Q. Were not there in those days a good many oysters around Biloxi here?

A. Yes sir, I always in going down there fished a few here for our own use, but not to sell. I might have sold a few of them but not to amount to anything.

Q. That is before the canneries were established here?

A. Yes sir. Before any canneries were established anywhere in this neighborhood that I know anything about.

Q. Did not the fishermen of those days fish oysters around here and to the eastward all through the summer to supply the hotels and the boarding houses?

A. No sir the principal part of the oysters that supplied the people here during the summer and the hotels came from around the immediate neighborhood of Cat island. What are known as the Shell banks.

Q. Well in those days there were a few oystermen that went as far as that for them did they?

A. There were not as many oysters taken then as now. There were some parties came here from New Orleans and made it a business after the season closed to come here and run during the summer.

Q. How about here in these fisheries. Back bay and Cedar point and other points. They did not stop fishing oysters during the spawning season. They fished them during the summer did not they?

A. No sir, nothing but for the local trade.

Q. I am asking you about the season. They fished them during the summer?

A. During the summer for the local trade. There was scarcely no local trade then. As a consequence we would fish in a little skiff, 15 or 18 feet long and carry them to a party in Mobile who would sell them to the local dealers there.

Q. Well now as a rule when these fishermen gathered these oysters and they got a fair wind when they got a load, would not they cull

the oysters while they were under sail and when they got on the land?

1549 A. I don't know any thing about when they got on the land. There were a good many that carried oysters here but I did not see them. Some of them from over there I think went clear into the basin before they culled them.

Q. There was no law then in the State of Mississippi, nor was there any regulation of the board of supervisors in regard to the culling on the reefs?

A. I think not. If there was I knew nothing about it.

Q. If there was it was not enforced was it?

A. Not strictly. Certainly not.

Q. Now were not these marsh lands of which you have testified in your examination in chief almost universally called the Louisiana marshes?

A. Well I would not know how to answer you on that. I have heard them called both by different parties.

Q. Now is it not a fact that the most of the fishermen of the Creole and French descent call them the Grand marshes, or Great marsh, and the American fishermen call them the Louisiana marshes?

A. No sir, as a general thing they were called the Louisiana marshes by the Spanish and Italians running to New Orleans, but as a rule here up until I suppose eight or ten years ago they were called the Grand marshes. I know when I first commenced I never heard it called Louisiana marsh until after this talk come from New Orleans about the time this Dunbar started a factory down about the French market.

Q. You don't know when it was that Dunbar started his factory near the French market?

A. No sir, I do not. I know that he had it there for two or three years and moved it to Bayou bridge.

Q. Was it not more than twenty years ago?

A. Yes sir, I think it was. I think it was more. Yes sir, I think it was. I think it was more than twenty years ago.

Q. Now Mr. Ritch, is it not a fact that the Mississippi fishermen along this coast only commenced going to these marshes after oysters, that is a large number of them, after the oyster fisheries and reefs of this neighborhood had begun to play out, and the canneries were established thereby causing a great demand?

A. Well I commenced long before there were any factories anywhere.

Q. But now I am asking you about the generality of the fishermen, and a large number of vessels that have been in the habit recently of going there. Is it not a fact that a large number of fishermen along this coast went to these marshes only after these reefs in this neighborhood began to play out, and there became a great demand from these canneries?

A. No sir, I think not. I think after the factory originated they

began to go to the marshes directly. They did not bother with the reefs around here as the oysters were never as valuable.

Q. That is because the canneries created such a demand that these neighboring reefs were not able to supply them?

A. To a certain extent that was not the cause. They would not get the oysters as fast as they could get them out of the Grand marsh, and the consequence is that they went there because they got them faster.

Q. They could not get them in the quantities?

A. They did not require near the time.

1550 Q. Nor the quantity.

A. It was not necessary about the quantity, because you go back on the north side of Cat island and there were plenty of oysters there.

Q. Now you have testified about going through this marsh with a vessel drawing four and a half feet of water. What would have to be the condition of the tide for you to get through with a vessel of that draft?

A. It would depend upon where we wanted to go.

Q. Well I am now speaking of the route that you have spoken of?

A. If you were at Karako and wanted to go to Chimney bayou, and you would want to go through Three Mile bayou you would have to wait for the high tide.

Q. How much water is there as a general thing in low water?

A. I could not really answer. I would judge about three or three and a half feet. Through these marshes there are mud flats and that is where this shoal water is. Almost all of the marshes have mud flats.

Q. Would not you stick on these mud flats if you attempted to go through there in low water?

A. Yes sir, as a rule. Even in high water. That is because we don't keep in the channel. You get out of the channel if you don't keep a sounding pole.

Q. If you grounded you would have to heave your vessel off with a windlass?

A. As a rule we could do it better with the anchor. Pulling the anchor back.

Q. You would have to drag through the mud would not you?

A. Yes sir, that is on the shoal places in the bays. If you hit the tides of course there is water enough there to float a dozen vessels.

Q. You never heard anything about this 18 mile limit of Mississippi until very recently?

A. Oh I heard that before I quit oystering.

Q. When did you quit oystering?

A. It was about eight years ago. I suppose maybe it was 12 or 15 years since that first originated here. I heard so much talk of it that I do not know when I first heard it.

Q. You never examined the acts of Congress admitting these States did you?

A. No sir.

Q. And all that you have heard is rumor and talk?

A. Just the talk among the people.

Q. Do you know where the deep water channel lies to the north of the coast line of these marshes?

A. That is about where it went along there. Our boats were small and did not draw much water. We did not look for the channel directly. We went anywhere as long as we kept off of the keys.

Q. Now the vessels drawing more water than your vessel took this deep water channel did not they?

A. If they were this side of Cat island they did yes sir.

Q. How close to the Mississippi line did this channel approach the main land. Did it approach the mouth of East Pearl river do you know?

A. No sir, down there by Heron Bay point it is close. I don't think that it is over a half a mile or possibly not that far. It comes in off Pass Christian I would judge anywhere about ten or twelve miles.

Q. Do you know the islands that lie between the north coast of this marsh and the Mississippi land. Mississippi main land?

1551 A. Which do you mean.

Q. The islands. St. Joseph and Grand isle?

A. I never have been there nothing more than passed by them. I fished no oysters in that neighborhood at all.

Q. Do you know whether Half Moon island and Grassy island and Round island and St. Joseph lie south of this deep water channel?

A. Well I know that they lie south of it, but the distance I could not state.

Q. During the time that you have been engaged in travelling these waters have you noticed any change in these islands

A. No sir, I never have noticed any, but as I stated to you I have not been ashore there.

Q. I mean from observation?

A. No sir, I would not have noticed it if there had been.

Q. Is it not a fact that St. Joseph has disappeared and Round island has disappeared?

A. If it has it has since I quit boating.

Q. Now about the appearance to the entrance to these marshes. What change if any has taken place in the mouth of Three Mile bayou. Has not it widened very much?

A. I don't think that it has. Not while I was running there. They tell me that it is wider now than it was before the 1893 gale, but I have not been running down there to see.

Q. How is it in regard to the Jones or Johnson bayou?

A. I never went through Johnson bayou.

Q. How is it in regard to Nine Mile bayou?

A. Nine Mile bayou is the place where we go through in going to w Orleans. I have never seen any difference while I was run- g there.

Q. How is it in regard to Grand pass.

A. Grand pass has not widened any I don't think. If it has it ery little.

Q. Now how is it in regard to Creole gap?

A. The north mouth of Creole gap has widened a little since I t commenced running down there. Up to the time I quit.

Q. Did you state in your testimony in chief that you considered e marsh territory as being in Mississippi?

A. No sir, I did not. I told you that I did not know where it s.

Q. You did not know where it was. How far south did you fish?

A. As far as Martin island.

Q. Have you ever been in American bay?

A. No sir, not as far as American bay. I have been further down re but I don't know the names of the bayous.

Q. Have you ever been in California bay?

A. I never have been in California bay.

Q. Were you freighting oysters there?

A. I never freighted any at all.

Q. Have you ever been down in Quarantine bay?

A. No sir, if I did it was only on a cruise. I did not know the ne of it. Four or five or a half a dozen times I have been ing around looking.

Q. Now about the entrance to these different bays. I understood u to say that the mouth had been a good deal changed?

A. Creole gap at the north mouth. Not the south mouth.

Q. How about Three Mile bayou and Nine Mile bayou?

A. We never bothered about them at all. Unless you got on a bar there was plenty of water. Unless you got on a mud flat.

52 Q. Do you know whether the coast line there has been partially washed away?

A. No sir, nothing more possibly than some little point. A point y wash away and then it accumulates right near it. You could ice these little things by the points being there that is all. Where er there is a wash the sea is liable to cut off the point that way. ere it is very narrow.

Q. What was the year about when you first commenced fishing the marsh?

A. About 1870 or possibly 1871.

Q. Do you know what time these canneries were established here ng the coast?

A. I don't know what year.

Q. About. I did not ask you to be certain?

A. I judge that it was about 1886 or 1887 or some where in there. on't know the year though. I am not no ways certain about the ar. I did not pay much attention to it.

Redirect examination.

By Gen. McCLURG:

Q. You have been asked about this deep water channel Captain. Tell us whether you have any personal knowledge or information of any kind of that channel ever being the line dividing the State of Louisiana from the State of Mississippi?

A. Well I have heard that here recently. I suppose in the last eight or ten years, six or five years maybe. I would not say how long. I could say that it was since the time I quit running or about the time I quit running.

Q. That is not since this suit started is it?

A. It is since the controversy started. I won't say the suit. But since there has been so much talk about it. It has been since then.

Q. And before that time what did you know of it?

A. I suppose that it is 14 or 15 years ago that Alabama passed an oyster law prohibiting other boats from coming in there, and about that time there was talk about stopping the Alabama boats from coming here fishing, and then I heard that they claimed that they had 18 miles running due south.

Q. Was it then that you first heard that the Mississippi line run 18 miles from the shore south?

A. As I remember it.

Q. These places that we have been talking about, the Grand marsh, are within that 18 mile limit?

A. Well I have heard that they were. That is as far down as Brush island.

Q. You know how far the 18 miles is and you think it extends down about Brush island?

A. Yes sir, some where in that neighborhood.

1553 PETER ANGLADA, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. How old are you sir?

A. 40 years old.

Q. Where do you live?

A. Biloxi.

Q. How long have you lived here?

A. All of my life.

Q. What is your business?

A. Boating.

Q. What sort of a boat?

A. Well I first run lumber to New Orleans and then I was in the oyster business after that.

Q. How long have you done boating between New Orleans and Biloxi?

A. Do you mean in the oyster business?
Q. In any business?
A. Since I was a boy ten years old.
Q. You know the water pretty well between New Orleans and loxi?
A. Yes sir.
Q. When did you first go in the oyster business?
A. About 13 years ago.
Q. Are you still in that business?
A. Yes sir.
Q. Where have you been taking oysters in the last 13 years?
A. We have been taking them in the Grand banks, and then we ve been taking them in the Grand marsh out here.
A. Through Three Mile bayou and southward as far as American y in places.
Q. How did you go?
A. Down through the marsh.
Q. In what sort of a boat were you?
A. In a boat drawing four feet of water loaded.
Q. Down through Three Mile bayou in a loaded boat?
A. Going through there you would have to take the tide, and I ould load it to about three and a half feet.
Q. That is in what part of the Grand marsh that you fished sters?
A. Well I fished in Indian Mound and Drum bay and Creole gap nd Grand pass and all of them.
Q. What State were you in when you were fishing there. Louisi-na or Mississippi?
A. Well as far out as the west part of Drum bay I thought that I as in Mississippi all of the time.
Q. Why did you think you were in Mississippi?
A. My old father told me that the dividing line was Pearl river nd that it run 18 miles south, so I always thought that.
Q. Is your father living?
A. No sir.
Q. When did he die?
A. 12 years ago.
Q. How old was he when he died?
A. 63.
Q. How long did he live here?
A. He had been in this country since he was a boy 15 years old.
Q. So that he had been here nearly fifty years before had he?
554 A. Yes sir.
Q. Did he live here at Biloxi?
A. Yes sir.
Q. State whether or not you have noticed any change of any kind n the width of these bayous since you first went in there?

A. Mighty little from what I can see. There is mighty little change any where.

Q. Have you noticed any changes in the islands. Where there has been any subsidence?

A. No sir, not much at all.

Q. You know where Grand pass is?

A. Yes sir.

Q. Creole gap?

A. Yes sir.

Q. Nine Mile bayou?

A. Yes sir.

Q. Three Mile bayou?

A. Yes sir.

Q. Johnson bayou?

A. Yes sir.

Q. And all of these places?

A. Yes sir.

Q. You have noticed no material changes there?

A. No sir, what ever there is you can not see it at all.

Q. Have you ever been out on these grounds?

A. Yes sir, often.

Q. Did you ever find any musk rats in this country?

A. No sir.

Q. Do these islands at Grand marsh go under at high tide?

A. It has got to be a mighty high tide for them to go under.

Q. What have they called these marshes since you have known them?

A. Well as far as I have known them they have always called them Mississippi.

Q. The Mississippi marshes?

A. Yes sir, Grand marsh generally, but they always claimed that they were in Mississippi when I come there.

Q. Did you ever hear it called the Louisiana marsh?

A. Just since this last law started.

Q. Have you paid any license?

A. The last two years?

Q. Have you paid any license to Louisiana in the last two years?

A. No sir.

Q. To Mississippi?

A. Yes sir.

Q. It is just the last two years that you have been taxed?

A. Yes sir, that is all.

Q. Have many Mississippi boats been going down there to your knowledge?

A. Yes sir, there have been a good many going in there.

Q. Since the building of the canneries the fishermen have increased in numbers?

A. Yes sir, the most of the small boats go in there yes sir.

Q. Do you know of any offenses or crimes being committed down here?

A. No sir.

Q. Were you fishing in there when Kennedy was drowned?

A. No sir.

555 Q. That is before you began?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. When did you first commence fishing in this marsh?

A. 12 or 13 or 14 years ago. I suppose. Something like that.

Q. Well now is it not a fact that at that time a large majority of the fishermen that fished in that territory called it the Louisiana marshes and regarded it as a part of the parish of St. Bernard?

A. I don't know, but as far as I went we used to claim——

Q. I am not speaking about what you used to claim. I am speaking about what this territory was called. Did not you call it the Louisiana marshes?

A. No sir, we always called it the Grand marsh.

Q. You said that you called it the Mississippi marsh did not you?

A. We called it the Mississippi marsh as far as that went. The Mississippi shore.

Q. You say that you learned this from your father about the 18 mile limit?

A. Yes sir.

Q. When did you learn this from your father?

A. When I was a boy running on schooners with him.

Q. How did your father come to speak to you about it?

A. Just like a father will speak to any other child.

Q. How did you come to get on this particular topic?

A. When we would get there he would say "Now we are in Mississippi." We would get to Pearl river and he would say "We are on Mississippi ground again."

Q. Did he say anything to you about it extending 18 miles south?

A. Yes sir.

Q. Well now is it not a fact that there has never been any talk or discussion about the 18 mile limit of Mississippi until recently. Since this controversy arose?

A. No sir, he is the only one that told us about that. I never heard any more since.

Q. He was very particular in telling you that the Mississippi boundary extended 18 miles to the south?

A. That is what he always told us that he heard.

Q. You spoke about taking out a license for fishing?

A. Yes sir.

Q. From whom did you get this license?

A. I got them here in Gulfport.

Q. Did you ever take out any license from the Louisiana authorities?

A. No sir. I never have.

Q. When did you take out a license from the authorities in Mississippi?

A. Last year before this year.

Q. When did you first commence to fish in this marsh?

A. About 12 or 13 years ago.

Q. Have you taken the trouble to pay any attention par-
1556 ticularly to the widening of the mouths of any of these bayous?

A. Well if they are widening it is so little that you can not tell it.

Q. How is it about Creole gap. Has there been any widening there?

A. What widening there is is so little that you can not hardly notice it. It looks like it is about the same thing.

Q. Is it not a fact that you never paid any particular notice. That all that was concerning you was whether or not you could get through there in a boat?

A. You can not help but notice if you are beating up and down there all day long. You are bound to notice.

Q. How about Grand pass. Has it widened any?

A. Yes sir, at the mouth it is widening a little yes sir.

Q. Is it not a fact that it has nearly doubled in width in the last twenty years. Fifteen or twenty years?

A. Well I could not answer you that. I was not running there 15 or 20 years ago.

Q. Is it not a fact that there have been great changes along this coast largely caused by the storm of 1893?

A. Well no sir, not so much.

Q. But there have been some changes?

A. Yes sir, but some were so little that you could hardly notice them.

Q. How about the deepening of the mouths there. Has there been any?

A. No sir, none that I could see.

Q. Did you ever sound to ascertain whether that is true or not?

A. You don't need to sound much. The boat will sound for you.

Q. You always had plenty of water in going through there?

A. Not all of the time. Different places you would get into it.

Q. Going into any of these passes what would the depth of the water generally be. How about Three Mile bayou?

A. Three Mile bayou has plenty of water at the mouth as you go in there.

Q. Was there plenty of water there when you first went there?

A. Yes sir, and there is plenty of water now.

Q. How about Nine Mile bayou?

A. There is plenty of water there too.
Q. I am speaking of at the time that you went in there?
A. There is a right smart of water at the north mouth, but at the south mouth there is not so much.
Q. How about Johnsons bayou?
A. I never have been through there.
Q. How about Turkey bayou?
A. I suppose there was 12 or 14 feet in there.
Q. When you first went in there?
A. Yes sir.
Q. How about Creole gap?
A. When I first went in there there was about three or three and a half feet of water.
Q. What is there now?
A. There is about the same now I suppose.
Q. How about Grand pass?
A. Grand pass has plenty of water at the north mouth but not so much at the south mouth.
Q. Has there been always the same kind of water there since you first knew it?
1557 A. Yes sir.
Q. How about the widening of Creole gap. Has it widened much?
A. No sir, it is about the same thing.
Q. How about the widening of Grand pass?
A. Only at the north mouth it is opened up a little wider.
Q. How much wider do you suppose?
A. It is so little that you could not hardly tell.
Q. How far to the southward have you fished?
A. As far as American bay.
Q. Have you fished at Martin island?
A. No sir, not oysters.
Q. Have you fished in Quarantine bay?
A. No sir.
Q. Well you have regarded American bay as within the 18 mile limit?
A. No sir.
Q. How far do you consider that the 18 mile limit of Mississippi extends?
A. To the west of Drum bay.
Q. I have forgotten, but did you testify that you had passed through these marshes in a boat?
A. Yes sir.
Q. Which way. Going from north to south or from south to north?
A. Either way.
Q. What does your boat draw?
A. Light two and a half feet. Loaded four feet.

Q. Did you experience any difficulty in going through there. Did you run on any mud flats?

A. You can not help but run on the mud flats.

Q. How was the tide when you went through there?

A. You can not go through there at all with a low tide.

Q. Then you have to go through there with a high tide?

A. Yes sir.

Q. Well then in going through with a high tide don't you run from time to time on mud flats?

A. Yes sir, you can not help running on them. You have to run on them.

Q. How do you manage when you get on them?

A. You have to wait for the tide to get you off.

Q. Do not you at times heave her off *a* with a windlass and a rope?

A. No sir, but a good many times we would lighten our boat up.

Q. Well you had to force her through these mud flats did not you?

A. Yes sir.

Q. Do you know where the deep water channel is lying close to the Mississippi coast to the northwards of this territory?

A. What they call the Cat Island channel?

Q. Yes sir?

A. Yes sir, pretty well I suppose.

Q. That is the channel that vessels of deeper draft follow?

A. Yes sir.

Q. How close to the Mississippi main land does this channel run as you approach the mouth of East Pearl river?

A. I suppose at the mouth of East Pearl river that you can go in about a mile from there.

Q. Do you know the islands known as the St. Joseph and Grassy and Half Moon and Round islands?

A. Yes sir.

1558 Q. How does this deep water channel run in regard to these islands. North or south of them?

A. It passes to the north of them all but St. Joseph.

Q. Do you know what changes have taken place in recent years in St. Joseph island?

A. That has been washed down a little.

Q. Has it not disappeared?

A. There was a little lump of marsh there about the size of this building, but it is gone now.

Q. How about Round island?

A. That is washed away and left a lump of shells there?

Q. Can this lump of shells be seen at any time except in low water?

A. In ordinary tide you can see it yes sir.

Q. How about Half Moon island?

A. There is no change at all there that I can see.

Q. None of it has been washed away?
A. No sir, none that I can see.
Q. Did you ever go ashore on these islands to make any observations?
A. Yes sir, I have been ashore often.
Q. Now is it not a fact that since this suit has been instituted that you fishermen have gotten together and agreed on this subject of calling this marsh the Grand marsh and Mississippi marsh?
A. Well no sir, I don't think we have. We always did call it the Grand marsh. Just those Dagoes and Cicilians from New Orleans called it the Louisiana marsh.
Q. Now is it not a fact that ten or twelve years ago if you would come along here and ask these people, who are supplying these canneries, or where did you get these oysters from, they would invariably reply that they got them from the Louisiana marshes?
A. No sir, not I. We always called them the Grand marshes.
Q. Suppose I would tell you that I have asked the question over and over again and had only gotten that reply, would you say that I was mistaken?
A. Yes sir, I believe you would be, because if you were to send me to Louisiana I would go out to the southward.
Q. Are you still engaged in the oyster trade?
A. Yes sir.
Q. To whom do you supply oysters?
A. To the factory and to the raw oyster dealers.
Q. What is the bulk of your trade?
A. The bulk of my trade is raw oysters.
Q. You supply a very large quantity of these canneries and factories don't you?
A. Yes sir, at times.
Q. Well you feel a peculiar interest in having this territory declared to be Mississippi territory don't you?
A. Well no more than what it is.
Q. If it was declared to be Louisiana territory you would be shut out from getting oysters?
A. No sir, not at all.
Q. Why?
A. Because I could get them elsewhere. Where we are getting them now.
1559 Q. Where have you been getting them?
A. All around St. Joseph and other places.
Q. Are there many oysters down around St. Joseph and those islands?
A. I have worked there all of the winter.
Q. Why did you care to go to the marshes?
A. I did not care about it. I could have taken to Louisiana and gone there if I had wanted to.
Q. It is a fact that you have not been fishing in the marshes recently?

A. No sir, not for the last two years.
Q. How did you happen to be summoned here as a witness?
A. I don't know sir. I was at supper last night when they summoned me.
Q. Were you told what you were wanted for. To testify to?
A. No sir, I did not know anything about it at all.
Q. Nobody has been talking to you about this being Grand marsh?
A. No sir.
Q. Then your belief and opinion is that if the fishermen were shut out from fishing in these marshes it would have no effect on the supply for the canneries?
A. No sir, I reckon not.
Q. You could get just as many oysters elsewhere as you are getting from Grand marsh?
A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. You were asked by counsel for Louisiana whether the fishermen and oystermen had not gotten together since this suit and agreed to call that the Grand marsh, and you were also asked whether you had not been groomed in this case?
A. Yes sir.
Q. Do you know of any instance where any of the witnesses on the part of the State of Mississippi has been instructed and told what to testify to?
A. No sir.
Q. You have no knowledge of any thing of that sort?
A. No sir.
Q. If you hear of any thing of that sort I wish you would please let us know?
A. If I was told to I would not be bought in so easy.

CLEMENT COX, a witness on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. How old are you Mr. Cox?
A. 57.
Q. Where do you live?
A. Biloxi.
Q. How long have you live there?
A. I have lived there since 1881.
Q. What is your present occupation?
1560 A. Oystering.
Q. How long have you been in that business?
A. Ever since I have been here. Since 1881.

Q. Where have you been getting your oysters?
A. Out here in Cat island and in different places in the marsh.
Q. What places in the marsh?
A. Well I have fished from American harbour, and I have fished a little to the southward of Kaliko bay.
Q. Are those places south of Drum bay?
A. Yes sir.
Q. Have you fished any in Drum bay?
A. Yes sir.
Q. What is that bay. Kaliko bay?
A. Foggy bay is the English of it. That is the English name.
Q. You have fished in Drum bay?
A. Yes sir.
Q. And the Karakos?
A. Yes sir.
Q. Are you familiar with Grand pass?
A. Yes sir.
Q. And the island called Isle à Pitre?
A. Yes sir.
Q. Do you know about Turkey bayou?
A. Yes sir.
Q. And Johnson bayou?
A. Yes sir.
Q. And Three Mile and Nine Mile bayou?
A. Yes sir. I never fished in these bayous but Turkey bayou, but I know all of these places.
Q. Have you ever gone through them?
A. No sir, I never went through them. I only went to the mouths of them.
Q. When did you first go into the mouths of these bayous?
A. I could not hardly tell, it has been so long, I was cruising along this coast. Not more than 15 or 18 years ago.
Q. When did you last enter along these bayous. Between Nine Mile bayou and Crane Town bayou?
A. I was down there this winter. That is through Three Mile bayou and the Karakoes.
Q. Have you ever noticed any material change in these bayous since you first went there and if so I wish you would please tell us what it is?
A. None in particular. Some of the points are washed a little, but I don't know any difference in the channels.
Q. Have you noticed any material change in that part of the Grand marsh where you have been fishing?
A. No sir.
Q. Have you noticed the sinking of any hills or the lowering of any hills?
A. No sir, unless it was a place cut off from a point and washed away. That is all.

Q. Where is the line as you understand it. The boundary line that divides the States of Louisiana and Mississippi?

A. It is Pearl river I have always heard.

Q. Do you know what the water line of Mississippi is. How far it extends to the southward from Pearl river?

1561 A. 18 miles I believe due south from Pearl river.

Q. How long have you understood that to be the line Captain?

A. About 12 years ago. This talk came up about Louisiana and Mississippi and this controversy, and there was some talk of Louisiana passing a law to cut us off there. I said then that it did not hurt us any.

Q. I believe that the line between Mississippi and Alabama now gets Petit Bois island in it?

A. Yes sir.

Q. It extends 18 miles out from the shore?

A. Yes sir.

Q. From the mouth of the river?

A. It goes down here to the Grand Matua island. East Grand bay is in Alabama and West Grand bay is in Mississippi.

Q. How far is that from the shore. That is between Petit Bois and the shore is it?

A. Yes sir, it is between Petit Bois and the shore. It is a low island, and I guess that it is about seven miles or some where along there.

Q. Can you say whether Isle à Pitre and Grand pass and the mouth of Johnson and Turkey and Three and Nine Mile bayous. Whether they are within the 18 miles of the Mississippi shore?

A. Yes sir.

Q. I believe you stated you know where Karako bay was?

A. Yes sir.

Q. And that is within 18 miles of the Mississippi shore?

A. As near as I could judge they ought to be.

Q. Do you know where Brush island is?

A. Yes sir.

Q. How — is it. How far is it from the Mississippi shore?

A. I don't think that it is over 18 miles.

Q. About how far is Drum bay?

A. It is about the same. It is very near in the line. I don't think that it is much over it.

Q. Do you know where Indian Mound bay is?

A. Yes sir.

Q. What distance is it from there to the mouth of Pearl river?

A. It is very near in the line as near as I can judge.

Cross-examination.

By Col. ZACHARIE:

Q. I think you stated you just came to Biloxi in 1881 to engage in the oyster fishery?

A. Yes sir.

Q. Do you remember what time these canneries were established here?

A. I think in 1881. The first I think at Back bay and then this one of Lopez in 1884.

Q. When you commenced oystering to whom were you delivering your oysters?

A. To Lopez and Elmer and Ducate and Macot.

Q. Those are all canneries here?

A. Yes sir.

Q. You have since that been taking your oysters to these different canneries?

A. Yes sir, first one and then the other.

Q. You are still delivering the oysters to them?

1562 A. Yes sir.

Q. I think you said when you spoke of the mouths of these different bayous and the passes going into this Grand marsh, that you had never gone through them into the interior of the marsh?

A. Yes sir, Three Mile bayou and Nine Mile bayous I went through them. I was through that this winter.

Q. How far did you go?

A. I did not go any further than Karako bay this winter. I worked up to the marsh until Christmas.

Q. You went to Karako through Three Mile bayou?

A. Yes sir.

Q. How far to the southward did you go past Nine Mile bayou?

A. You mean going right on through?

Q. How far did you go?

A. This winter?

Q. At any time?

A. I have been down to Pointe à la Hache.

Q. How far did you fish to the south at any time. The most southward point?

A. To run any length of time Kaliko bay.

Q. Did you ever fish in American bay?

A. No sir.

Q. Did you ever fish in Quarantine bay?

A. No sir.

Q. Did you ever take out a license from either Louisiana or Mississippi to fish?

A. Yes sir.

Q. From what authorities and what State?

A. For the last two years from Louisiana.

Q. From Louisiana?

A. Yes sir, about ten years ago, I guess that it was some where about eight or ten, I am not sure, I had to take out a license from Mississippi.

Q. Why did you take out the license from Louisiana?

A. Why they compelled us to do it.

Q. Because as they claimed you were going to fish in Louisiana waters. Is that the reason?

A. Yes sir, they claimed it, but we were never bothered before that. I worked in the marsh all of the time but I was never bothered up to the last two years.

Q. You never heard the boundary line discusses in any way, did you, prior to the time that this controversy arose?

A. Yes sir, when this Alabama controversy come up.

Q. About what year was this?

A. That was about ten or twelve years ago I think.

Q. Now is it not a fact that this marsh territory that we have been speaking of had been generally known as and called the Louisiana marshes?

A. Some call it one thing and some another.

Q. I am talking of the fishermen generally there?

A. I have heard as many call it Grand marsh as I did any thing else.

Q. There are a considerable number that call it Louisiana marsh?

A. It is the same thing about the boundary. Louisiana claims one thing and Mississippi another. Some claim this is Grand marsh and some claim it is Louisiana marsh.

Q. Is it not a fact that a large number of the Mississippi fishermen have called this territory the Louisiana marshes?

A. Well they might call it that way.

Q. I am not asking you what they might call it. I am asking you the fact. Have not they called it that way?

1563 A. I have heard as many call it Grand marsh.

Q. Just as many called it Louisiana marsh as called it Grand marsh?

A. As near as I can recollect.

Q. You have never consulted the acts admitting the State of Mississippi and the State of Louisiana as to the location of the boundary?

A. No sir.

Q. You have never examined any of the records of the U. S. land office in this territory?

A. No sir.

Q. You have merely heard the talk going about between the fishermen. Is that the extent of your knowledge?

A. Yes sir, that is all.

Q. Now in regard to the changes in this territory. Have you paid any particular attention to any of the changes if there have been any since the great storm in 1893?

A. No sir, maybe some of the points are washed away a little.

Q. Have you ever noticed whether the openings and the mouths and so on of these different bayous have widened?

A. Well if it has it has been a mighty little. I don't see any difference in them.

Q. Now say taking Creole gap. Has there been any change there?

A. That is about the same.

Q. Have you ever noticed any difference in the depth of the water in any of these passes or mouths?

A. Right in the mouths. Of course what they call the gap there has been plenty of water, but as soon as you get over that and get into the bay there is no difference at all.

Q. Now in going from the north to the south side of this territory, in what depth of vessels have you gone through here?

A. Well loaded it is about three and a half feet.

Q. What has been the condition in the tides when you would pass through there. Has it been in high water or low water?

A. Yes sir, you have to have a high tide.

Q. And in going through there even at high tide. Did not you then run upon shallow mud flats?

A. You have to be mighty particular if you do not.

Q. Don't you very often find yourself aground on these mud flats?

A. Yes sir.

Q. And is it not necessary for you to heave your vessel off through the mud and force it through the mud and drag her through the mud?

A. Yes sir.

Q. Have you ever fished in the neighborhood of Martin island?

A. Yes sir, but there are no oysters there now. There used to be some there.

Q. Do you consider that within the 18 mile limit?

A. Yes sir, that ought to take that in.

Q. Do you know where the deep water channel is in the territory between the north side of these marshes and the Mississippi main land?

A. Yes sir.

Q. As you approach the mouth of East Pearl river how close does *does* this deep water channel run to the Mississippi shore?

A. Well in Heron bay there and St. Joseph I don't think that it is over a quarter. Maybe it is a little more. Between a quarter and a half.

Q. Do you know where St. Joseph island is?

A. Yes sir.

Q. Do you know Grassy island?

1564 A. Yes sir.

Q. Half Moon island?

A. Yes sir.

Q. Round island?

A. Yes sir.

Q. What change if any has taken place in regard to St. Joseph island?

A. St. Joseph island has washed.

Q. Washed entirely away?

A. Well at common tide you can see the lump.

Q. How about Round island?

A. It is washed. There is a little shoal keys there: You can see it in an ordinary tide there.

Q. In regard to Half Moon and Grassy island- what change if any has taken place?

A. I cannot see that there is any there.

Q. Have you been ashore on these islands?

A. Yes sir.

Q. Have you paid any attention to any changes?

A. I could not see that there were any changes at all.

Q. Now the shore line along the north shore of these marshes. Is not the shore line washed away in a good many places?

A. Well it may have washed away a little but it is not very much. I cannot see that it has washed away so much.

Q. In regard to this deep water channel. It runs from the mouth of East Pearl river does not it to the eastward, until it passes the Marianne island and then branches off to the south east does not it towards Cat island?

A. Yes sir.

Q. Do you know the Marianne islands?

A. Well there is no island there. It is just a reef.

Q. Were not there islands there when you first commenced?

A. The shoal keys were there. They were out of the water.

Q. What is there now?

A. There is Pelican and Red Fish keys. They are out of the water all of the time unless it is a storm tide.

Q. A storm flood you mean?

A. Yes sir, and it floods all of this around here.

The commission here took a recess until two o'clock.

At two o'clock the commission resumed its hearing of the testimony as follows:—

WILMER MATHIEU, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

Q. How old are you Mr. Mathieu?

A. I am 43.

Q. Where do you live?

A. I live here in Biloxi.

Q. How long have you been living here?

A. I have been living here since 1878.

Q. What has been your occupation since 1878?
A. Oystering principally.
Q. Where have you been engaged in the oyster business?
A. In the Grand marsh and out in the sound.
Q. Are you familiar with the waters between here and Pearl river?
A. Yes sir.
Q. And with the Grand marsh?
A. Yes sir.
Q. Tell us please sir the different places in the Grand marsh
t you are familiar with and have visited?
A. Creole gap and Grand pass and Three Mile bayou, Bayou
ndreaux and Cranetown, and Martin island and American harbor.
you want me to name them clear on down to the Mississippi
er?
Q. No sir?
A. I can name them all down to the river if you want me.
Q. Were you ever in Drum bay?
A. Yes sir.
Q. Well now about how far is it from Drum bay to the Missis-
pi shore on a due north line?
A. Well I could not say exactly, but about 18 or 20 miles to go
a due north line.
Q. Then you were in that part of Grand marsh north of Drum
y, and there about Southwest pass. In what State were you then.
uisiana or Mississippi?
A. I thought that I was in Mississippi.
Q. Why did you think that you were in Mississippi?
A. Well because I considered the line and I have always heard
at the line — 18 miles south.
Q. South of what?
A. Of Pearl river.
Q. You know where Pearl river empties into Lake Borgne do
u?
A. Yes sir.
Q. Have you ever been through Nine Mile bayou?
A. Yes sir.
Q. Three Mile bayou?
A. Yes sir.
Q. Johnsons bayou?
A. Yes sir.
Q. Turkey bayou?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Creole gap?
A. Yes sir.
Q. And down through these waters that you have spoken of
while ago?
A. Yes sir.

Q. What sort of a boat have you been down there in?

A. Well I have been on different kinds. I have been on some drawing as high as five and a half feet loaded and on some two and a half feet loaded.

Q. Were you ever disturbed by Louisianans or any one else while you were in there?

A. No sir.

Q. You brought your oysters out of there to what point?

A. Biloxi. Scranton and Mobile.

Q. How long have you been doing that?

A. 22 or 25 years, except this last year or two that this law come up prohibiting us from going in there.

Q. Have you noticed any material changes in the widths of any of these bayous that I mentioned awhile ago since you have been going in there?

A. Three Mile bayou has cut a little but in the others I don't see any difference.

1566 Q. Tell us whether or not there has been any change in the general configuration of these islands between the time you first saw them and the last time you saw them?

A. Well there is one island on the outside that they call Sundown that is cut into. Some body cut it with a spade I think, in the narrow portion and widened it out. They made two islands instead of one there. There is no other change that I can see except that has been cut out with a spade in order to get into the bay or some thing instead of going around, and then when the current comes through there it will open it wider.

Q. That is the case with Creole gap is not it?

A. They claim that that was cut with a spade.

Q. Have you ever been out of the water on the top of any of these islands there in the last twenty-three years?

A. Yes sir, lots of times.

Q. Mention some of them?

A. I have been on Martin island and Brush island, and Mitchell island and Sam Holmes island, and Mud Grass island and Raccoon island.

Q. Do I understand you to mean that you have been on them at different times in the last 23 years?

A. Yes sir.

Q. Have you ever seen any musk rats on them?

A. Yes sir, plenty of them. I have seen great big rats. I don't know whether they were musk rats or not.

Q. Where did you see them?

A. On the shore. In the drift in the marshes.

Q. In what portions of these islands did you see them?

A. About 15 or 20 feet from the water, where the stuff drifts up there and makes a pile of rubbish there from these overflows. That is where I have seen them.

Q. Where you have seen these rats have you observed any ma-

rial change in the shore line different from any other portions of
e marsh?
A. No sir.
Q. Now you state that you had been in there with boats that would
raw about five feet of water loaded?
A. Yes sir, five and a half feet.
Q. Tell me what places you could travel in the marsh in a boat
rawing five feet of water?
A. Well we ran out of Moran harbor. There is a channel that
omes up there with not over nine or ten feet of water in it, and I
ould go up there and load and come out again.
Q. How about Grand pass?
A. Yes sir, you can go in there drawing any amount of water.
Q. How about Nine Mile bayou?
A. There is plenty of water in there.
Q. That is about the deepest one of these bayous is it?
A. Yes sir, Three Mile is about the deepest.
Q. 23 years ago could you go from Brush island and Door point
p into the Grand Marsh and come out of Three Mile bayou?
A. Yes sir.
Q. In your boat?
A. Yes sir certainly.
Q. Could you go up there and come out of Nine Mile bayou?
A. Yes sir, any of these points.
Q. Was there much traveling through this route by boatmen?
A. Yes sir.
Q. How much draft could you take up through this route?
567 A. Well if you were drawing four feet of water you had to be governed by the tide. If it was in low tide you had to stop n some places or you would go aground, and when the tide rose ou could go on across the mud flats. You could draw four or four nd a half feet.
Q. So that at certain times of the tide you could make these trips hrough there?
A. Yes sir.
Q. Were you ever down in Treasure bay. Bayou Tresor?
A. Yes sir.
Q. You say that that is within 18 miles of the Mississippi?
A. Yes sir, it is inside of Mississippi.
Q. You have seen St. Joseph and Brush islands there near Pearl river?
A. Yes sir.
Q. Some of them have been washed have not they?
A. Yes sir, some of them.
Q. Have you ever been required to take out a license there from Mississippi or Louisiana to fish in there?
A. I never did take out any no sir.

Cross-examination.

By Col. ZACHARIE:

Q. You said that you had been in the oyster business for about 23 years?

A. Yes sir.

Q. Is it not a fact that these marshes of which you have spoken are generally known as the Louisiana marshes?

A. No sir, Grand marsh is what we always called it.

Q. You did, but I am asking you as a general thing among the fishermen. Have not they been known as the Louisiana marshes, and have you not heard them called that often?

A. I have heard them called the Louisiana marshes.

Q. Since when have you known them to be called the Grand marshes?

A. Ever since I have been going out there we called them the Grand marshes.

Q. You say that you have always heard of the Mississippi line or limit as extending 18 miles south. When did you hear that?

A. Time and again I have heard that it ran out there. We would inquire of different people that I thought knew more than I did myself, as to how far the line of Mississippi run and they would say it run 18 miles south and then turned up east.

Q. What was your reason for inquiring that?

A. I did not have any particular reason. I just wanted to see where it was out of curiosity.

Q. You have never examined the acts of Congress have you in regard to the boundaries of the two States?

A. No sir.

Q. Then you know nothing about this boundary question except what you have heard by rumor and general talk?

A. That is all.

Q. Now is it not a matter of fact that that question has only been discussed for the last few years by the fishermen?

A. About the boundary line.

Q. Yes?

1568 A. Yes sir, it has been discussed among them about the boundary line, but they would always talk it among one another that the line of Mississippi run 18 miles south, and they would consider how far out they were and whether they were in Louisiana or Mississippi.

Q. Have you ever noticed what changes have been produced in this shore line and the mouths of these different bayous since the storm of 1893?

A. Three Mile bayou has been considerably. The mouth of Three Mile bayou.

Q. How is it with Creole gap? Has that not been enlarged to a considerable extent?

A. I have not seen any change.

Q. How is it with Grand pass?
A. I don't think Grand pass is either.
Q. You have spoken of a channel having been cut through Sun Down island with a spade. How long is that channel?
A. It is not a channel. It was cut through the island.
Q. Whatever you may call it. How far is it through there?
A. Well it is about, I suppose that it is 75 yards now.
Q. How long is it from side to side?
A. Well it is this way, just like two doors on each side and a little hole in the middle.
Q. It is through a neck there is it?
A. Yes sir.
Q. From one side of the island to the other how long is this neck?
A. It is 75 yards I think now.
Q. How do you know that it was cut with a spade?
A. I never saw the people cut it. I was told that it was cut with a spade. I have been around the island.
Q. Could that not have been cut with a big storm?
A. No sir, it was not cut in the big storm because I was out there afterwards. We go constantly around this island and I am very familiar with it. If there had been any change in it we would have noticed it right away.
Q. You spoke of the musk rats. You have seen a great many muskrats in that country?
A. I have seen rats, I don't know what kind they are.
Q. Do they not burrow in the ground?
A. They go under this drift.
Q. Don't they have entrances there so that they fish under water and go underground?
A. I don't know that.
Q. You have been over this territory on foot have not you?
A. Oh yes sir.
Q. You have gotten into these muskrat holes and had your feet to give away under you?
A. No sir, only in soft places. There are boggy places in the marshes. I never fell in no holes.
Q. About what did you say that these vessels drew that you went through the marshes with?
A. I used to be engaged in the trapping business and we would use a light draft vessel to go through there with because we would go through from one side to the other.
Q. About what draft would these vessels have?
A. About two feet.
Q. Could you go through over these mud flats in a vessel of this kind at low tide?
1569 A. No sir.
Q. If you did you would stick on the mud flats?
A. Yes sir.

Q. It was only in the highest tides that you could go through with vessels drawing four feet and over?

A. Yes sir, it would take a high tide. There would be some places that you could go and some you could not go.

Q. Did you ever notice at the mouths of any of these bayous whether it was deepening or not?

A. Well I did not notice.

Q. You never have sounded it?

A. No sir.

Q. I believe you stated that you knew these islands lying between the north coast of these marshes and the Mississippi main land?

A. Yes sir.

Q. Do you know St. Joseph island?

A. Yes sir.

Q. Do you know Half Moon and Grassy islands?

A. Yes sir.

Q. Do you know Round island?

A. Yes sir.

Q. What changes have taken place in St. Josephs island since you have known it?

A. I don't know any particular changes.

Q. Is it not a fact that St Joseph island has been washed away and the light house there since you have known it?

A. The old light house you mean?

Q. Yes sir.

A. Well if it has it has washed away since I last saw it.

Q. Is it not a fact that Round island has disappeared entirely?

A. Not to my knowledge it has not. I have not been there in a couple or three years.

Q. Is it not a fact that Half Moon is almost washed away?

A. Yes sir, it is washed some.

Q. To a considerable extent is it not?

A. Yes sir, it is washed.

Q. Do you know where the deep water channel is that is used by large vessels drawing considerable water?

A. Yes sir.

Q. Does not that channel run from the mouth of East Pearl river close to the Mississippi shore and to the northwards of these islands?

A. It does not run close to the shore.

Q. How far do you think it is from the deep water channel to the main land of Mississippi?

A. From what point?

Q. After you leave the mouth of East Pearl river going to the east?

—. ——.

Q. As much as that?

A. Yes sir.

Q. I mean near the mouth of East Pearl river going along just north of these islands?

A. It runs right close to the island there where it comes out of the river.

Q. I am speaking of how close to the main land of Mississippi. Is it or is it not a fact that it runs within a quarter or a half a mile of the main land there?

A. I don't know whether it does or not there. Coming through there *there* on large vessels they would stick right to the channel. When we went to St. Joseph we were right close to the channel.

1570 By Gen. McCLURG:

Q. How far were you then from the Mississippi shore. The main land?

A. I could not say how far.

Q. At St. Joseph or about St. Joseph?

A. I could not say how far it was. It looked like it was about a couple of miles from the main land.

By Col. ZACHARIE:

Q. Are you very sure that there have been no changes in 23 years in the coast line of these marshes?

A. Well the changes are in these cuts.

Q. Is that all the change. Is the coast not gradually wearing away. The waves undermining the soil and the crust dropping in?

A. Not that I can see.

Q. Do not you find along this coast that pieces of crust rolled up into balls, and places on the shore where it has undermined this crust?

A. Some times you see little pieces of dirt drifting along there that is washed off yes sir.

Q. What is your business now?

A. Oystering.

Q. To whom do you deliver these oysters. Are not you supplying these canneries and factories here?

A. Yes sir.

Q. That is your principal and main business?

A. Yes sir.

Q. You are dependant upon that for a livelihood are you not?

A. Yes sir.

Q. You have only engaged in this oyster business since these canneries were established?

A. No sir, before.

Q. What year was it that you commenced oystering?

A. Around 1878.

Q. Around 1878?

A. Yes sir, 1878, or 1879 or some where along there.

Q. You stated that you had been in the oyster business for 23 years?

A. About 23.

Q. If you commenced in 1878 it would be 26 or 27 years?

A. In 1878 was my first experience in the oyster business. I would cruise around on a boat and make two or three trips and quit then.

Q. You were not in the business?

A. No sir.

Q. You would go out with others?

A. I was working and they would give me some thing. I was young then.

Q. To whom did you sell your oysters?

A. To Mr. Fillmore and Mr. Desports and Mr. Elmer.

Q. That is they had places here for raw oysters?

A. Yes sir.

Q. Did you go out in the summer time?

A. Not for oysters. We would go out for bird eggs.

Q. You did not fish for oysters in the summer time?

A. No sir, I have not fished outside of a little for planting purposes in the summer time.

1571 Q. Is it not a fact that as a rule along this coast oysters were fished all through the summer during the spawning season. Were not all of these hotels and boarding houses and oyster shops etc., supplied with oysters all during the summer time?

A. Yes sir.

Q. Is it not a fact that these oystermen when they would get a load of oysters and a fair wind home, that they would not stop to cull on the banks but they would cull as they went along, or cull after they got home on the land?

A. No sir, they always stayed there and culled them. As far as I know they did.

Q. You had no law or regulation of the board of supervisors at that time of which you speak in regard to culling and fishing in the summer time?

A. No sir, the only law that we had was that if we did not cull them good a man would not buy them.

Q. What difference did it make to him if the oysters were not culled?

A. If you were to fill up the barrels with shells you could not get anything out of it.

Q. That is if you allowed the young oysters to remain to such an extent as to make a difference in the contents of the barrel he would not take it as a full barrel?

A. No sir, he did not want to measure that way. The more he got in a barrel the better it was for him.

Redirect examination.

By Gen. McCLURG:

. I presume the purport of the last few questions asked you were ustain the charge in the bill of complaint in this case to the effect t the bad management of the oyster business in Mississippi has e much to destroy the oysters. I want you to state to the best our knowledge about the quantity of oysters now as compared h 23 or 24 years ago in this section about which we have been ing you?

. Well the same oyster reefs out here. That is the reefs out in lake that we call the shell banks, 23 or 24 years ago, they were ntiful there because they were not ever used at all. They were mall that they were not hardly any use. The factories began ake them and break into them. They were very thick on the tom.

. How thick?

. Five or six or seven inches thick on the bottom. So thick t they would not grow to any size at all, but gradually working hem and picking out the large ones and throwing the others k they got to growing again.

. Are they as plentiful now as they were then?

. They are not as thick now as they were then.

. I am not speaking of any particular reefs but in the whole itory?

. Yes sir, the boats make about as quick a trip now as they did n.

. Are not there a great many more taken out now than there e then?

. Oh I should smile. There are thousands of barrels more taken out.

2 Q. When you first began it was before the first factory was established along this coast?

. Yes sir, and they could not use many at that time when Mr. ez started.

. You were asked about the deep water channel as far as Cat nd and on towards the mouth of Pearl river Before this contro- sy arose a few years ago had you ever known or heard of that being the line between Louisiana and Mississippi?

. Cat Island channel?

. Yes sir?

. No sir, I never did hear that that is the line. I always heard the line run from Pearl river until they began to scuffle about nd then they claimed that Cat island was the line.

. Since when?

. That is since they began to talk about the line in the last two hree years.

Recross-examination.

By Col. ZACHARIE:

Q. When you spoke of the thousands of barrels that are n caught were you speaking of the oysters reefs in the neighborhood Biloxi and the eastward or were you talking about these marsh

A. I am speaking of the lakes to the southward and the westw and the northward of Cat island?

Q. You mean in that sound there?

A. Yes sir.

Q. Is it not your opinion as an oysterman that the constant fi ing of these reefs in this neighborhood during the summer, and t non enforcement of the culling on the banks has done very mu to destroy the fisheries in this neighborhood of Biloxi?

A. No sir, there were never enough taken from the oyster re in the summer time to amount to any thing.

Q. Was not that enough for your trade here?

A. Yes sir, but that is not enough to mention?

Q. And still it had a great effect in destroying what was here?

A. No sir, I don't think that it hurt them at all.

Q. You don't think that the culling of all of these young oyst and fishing them during the spawning season has any effect in creasing the supply of the oysters?

A. They would cull the oysters out there where they were.

Q. Don't you think that the fishing of them in the spawning s son has the effect of decreasing them to a great extent?

A. Yes sir, certainly it does.

Q. Well prior to the establishment of these canneries or factor there was very little demand for oysters was not there except t local consumption along the coast?

A. That is all. In the winter season when the raw business w here.

H. H. MATHIEU, a witness introduced on behalf of the State Mississippi, being duly sworn, testified as follows:—

1573 By Gen. McCLURG:

Q. How old are you?

A. 37.

Q. Where do you reside?

A. In Biloxi.

Q. How long have you lived here?

A. I have lived here or right between here and Ocean Springs the last 20 or 22 years.

Q. Where were you born?

A. In New Orleans.

Q. What is your occupation?

A. Oysterman or boatman.

Q. How long have you been in that business?

A. I have been there off and on for the last twenty years.

Q. Where have you been catching oysters?

A. All through the reefs here in Mississippi and Louisiana, and down as far as Texas, Sabine pass.

Q. Have you ever been in Grand marsh?

A. Yes sir, I have been all through it.

Q. Since when. When was the first time you ever went through it?

A. I guess about twenty years ago.

Q. Have you been going through there for the last twenty years?

A. Yes sir.

Q. Name the portions of it that you are familiar with and have visited often?

A. Well I have been all through from Isle à Pitre to Three Mile bayou, and Grand pass and through it down as far as the river, and past the river on the other side to Morgan City as far as Sabine pass mostly through the bayous and lagoons.

Q. Were you ever in Nine Mile bayou?

A. Yes sir.

Q. You have been down as far as Indian Mound bay?

A. Yes sir.

Q. And Treasure bay?

A. Yes sir.

Q. And Drum bay?

A. Yes sir.

Q. And from there to the northward to the sound?

A. Yes sir.

Q. Have you noticed any difference in the waters or the islands, any material difference or changes since you first went in there?

A. Well mighty little. There are little changes in the gaps, some of them. Nothing to amount to anything.

Q. What gaps have you noticed some changes in?

A. I think that Creole gap has widened a little bit, but the channel did not change. There was no change in the channel.

Q. Did you notice whether these islands that are in that territory down there about which we have been talking have subsided any or whether they are higher?

A. I think there is one of them gone.

Q. Which island is that?

A. St. Joseph island.

Q. I am speaking about those down in the marshes?

A. No sir, I think that they are all about the same. I went off and stayed for six years and came back and went through there at night the same as I ever did.

1574 Q. How much water was your boat drawing?

A. About three and a half feet.

Q. With a boat of light draft, say two feet draft at what place could you come out of the sound or Lake Borgne into that Grand marsh?

A. You can go through Three Mile bayou and come out to the southward.

Q. Coming this way?

A. Through Three Mile bayou and Nine Mile bayou.

Q. How are Johnson bayou and Turkey bayous?

A. They are shoal bayous from the inside.

Q. Grand pass?

A. That is just a cut through the marsh across. That don't enter inside.

Q. Three Mile and Nine Mile bayous?

A. Yes sir, they are entries into the marsh. Into the lakes inside.

Q. What do you know about the boundary line between the States of Louisiana and Mississippi?

A. I don't know anything much except that they claim around that is all, and what the chart says.

Q. Do you know where Pearl river is?

A. Yes sir.

Q. Do you understand Pearl river to be the line dividing Louisiana and Mississippi north of Lake Borgne?

A. Yes, sir.

Q. What do you know about the line between Louisiana and Mississippi south of Pearl river and east of Pearl river?

A. Running to the southward.

Q. Yes sir.

A. I know they claim Chandeleur islands in Louisiana on the line I believe with Pearl river. I have brought mail out there that was directed that way.

Q. To Chandeleur, Louisiana?

A. Yes sir.

Q. In what State is Isle à Pitre?

A. The end of it is in Mississippi I think.

Q. Isle à Pitre is an island is it?

A. It is an island or peninsula or point projecting out there.

Q. What separates it from the other body of the marsh?

A. Creole gap.

Q. Have you ever been disturbed by either side in fishing down there in Grand marsh?

A. No sir.

Q. Have you paid a license to either State?

A. Yes sir.

Q. What State?

A. Mississippi.

Q. When?

A. This winter the last license.

Q. When did you buy your first license?

A. This is the first license that I ever bought.

Q. Did you ever buy one from Louisiana?

A. No sir.

Q. Where did you fish under this license that you bought from
sissippi?
A. I fished on these inside reefs here in Mississippi sound.
Q. Did you go in the marsh?
A. No sir, not inside of the marsh. To the north of the marsh.
ll Banks reefs it is called.
Q. Were you ever about Sundown island or Brush island or Door
point?
A. I have been there yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Mathieu, has not this marsh of which you have been speak-
been almost universally called amongst the fishermen the Louisi-
marshes until very recently?
A. Yes sir.
Q. Have not the mouths of Three Mile bayou, Nine Mile bayou,
key bayou, Johnson's Bayou and Grand pass worn a good deal
er since you have known them?
A. The passes have changed the least bit. Not a great deal though.
Q. Do you know how the depth of the water has changed going
these bays and bayous?
A. I think it ranges about the same with the exception of Creole
That has deepened a little.
Q. There is a greater volume of water pouring into the marshes
e is not there? Through this deepened channel at Creole gap?
A. Creole gap does not enter into the marshes. It comes through.
Q. It goes through to the south side of the marshes?
A. Yes sir.
Q. And there is more water going through there than there was
nerly?
A. Yes sir there is.
Q. Is that not true in pretty nearly all of these bayous and passes.
ave you ever sounded them?
A. Yes sir, I have sounded them. I think that these main passes
bout the same. They have about the same water.
Q. You never pretended to fish under a Mississippi license in these
shes?
A. No sir.
Q. You fished only in the sound with a license?
A. Yes sir, that is all.
Q. You never *through* that your license gave you the right to fish
ese Louisiana marshes did you?
A. Well I never had no cause to go in there in fact.
Q. Well now what did you say that the depth of these vessels that
went in there with was? Through the marsh?
A. The last time I went through there I was drawing about three
a half feet.

Q. Did you not have to wait for the high tide to go through there?

A. No sir.

Q. Did you not get stuck on mud flats in a good many places in going through there?

A. No sir, I never got stuck at all. There are places that you can get stuck there though in.

Q. Is not the coast; the northern coast of these marshes worn away considerably. The crust of the marsh being crumbled away by the eating of the waves?

A. No sir, not that I noticed. It looks about the same to me.

Q. Did you ever take any particular notice with a view to see whether they were caving away or washing away?

1576 A. I did with the passes and such as that on account of the navigation.

Q. I mean the general coast line?

A. I think I would have noticed it in that case.

Q. You have spoken of these islands lying to the north of these marshes, or between the northern coast line of these marshes and the main land of Mississippi. Is St. Joseph island one of these?

A. St. Joseph island is about washed away.

Q. Did you know an island there named Round island?

A. Yes sir, there is one called Round island.

Q. What has become of that?

A. It has washed some too.

Q. Is there any Round island any longer there?

A. No sir.

Q. Is it not a fact that it has disappeared entirely?

A. It is washed away.

Q. How about Half Moon or Grassy island. Has that become partly washed away?

A. It is there still.

Q. Is it not partly washed away?

A. No sir, I don't think that Half Moon is washed much. No sir.

Q. Do you know where the deep water channel is that runs from the mouth of East Pearl river eastward?

A. Yes sir.

Q. Do you know how close it runs to the Mississippi main land?

A. To the marshes you mean?

A. Yes sir; to the marshes on that side. I call that a part of the main land, the marshes on the Mississippi coast?

A. I would judge it to be about eight miles across.

Q. Let me see if you understand me. I am speaking of just after you leave the mouth of East Pearl river. How close does it run to the Mississippi shore. The deep channel?

A. You mean to the Mississippi shore do you?

A. Yes sir?

. You pass the land there right along the side of it. Within yards.
. That is north of these islands that you have spoken of?
. Yes sir.
. That is the route that is followed by the deep water vessels ng to the eastwards and intending to pass down to the Gulf in channel between Cat island and Isle à Pitre?
. Yes sir, that is the main channel.
. To whom have you been delivering or selling your oysters e you have been engaged in the oyster business?
. Do you mean this season?
. Generally. The whole time that you have been occupied in business?
. Oh I have run them for most every body in Biloxi here. The lers.
. I mean to say what class of dealers?
. The Barataria Canning Company, Mr. Lopez, Mr. Gornflo, and Desports. In fact most all of them here.
. The demand for oysters has been manifestly increased has not ith the establishment of these factories?
. Yes sir, I think so.
. Do you remember the condition of this oyster trade before these canneries or factories were established?
A. Yes sir, some what.
Q. There was very little demand then was not there except home consumption?
. That is about all.
. Before these canneries were established there were a great many ers around here in the neighborhood of Biloxi was not there, k bay and along these islands to the east?
. There were a few around here?
. There were a great many oysters in Back bay?
. Yes sir.
. Were not there a great many oysters to the eastward. At Cedar nt and other points?
. At Scranton and Cedar point yes sir.
. Were not these oysters for the local demand fished all through summer time. For the local demand. For the hotels and board-houses and oyster shippers and so on?
. Yes sir, there was some fishing all through.
. That is true of the spawning season. Of the summer season?
. All of the time. They never stopped. The spawning season lieve they claim is all the year round. I don't know.
. No, it is only a few months. Is it not a fact that in those days oyster fishermen were not particular in culling the oysters on banks if they had a fair wind to get home on, and that they ed them as they were going home *of* after they got there?
. No sir, I never did.
. I mean to say about the fishermen generally?

A. I could not say that about other people. I don't know whether they did that or not.

Q. Well now as an oyster man would not you say that this habit of fishing oysters during the spawning season and if they were not culled on the banks would have a great tendency to destroy and diminish the oyster reefs?

A. Yes sir, if they were not culled, certainly.

Q. Could you form any sort of an estimate as to the proportion the demand was for oysters before the establishment of these canneries and what it is now?

A. Well I have no idea.

Q. Was there 1/100 part of the demand for oysters before the establishment of these canneries that there is now. In other words is not the demand one hundred times more now than it was in those days?

A. I think that it is yes sir.

U. DESPORTS, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. MCCLURG:

Q. How old are you Mr. Desports?

A. 42 years old sir.

Q. Where do you reside?

A. Biloxi, Miss.

Q. How long have you resided here?

A. I have been here nearly all of my life with the exception of five years that I lived in Mobile when I was a child.

1578 Q. What five years was it that you lived in Mobile?

A. I was about eight years old when I went there. When I first moved there.

Q. You came back here at about the age of 13?

A. Yes sir.

Q. And you have lived here constantly since?

A. Yes sir.

Q. What is your business?

A. I am a raw oyster shipper.

Q. How long have you been in that business?

A. For 11 years.

Q. What are we to understand by your being a raw oyster shipper. Explain that?

A. I ship nothing but raw oysters. I am not a canner. I ship oysters by the thousand.

Q. How many thousand oysters did you ship this last season. That is about closed now is it not?

A. Well it closed about the 10th, of May. Of course as we approach April it keeps diminishing all of the time during the warm months. I expect on an average from the 1st of September to

the 1st of May, I expect about 60,000 a day would be a good average.

Q. You would average about 60,000 a day?

A. Yes sir.

Q. Well how does that compare with the year before?

A. A good deal better. I shipped about one third more oysters this last winter than I did the previous winter.

Q. Has your oyster business been increasing since you started it?

A. Yes sir, every year.

Q. Where have you been getting your oysters from the time you started up until now. Speaking in a general way?

A. Up to two years ago; up to the time they enforced this Louisiana law, nine tenths of my oysters came out of the Grand marsh over there.

Q. What stopped you two years ago from going down there?

A. Well there was a law there preventing boats from fishing and carrying oysters into this State and consequently I could not go there any more.

Q. Has that any reference to the beginning of the agreement entered into between the Oyster Commissions of Louisiana and Mississippi?

A. Well there is an agreement I think for the neutral ground.

Q. Where is that line?

A. It is I suppose the line along the north edge of the marsh.

Q. And where is the neutral ground?

A. That is the neutral ground.

Q. North of that line?

A. Yes sir.

Q. Are Mississippians excluded under that agreement from going into the marsh?

A. Yes sir.

Q. Out as far as Isle à Pitre?

A. They can fish under that law I think as far as Isle à Pitre and Grand pass and in through in there.

Q. Previous to that time you say the greater portion of the oysters were taken from Grand marsh?

1579 A. Yes sir.

Q. What portion of Grand marsh?

A. We got our oysters from Three Mile bayou and Nine Mile bayou and Turkey bayou and about Treasure island and Turkey bayou and Cat Island pass. In fact all of these places in there.

Q. Do you know in what State these bayous are?

A. I was under the impression that they were in Mississippi. We were never prevented from going out there up to two years ago.

Q. Why were you under that impression?

A. Boats hailing from these places would come out there and get oysters and there was nothing said about it.

Q. You know that the two States are divided north of Lake Borgne by Pearl river?

A. Yes sir, that has been my impression. I have heard them say that is the dividing line. Pearl river is the dividing line.

Q. Where is the line south of Pearl river?

A. My understanding was that the line was due south 18 miles from Pearl river.

Q. About how far down into Grand marsh would this line reach 18 miles from these places on the Mississippi shore?

A. Well it would take in these places that I have just mentioned. Three Mile bayou and Nine Mile bayou and Bayou Treasure and Mussell bayou and the principal places around where they get oysters there.

Q. Do you know where Brush island is?

A. I have not been out there lately. I only went out there twice. I passed near Brush island this last trip that I went. I never followed up catching oysters. I don't know any thing about the marsh. I never have been in the marsh. I know just what the boatmen would tell me when they come in with a load, that they got them out of Treasure bayou or Three Mile bayou, or where ever they got them down there, or Nine Mile bayou.

Q. Is there any difference in the demand for oysters since they have the canning factories?

A. Well they use a different kind of oysters. That is the highest price oysters that we use.

Q. You deal exclusively in raw oysters?

A. Yes sir.

Q. When were these factories established along here?

A. I think that the first factory was established about 1882 or 1883. The Biloxi canning factory.

Q. What effect has the establishment of these factories on the local demand for oysters?

A. It has increased the demand for oysters.

Q. About what per cent. do you reckon it has increased the demand?

A. Well I don't know. It is a very large increase. The more factories the more business there was.

Q. Well how about the growth and out-put of the oysters?

A. Well last year there were more oysters brought in than there were the years previous. We got a quantity of oysters last year.

Q. You mean to say that you judge from that there are more oysters in this territory than there was before?

A. There are just as many. There are more boats being built every year and naturally they bring in more oysters.

1580 Q. What about exhausting the supply of oysters in this territory?

A. I don't think that it has been exhausted any at all.

Q. If it be true that before the factories were established and even since that local hotels and restaurants and boarding houses have been using them through the summer months, and what is sometimes

he spawning season, has that had any influence towards ex-
g them?
don't think that it has for this reason. There are very few
brought here through the summer, and now here these sum-
ps that use oysters, they buy them from right around here from
iffs. Occasionally there is a boat comes in but there is very
mand for them. A schooner load I suppose would run all
shops in the summer time.
there any one else here dealing in raw oysters except your-

es sir, Mr. Gornflo and Mr. Mayberry.
ow many does Mr. Gornflo handle?
don't know sir how many he handles. He is a very large
also.
ou know where this deep water channel is that is between
nd and Isle à Pitre?
ell we were out there last year. That is the second time that I
er been out there, but I don't know much about these places.
ou did not go out to take oysters?
o sir, we just went out on a pleasure trip. We were out there
s. We sailed through to the southward. We passed Brush
nd Door point. We went down about twenty five or thirty

ior to the last two or three years, since this controversy arose
Louisiana and Mississippi over the location of the State line.
hat time did you ever buy any privilege license?
o sir.
d you catch these oysters or buy them?
bought them.
r the market?
s sir, off of the boats.
ou did not run these schooners?
have some of my own schooners. Yes sir, I own five
rs, but that of course would not supply me.
ou have five schooners engaged in the oyster business?
es sir.
ou bought the oysters from those who sold them and then
l them on the market?
es sir, I bought them from other schooners.
bout how much money does it take Mr. Desport to handle
ysters a day during the season, say beginning on the first of
tember and ending on the first of May?
ell including the buckets and handling and all about $180.00
They cost about $3.00 a thousand.
ell how does that compare with the expense of handling
oysters?
ell I don't know much about what it costs them to handle a
f oysters.

Q. How many hands do you generally have employed. How many men or women?

1581 A. Last winter I had about thirty openers steady. Of course near Christmas times I have extra men, but I buy a great many oysters by the thousand already opened. A great many are bought in that way from Ocean Springs, and at different places.

Q. You employ during the season an average of about thirty hands a day?

A. Yes sir, working around here. That is not the boatmen. Those are just the men that are opening. I expect about thirty-five, because I have five carpenters.

Q. How many do you have on your boats?

A. On the boats that they run to me?

Q. Yes sir.

A. There are about four men to the schooner. I have had as high as 12 to 15 schooners running. About 12 schooners would be something like fifty men.

Q. And sixty more?

A. Yes sir, about fifty more.

Q. Then you have altogether engaged directly or indirectly with your business about how many hands?

A. About 80 or 90.

Cross-examination.

By Col. ZACHARIE:

Q. Now Mr. Desports is it not a fact that until eight or ten years ago these marshes which have been testified to were almost universally known as the Louisiana marshes?

A. Well Colonel, I have heard them called Grand marshes and Louisiana marshes. I have heard them called very often Louisiana marshes.

Q. Did not the most of those fishermen here call them the Louisiana marshes?

A. I don't know that the most of them did. I expect that there were about as many called them the Grand marsh as the Louisiana marshes. I never paid any particular attention. They would say "We are going out in the marsh for oysters. Some times they would say Grand marsh and some times Louisiana marsh.

Q. Is it not a fact that this territory was almost universally conceded to be Louisiana territory until quite recently, 10 or 12 or 15 years ago?

A. No sir, not to my recollection. I never heard them say they were in Louisiana or Mississippi. They went out there and got the oysters and brought them in.

Q. Do you know that until recently the Louisiana law did not prohibit non residents of Louisiana from fishing in Louisiana waters?

A. Well I did not know that, no sir.

. Now you have spoken of the 12 or 15 boats in your employ. many of these boats are operated under a Louisiana license?
. That are run under me?
. Yes sir?
A. None at all.
Q. Were not there two or three?
A. There were three of them took out license last year of e but they were running in Louisiana in the disputed terri-. They would not allow us to fish in there. These men took this license because they have been accustomed to catch these e oysters in the marsh. They thought that they could make as h money by taking out the license and running these oysters he Rigolets. They did not know much about dredging.
. They were tong fishermen?
. Yes sir, nippers and tongs.
. Then according to your statement the only ones of the boats have taken out a license in Louisiana are boats that have taken ers from the Rigolets to New Orleans?
. The balance would not take them out because they could not y them any where else.
. Did the balance take them out in Mississippi?
. Yes sir.
. Since when did they take them out in Mississippi?
. Since the law went into effect.
. How long ago has that been?
. Two years ago.
. Is it or is it not a fact, Mr. Desports that almost from time im-norial that the reefs in the neighborhood of Biloxi and to the ward have been fished all during the summer?
. You mean over here?
. Yes sir.
. All during the summer?
. Yes sir, and the spawning season?
. I don't know. There are not many oysters fished in the sum-time. Three years ago all of the oysters we did have here were ed by the freshets, and there are very few oysters through here.
. You did not answer the question. The question is this. ether for the home supply these neighboring reefs have not been ed all during the spawning season to supply the hotels and the rding houses and the oyster shops?
. No sir.
. Can not you go into any of these hotels here and get oysters ?
. Yes sir.
. Then they are fished during the spawning season are not ?
. They are fished now what few oysters are around here. Some know come from the outside.

Q. Was not that universally the custom before the establishment of these canneries?

A. We don't handle oysters in my business in the summer.

Q. I am speaking now of the habit of the fishermen here from time immemorial to fish these reefs all during the summer season. During the spawning season?

A. For local use yes sir they would catch a few.

Q. Well do you or do you not know that almost from time immemorial, that these fishermen have been careless in culling on the banks in the neighborhood, and that whenever they got a load and the wind would spring up so they could go to their homes they would cull as they went, and then some times cull on the land after they got there. In other words was there any strict enforcement in regard to it of any kind. I am speaking of the years along back in regard to the culling on the banks so that the young oysters would be thrown back in?

1583

A. There has been a law for the last twenty years in regard to culling oysters.

Q. Has that law been enforced?

A. Well I think that it has. I never saw a schooner come in here culling oysters as they came. I have never seen that.

Q. You have not been aboard of these schooners?

A. No sir.

Q. You say that you only made two trips?

A. The trips that I made were short trips.

Q. You have been principally occupied with your business of opening and shipping oysters?

A. Yes sir.

Q. Outside of that you don't know much about the oyster trade?

A. No sir, I don't know where they catch them except when they tell me that they came from.

Redirect examination.

By Gen. McCLURG:

Q. You said that Mississippi had a law years ago in regard to license for fishing oysters. You said that you did not pay this license?

A. No sir.

Q. That is 10 or 12 or 15 years ago?

A. Yes sir.

Q. Did you own any of these boats at that time?

A. No sir, I did not own any boats at that time. There were inspectors some 15 or 17 years ago, but I did not own any boats then.

Q. Where did these inspectors come from. From what State?

A. From this State and this county.

Q. How far out did they go if you know?

A. Of my own knowledge I don't know how far they went. I could not say.

ERNEST DESPORTS, a witness introduced on behalf of the State issippi, being duly sworn, testified as follows:

By Gen. McCLURG:

How old are you, Mr. Desports?
I will be 51 my next birthday.
Where do you reside?
At Biloxi.
How long have you lived here?
I was born here.
Q. How long had your parents lived here?
A. I think that my grandfather first came to Biloxi in 1825.
What is your occupation now?
I am now bar pilot at Ship island.
Have you held any positions in Harrison county?
Yes sir, I was justice of the peace at one time. Constable at ime, and harbor master of Ship island at one time. I was r master for six years.
Of Ship Island harbor.
Yes sir.
You understand that this is a suit between Louisiana and Mis-pi over the boundary line between the two States?
Yes sir.
Now where is the dividing line between the two States. About ?
Well the dividing line of Mississippi and Louisiana is Pearl as I understand it. Well I have read the boundary of Missis-beginning there and going north, and thence east and south leagues from the main shore, and thence running in a westerly ion to the place of beginning, including all islands in the lary.
Within what distance from the shore?
Within six leagues or 18 miles.
Can you say whether the public generally before this contro-arose, generally regarded that as the true line?
I have always heard that regarded as the true boundary line sissippi.
Have you ever engaged in the oyster or fishing business here in?
For a short while I was engaged in shipping oysters. I did ep it up very long.
When was this?
That was about eight or nine years ago.
Where were your oysters taken from?
From the marshes. From the territory in dispute so the boat-old me who brought them in. I know nothing about that y out there at all. I was only there four or five days after the of 1893.

Q. Where were you then. In what portion of the marsh?

A. I only remember the names of a few places. I remember Turkey bayou and Three Mile bayou and Indian Mound bay and Isle à Pitre.

Q. How did you go out there?

A. I went out in a schooner.

Q. How much water did she draw?

A. The schooner was drawing about four feet.

Q. What route did you go?

A. I don't know.

Q. You could not tell?

A. No sir.

Q. You are not familiar enough with that territory?

A. No sir.

Q. What was your business out there?

A. I was one of a party of gentlemen who volunteered to go out to see if we could find any men in distress from the storm.

Q. Where did you go out from?

A. From Biloxi.

Q. They were the citizens of this town?

1585 A. Yes sir, we went on the schooner Emma Hand. She was one of the few schooners that was not lost in the storm.

Q. What did you find?

A. We found a great many men. Drowned men that we buried. I jotted down a description of all of those that we found. We buried them. The last few days we were out we found some floaters that we could not do anything with at all. We were too far from the marsh and we could not bury them, and we let them go, they were so swollen. We were about the first boat out. On our return trip back home we noticed a great many crosses where people had been buried, where the corpses had not drifted ashore when we first went out.

Q. Did you bury any out there?

A. We buried I think it was eight.

Q. Where did you bury them?

A. I don't remember where they were exactly except that they were buried at a place; two of them at a place called Karako camp, or bayou or some thing.

Q. What was the character of the soil in which you buried them?

A. It was dark looking mucky stuff. You would dig a little hole and it would fill with water. We would have to hold them down sometimes to bury them. We used several bottles of carbolic acid in order to get to them. My business was to jot their description down and I turned it over to a newspaper man. I think there were about three columns of that stuff that was published by the Picayune that was sent in by the correspondent here.

Q. Did you have any personal knowledge of any arrests made out there for a violation of the Mississippi laws. Out in that territory?

Well the only one that I have any personal knowledge of is Kennedy boys.

Col. ZACHARIE: This is objected to on the part of the State of iana by her counsel, as to any testimony in regard to any ju- l proceedings held in the State of Mississippi or in the county larrison unless the primary and best proof, the record of such shall be first furnished or accounted for before any secondary ence can be introduced.

By Mr. McCLURG:

You stated that you had personal knowledge of the Kennedy Were you present?

Not to the trial. Of the arrest I did. I saw them when they under arrest, but I was not at the trial.

Col. ZACHARIE: It is understood that the counsel for Louisi- make the same objection to all of this testimony of this character except to same.

By Mr. McCLURG:

There has been something said about taking the oysters here e spawning season, for the hotels and restaurants and local pur- poses. What do you know about that Captain?

A. Well I know that people do not eat oysters during the spawning season, when the oysters are in milk during the hs of April and May. When they are spawning you would not one person in five hundred that would eat an oyster then, be- they are not palatable and not fit to eat. We do not eat oys- n the spawning season. This is not the spawning season. The rs are through spawning.

Could you say whether the supply of oysters in this oyster ter- has been in any manner diminished or destroyed by reason king oysters in the spawning season?

I don't think that it has been hurt a particle.

The building of the canneries here has greatly increased the nd for oysters here has it not?

Yes sir.

Has the supply been about equal to the demand?

Last winter I understood from all of the canning factories and the raw oyster shippers that they had done a greater business they had ever done before. There seemed to be no trouble in g oysters.

That is after the agreement cutting us out?

Yes sir, this is last winter you know.

None of these oysters were taken as I understand it, west of l pass. South of the marsh land?

I have not seen an oyster come into Biloxi that looked like a oyster, except those taken from the neutral ground. There siderable difference in the looks of the oyster. One accus-

tomed to them can tell almost at once where the oyster comes by looking at the shell.

Cross-examination.

By Col. ZACHARIE:

Q. You have spoken of this territory in dispute as the G marsh?

A. I beg your pardon, I did not use that expression.

Q. What have these marshes been generally known as?

A. Generally speaking we call them the marshes. I have h them spoken of as the Louisiana marsh or the Grand marsh, bu a general thing the boatmen say "I am going out to the marsh Most of the boatmen use the expression "Marsh."

Q. Do you say that the oysters in this latitude cease to spawn the month of May?

A. In April and May they are spawning. At present you wo not find a particle of spawn in the oysters, but they have ceased spawn before this.

Q. Do you not know that it has been thoroughly established these southern latitudes that the oyster begins to spawn in the mon of April?

A. Yes sir.

Q. And extends away through to the month of October?

A. No sir, I do not, but I suppose it must be true because you c find young oysters growing on new planks in the water, but as general thing oysters are through spawing as we understand it June.

1587 Q. Well now is it not a fact that along this coast, whether yo come over here in the month of April or May or June or an other of the spring or summer months, that you can get oyster either raw or cooked at any of these restaurants or hotels or boarding houses or oyster shops along this coast. Do not they have them on hand constantly?

A. Yes sir, but none of the home folks eat oysters in the spawn ing season and very few outsiders.

Q. Well they have them?

A. Yes sir, but very few? That don't amount to anything.

Q. Then it is evident that the fishermen fish them during the spawning season?

A. Yes sir there is a small number taken out. They have noth ing else to do.

Q. Do you know anything about the habits of the fishermen in culling these oysters. Are they strict and careful to cull these oysters on the reefs, or do they when they get a load and have a fair wind start for home and cull on the way and cull on the land after they arrive home?

A. I never have seen oysters culled here after they arrived here As to what they do before they get here I don't know. I am not

accustomed to that country out there and I have never fished oysters for a living.

Q. Then you are only testifying to what you have seen and not what you have not seen?

A. Yes sir.

SATURDAY MORNING, June 11th, 1904.

The commission met this morning at 9 o'clock, and there were present Gen. Monroe McClurg, counsel on behalf of Mississippi, and Hon. John Dymond, Jr., counsel on behalf of the State of Louisiana and Hon. William D. Bullard, commissioner.

T. R. FRIAR, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you live?
A. In Ocean Springs.
Q. What county is that?
A. Jackson county.
Q. Jackson county, Mississippi?
A. Yes sir.
Q. How long have you been living there Captain?
A. Something like fifty years I think.
Q. What has been your occupation during that time?
A. I have done a great many things. I am a house carpenter by trade. I have followed that several years and several years I have shipped oysters.
Q. Where did you get the oysters that you shipped?
A. I bought them a good many, and a good many of them I planted.
Q. Are you familiar with the waters between Ocean Springs and the mouth of Pearl river?
1588 A. No sir, I cannot say that I am. I have been out there a good many times but I have always had some man that knew the water and I paid very little attention to it.
Q. When were you first in these waters?
A. I could not remember that. It is several years ago.
Q. In your best judgment. How long has it been since you first went there?
A. It must be 25 years.
Q. Were you ever in the marsh?
A. Yes sir. Not all through it.
Q. What portion were you in?
A. That is more than I can tell you. I have not been much further than Door point.
Q. Have you ever been in Isle à Pitre?
A. Yes sir, and Door point is beyond Isle à Pitre.
Q. Southwest from Isle a Pitre is not it.

A. No sir, that is southeast.
Q. Have you ever been as far west as Nine Mile bayou?
A. No sir.
Q. Three Mile bayou?
A. No sir. I am not familiar with the marsh and the names of the places. I possibly might have been there but I don't know the names of the places.
Q. Well were you ever about Isle à Pitre or Door point or in that vicinity; when you were down there as you state were you in the State of Mississippi or the State of Louisiana?
A. That is more than I can tell you, but I thought it was in the State of Mississippi.
Q. Why did you think you were in the State of Mississippi?
A. Because I have always heard that Pearl river was the line and from there running south.
Q. How far south?
A. I have heard that it was 18 miles.
Q. How long have you been hearing that?
A. I could not tell you. I have no idea.
Q. About how many years ago?
A. Twenty years I reckon.
Q. Have you ever noticed any changes in any of these bayous or islands out there since you went there?
A. No material changes. Some places get a little deeper and some places are filling up a little, but not to amount to much. The place that is called Creole gap has widened a good deal.
Q. Do you know anything about the history of Creole gap?
A. I don't know anything of it of my own knowledge. I have heard that a boat got stranded there and they had to dig it out and that caused that place to run through there.
Q. That place has widened?
A. Yes sir.
Q. How long do you say it has been since you first saw that marsh?
A. I think that it has been about twenty five years. I am not certain about that. It is somewhere about that I guess.
Q. What has it been called during this time if you know?
A. I have heard it called Grand marsh. Generally in speaking of it it was spoken of as the marsh. If you would ask a boatman where he was going or where he got his load *and* he would say in the marsh. Lately they have called it the Louisiana marsh?
Q. How long has it been since you have heard it called Louisiana marsh?
1589 A. That is just a few years ago. I don't know.

ss-examination.

By Mr. DYMOND:

ain how old are you?
59.
were born and raised in Ocean Springs?
ir, I was born in Marion county Mississippi.
n did you first come to Ocean Springs?
ld not remember. I was very small then.
t how old. Five or six years old?
ir, I suppose so.
n were you first interested in the oyster business in any

thing like 25 years. I could not say exactly.
re were you at that time. In Ocean Springs?
ir.
ou ever fish oysters in Back bay?
not remember whether I ever did or not. I might have
never fished oysters extensively.
n you first went into the oyster business were there oysters
ean Springs and Back bay and along the coast here?
ir, there were oysters.
caused you all to go over in the marsh to get oysters?
t them more plentifully.
were more plentiful there than they were here?
ir.
were they not plentiful here?
is some thing that I could not say.
t because they were fished out?
ps there is a good deal in that. That is hard to tell.
t how long ago was it that you first heard the marshes as
em called the Louisiana marshes?
is a few years back. Possibly ten years. I don't know.
nly reason that you had for supposing that you were in
when you were over there was because you thought you
18 miles of the Mississippi main shore. Was not that
ason?
ir.
lid not know what rights Louisiana had in this marsh

nly not.
lid not know you were within nine miles of Louisiana
?
d not tell you that.
matter of fact there has never been any line drawn down
marsh 18 miles from the shore?
t know sir.
ow frequently were you in the marsh?
ry often.

Q. If you were not very often in the marsh would you be competent to tell whether there had been any changes there or not?

1590 A. Well of my own personal knowledge I don't know much about it.

Q. You don't know much about that?

A. No sir, only from hearsay. What I have heard others say. Only as far as Creole gap. I have seen that and noticed it.

Q. You know that has gotten bigger?

A. Yes sir, I know that has gotten bigger.

Q. Were you ever down there in the swamp Captain?

A. No sir.

Q. These factories that have been built along the coast. They have increased the demand for oysters very much have they not?

A. Yes sir, I think so.

Q. You have had to go further and work harder to get oysters since these factoriss have been working?

A. I never got any oysters for the factories.

Q. You have always handled a better grade of oysters? Is it not a fact that the oysters for shipping purposes are more plentiful in the marshes than in the sound?

A. Yes sir, they are more plentiful.

Redirect examination.

By Gen. McCLURG:

Q. You were engaged in shipping raw oysters?

A. Yes sir, raw oysters.

Q. You never have been engaged in the canning business?

A. No sir, I never have been.

Q. Crevasses from the Mississippi river, and the fresh water coming down the streams out of Mississippi and Alabama and pouring into the sound destroyed the oysters did not it?

By Mr. DYMOND: Objected to by the counsel for Louisiana on the ground that the question is leading and an exception is reserved on that account.

By Mr. McCLURG: What effect does fresh water have upon oysters?

A. Too much fresh water will kill them.

Q. Do you know of any time that they were injured by fresh water?

A. Yes sir.

Q. Where did the water come from?

A. Well it came from too much rain.

Q. I mean how did it get into the sound?

A. Well that is through these crevasses.

Q. From the Mississippi river?

A. From the Mississippi river.

Q. Do you remember what years that was?

A. No sir, I do not.

A. RYAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you live Mr. Ryan?
A. Ocean Springs sir.
Q. How long have you lived there?
A. I was born and raised in Ocean Springs.
1591 Q. How old are you?
A. I am 59 years old sir.
Q. What do you do there?
A. I am a carpenter and a fisherman and also an oysterman.
Q. When did you first do any oyster fishing?
A. Well sir when I began I suppose that it was about six or eight years after the war.
Q. That is six or eight years after the civil war?
A. Yes sir.
Q. Somewhere about 1870?
A. Yes sir.
Q. Where did you fish?
A. The first oyster fishing I ever did I followed it right here at home. Right here in the bays for a certain length of time, and then when the oysters got a little scarce I did like the rest of them. I went elsewhere.
Q. Where did you go?
A. Out to the marsh.
Q. To what marsh?
A. At that time we always called it the Grand marsh. I don't know what they may call it at present. A great many call it the Louisiana marsh now I suppose.
Q. In what part of the marsh did you go?
A. I never went into the interior at all. I always fished near the eastern lines of the marsh. I have gone out as far as Cat Fish pass. That is about as far as I have ever gone out there in these marshes.
Q. Cat Fish pass?
A. Yes sir, that is what they called the name when I used to go out there.
Q. Have you ever been about Isle à Pitre?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Were you ever as far west as Three Mile bayou?
A. I went to Three Mile bayou yes sir. One time it was on account of bad weather that I went into Nine Mile bayou. In fact I don't know the water in there myself. I only had one of my boys with me. He had been running out there and he knew the water in there and he went in there for a harbor.
Q. How far in Nine Mile bayou did you go?

A. We went in the mouth of it I don't hardly think more than a quarter of a mile sir.

Q. What sort of a boat were you in?

A. I was in a schooner.

Q. How much did she draw?

A. She drew about three feet or three and a half feet.

Q. When was this?

A. That was three winters ago.

Q. That is the only time that you remember being in Nine Mile bayou?

A. Yes sir, I went through Three Mile bayou a great many times but there are several ways to go through the marsh, and on account of the winds. You meet a head wind and you will go one way and a fair wind and you will go another. We went through Three Mile bayou the most of the time.

Q. When did you first go through Three Mile bayou?

A. Well sir I could not tell you exactly when I first went through there. It might have been maybe three or four, or four or five years ago. Maybe it was a litle longer than that.

1592 Q. Well do you know where the eastern mouth of Pearl river is?

A. Yes sir.

Q. When you were out there in the mouth of Nine Mile bayou and about Isle à Pitre and Cat Fish pass. They are there close together?

A. That is I suppose about south of Isle à Pitre.

Q. What do you know about the line between Louisiana and Mississippi there?

A. Well sir, I don't know that I know a great deal of the lines but I have always heard it said you know that the lines run south from the river straight out.

Q. From what river?

A. From Pearl river.

Q. Straight our how far?

A. I believe it is 16 or 18 miles is what I have always understood.

Q. How long have you been understanding that this is the line?

A. Well for 18 or 20 years or maybe more. Maybe it is thirty years.

Q. Do you know anything about the lines. Did you ever read any of the laws describing them?

A. No sir.

Q. What you know about it is entirely f-om what you have heard?

A. That is what I have heard yes sir. I am here under oath and I would not like to say one thing more than what I really know what is right.

Q. And I would not have you to do any thing else?

A. No sir.

Cross-examination.

By Mr. DYMOND:

Q. Now Captain when you fished in the marsh did you see any oats from the Old Basin fishing in there?

A. Yes sir, I saw a great many all over the marsh sir. That is here I have fished, at Grand pass and around Cat Fish, and come hrough Three Mile bayou and you have to go around the Karako here.

Q. Did you or did you not know what the law of Louisiana was that time in regard to non residents fishing in Louisiana?

A. No sir, I did not.

Q. You were not disturbed in fishing there at all?

A. No sir, not at all.

Q. It might have been that the Louisiana law permitted you to sh there at that time might not it?

A. Well every body fished in there at that time sir. I thought at I had as much right to fish there as any body else.

Q. Your idea about your thinking you were in Mississippi was ue entirely to the idea that you had that Mississippi run 18 miles the south of Pearl river?

A. Yes sir.

Q. You knew nothing about what claim Louisiana had to this territory did you?

593 A. Well no sir. What made me think that it might have been in the Mississippi, on account of this line if it run out athward from Pearl river I thought that I was always to the east-ard of this line.

Q. But you did not know that there was a line of Louisiana run-ng three leagues or nine Miles from her shore line over this way stward towards Malheureux point?

A. No sir.

Q. Or that she claimed any thing like that?

A. No sir.

Q. In fishing there Captain did you ever see any boats running tween New Orleans and the coast over here. Running by the golets?

A. Running this way?

Q. Any boats engaged in the coast trade from here to New Or-ans?

A. Well no sir as a general thing when they come from the arshes this way they generally strike out north east is our course.

Q. I don't mean from Three Mile, because that is on the coast be-ween Malheureux point and Isle à Pitre. I mean coming out of e mouth of Pearl river and out of the mouth of the Rigolets. ast boats going from here with charcoal and wood. Do you ow what route they followed. Was there any special course that ey used to go along?

A. Well yes sir, they went down this coast here towards the Rigolets. About a south west course.

Q. Why did they take this course. Do you know?

A. They had to go that way so that they can go straight through the Rigolets I suppose.

Q. Is there any deeper water there than any where else. I mean along through the sound there?

A. I suppose there must be.

Q. Do you know any thing about a channel that runs out of the mouth of Pearl river?

A. No sir, I am not very well acquainted with the channels in that country sir. I have made a few trips to the city but it was always on small boats, and on them you don't have to look for any such things as channels.

Q. When you started fishing oysters you used to get plenty of them around here?

A. Yes sir, I used to fish here.

Q. And as they got scarce here and there was more of a demand you went to other places to get them?

A. Yes sir, in the long run they got scarce. But at present a man can go out there and made a pretty fair day's work yet when he has the weather to do it.

Q. Is not the quality of the oysters in the marshes better for the shucking trade?

A. No better than it is out. Of course in quantity you can get more from there, especially in the raw oyster business.

Q. That is what I say?

A. Yes sir.

Q. You can get more oysters of a better class in the marshes than you can around here for the same kind of work?

A. Yes sir.

1594 A. BEAUGEZ, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. How old are you?
A. 45 years old.
Q. Where do you live?
A. In Ocean Springs.
Q. How long have you lived there?
A. 23 years.
Q. Where were you born?
A. In Jackson county, right across the bay.
Q. What is your occupation?
A. Well carpenter work. I follow boat work.
Q. How long have you been in the oyster business?
A. It has been a good long time.

Q. How many years do you think?
A. Well it has been at least about twenty five years.
Q. Where did you get your oysters?
A. In Grand marsh I run a boat about 12 years, and quit for about 15 years.
Q. When did you run the boat last. When did you quit?
A. Oh it has been about 15 years ago. We stayed on Cat island 11 years.
Q. You stayed on Cat island 11 years?
A. Yes sir.
Q. You lived on Cat island?
A. Yes sir.
Q. Who did you live with?
A. With my folks. My father and brother and sister.
Q. How long is Cat island?
A. The main body of the island is about seven miles long or maybe a little more.
Q. How wide is it out to the woods point?
A. The woods point is about three quarters of a mile wide.
Q. Did you go into Grand marsh from Cat island?
A. Yes sir.
Q. What part of Grand marsh did you go in?
A. The furtherest I went any ways was Cat Fish bayou. You now around the front was covered up with oysters then and we did ot have to go way back.
Q. Did you ever go through Grand pass?
A. Yes sir.
Q. Did you ever go through Three Mile bayou?
A. Yes sir.
Q. When did you first go through Three Mile bayou?
A. I was a young fellow and I did not take no recollection of all f these trips. It has been so long that I have almost forgotten it.
Q. How long did your father live on Cat island?
A. 11 years. We all stayed there together.
Q. In what State is Cat island?
A. I have always heard that it was in Mississippi.
Q. Do you know where Isle à Pitre is?
A. Yes sir.
Q. What State is Isle à Pitre in?
A. I have always heard that it was in Mississippi.
595 Q. Why do you say it is in this State?
A. That is what I have heard. I don't know nothing bout the law. I am not educated enough to know the law.
Q. Tell us what you have heard about it?
A. I have always heard that it was in Mississippi.
Q. Do you know where Pearl river is?
A. Yes sir.
Q. What has been your understanding as to the limits of Mississippi. As to how far it went?

A. The line you mean.
Q. Yes sir?
A. I have always heard that it was the line. That Pear
was the dividing line.
Q. Between Louisiana and Mississippi?
A. Yes sir.
Q. Th-n which way did Mississippi go from the mouth of
river?
A. I have always heard that it went south.
Q. How far?
A. I don't know sir how far.
Q. Could you say as to whether it went to Grand marsh?
A. I have always heard that it went 18 miles. That is w
have heard, but to say that I know it I suppose that I do not.
Q. When were you over there in the marsh the last time?
A. I went in a trip about two or three years ago. I stoppe
business of fishing about 15 years ago.
Q. Did you notice any changes in the bayous and lakes and is
down there?
A. The only place that I saw much change was at Creole g
Q. What change did you notice in Creole gap?
A. It is wider there.
Q. Do you know whether any body ever lived in the Grand
like you did on Cat island.
A. Well there was a camp that the Pascagoula factory had p
there at Kazako bay. The camp stayed there for a good long
Q. What became of it?
A. I don't know sir. I think that they took it up if I am
mistaken.
Q. When was this. How long ago?
A. Just as I told you I was young and I did not keep any re
of it.

Cross-examination.

By Mr. DYMOND:

Q. You say that you have not been fishing for about 15 y
Captain?
A. Yes sir.
Q. This is 1904. 15 years would carry you back to 1889. D
to that you fished and lived on Cat island?
A. Before we moved to Ocean Springs. You can count that
Q. Do you know any people living in Pass Christian?
1896 A. Yes sir, I do.
Q. Do you know a Mrs. Monroe, or the Missies Monroe
the house on the beach there at Pass Christian?
A. No sir, I don't know them. I knew Dr. Laroux.
Q. Did you ever know a man by the name of J. Leori?
A. No sir, I did not know him.

Q. Did you ever know of any body claiming to own Isle à Pitre; having bought it from the Government?

A. No sir, I never heard of it.

Q. So as a matter of fact you don't know whether Isle à Pitre belongs to any body or not?

A. No sir.

Q. You say you thought you were in Mississippi because where you were was 18 miles from the Mississippi shore?

A. Yes sir.

Q. Did you know any thing about what the claims of Louisiana were?

A. No sir, I just went by what I heard.

Q. Now is it not a fact Captain that the marsh has been called the Louisiana marsh just about as much as it was ever called Grand marsh?

A. Well the first time that I heard it it was Grand marsh. The parties would leave here and go to Grand marsh.

Q. How long ago is that?

A. It has been a good long while ago.

Q. When did you first hear it called the Louisiana marsh. About how many years ago do you think?

A. It has been a good while since we stayed on the island. There is Louis Gren, and Baptiste Moran that called it the Grand marsh.

Q. When did you first hear it called Louisiana marsh?

A. Lately.

Q. How many years ago?

A. I could not say.

Q. As much as ten years ago do you think?

A. About.

Q. You don't know what the lawyers from Mississippi say about this being Louisiana marsh in their papers in court?

A. No sir, I did not read the papers. I am not a scholar much.

1597 United States Supreme Court.

THE STATE OF LOUISIANA }
vs.
THE STATE OF MISSISSIPPI. }

Vol. 3, p. 611 to p. 923, incl.

1598 J. B. BEAUGEZ, a witness introduced on behalf of the St of Mississippi, being duly sworn, testified as follows:

By Gen. McCLUNG:

Q. Where do you live?
A. Ocean Springs.
Q. Jackson county, Mississippi?
A. Yes sir.
Q. How old are you?
A. I am 48.
Q. How long have you lived at Ocean Springs?
A. 23 years.
Q. What has been your occupation during this time?
A. Fishing.
Q. Where have you been fishing?
A. Well I have fished all over here in these waters. Chandeleu island and Horn island and Cat island. I have fished a good deal.
Q. Oyster fishing?
A. Fishing mostly.
Q. Do you know where Isle à Pitre is?
A. Yes sir.
Q. Nine Mile bayou?
A. No sir, I have not been in there.
Q. Three Mile bayou?
A. Yes sir, I have been as far as Three Mile bayou and that is about all.
Q. Did you ever fish in this section?
A. Yes sir.
Q. What is that section of country down there called where Isle à Pitre and Grand pass and these bayous are?
A. I have fished down there.
Q. What is the name of the place down there?
A. There is Jack Williams and the Karakos and Three Mile bayou.
Q. How long have you known these places?
A. About 31 or 32 years.
Q. Do you know where the line is that divides Louisiana and Mississippi?

A. Well no sir. I have heard a good many times that the line run from East Pearl river south.

Q. How far south?

A. About 17 or 18 miles south. That is what I have heard.

Q. How long have you been hearing that?

A. Oh well ever since I was a little boy. I have always heard my folks say so. That is the old people.

Q. Have you heard this marsh down there called by any other name except the marsh?

A. I have always heard it called Grand marsh except lately.

Q. Is that marsh; any portion of it within 18 miles of the Mississippi shore?

A. Well yes sir, it is.

Q. The Karako and Jack Williams and these other places. Are they within 18 miles of the Mississippi shore?

A. Yes sir, I rather think they are.

Q. Isle à Pitre?

A. Yes sir, Isle à Pitre is a heap closer than these other places.

Q. When you were in this country down there. At Isle à Pitre and Karako. What State were you then in?

A. Well I thought I was in Mississippi State according to what I have heard.

Q. You have never read any of the laws on the subject?

A. No sir, I never did.

Cross-examination.

By Mr. DYMOND:

Q. You thought you were in Missi-sippi because you thought you were within 18 miles of the shore?

A. Yes sir.

1760 Q. Whether Mississippi is really entitled to the 18 miles from the shore you don't know?

A. No sir.

Q. And as to what Louisiana's rights are in the matter you don't know?

A. No sir.

Q. When you fished there did you not see Louisiana boats fishing there the same as you were?

A. Yes sir, I have seen a good many Louisiana boats fishing there also.

Q. Could you tell exactly what points were 18 miles from the Mississippi shore?

A. No sir.

Q. You don't know whether Martin island is in Mississippi or not do you?

A. No sir, I could not say if it is or not. Martin island is a long ways out.

Q. Did you ever fish oysters?

A. Yes sir, I have fished oysters, but a mighty few.
Q. Where did you fish oysters down there?
A. When I did the oyster fishing I always fished on the r
mostly in front of Isle à Pitre, and all around Cat island and so
at Jack Williams bay, and south of the Karakos.
Q. You are a brother of Mr. A. Beaugez who testified just bef
you did?
A. Yes sir.
Q. And you lived on Cat island with the family?
A. Yes sir.
Q. Did you ever know one John Leovi who had a home at Pa
Christian?
A. No sir.
Q. You quit fishing about the same time that your brother di
About 15 years ago?
A. Yes sir, about that.
Q. Did you know a gentleman by the name of Mr. Gilmore wh
claimed to own Isle à Pitre?
A. No sir, I did not.
Q. You have not fished there since about 1889?
A. No sir.
Q. Now in regard to this being called Louisiana marshes. As I
understand it you say that it has recently been called Louisiana
marshes. Lately?
A. Yes sir.
Q. Well for how many years do you think?
A. Well for about eight or ten years.
Q. Well now as a matter of fact you really don't know which of
these States these marshes belong to do you. As a matter of law or
of fact?
A. No sir, I don't know.

E. LADNIER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you reside?
A. Ocean Springs.
Q. For how long?
A. It has been 23 years that I have been there.
Q. How old are you?
A. 37.
Q. What is your business?
A. Well I have not been doing nothing but oystering.
Q. How long have you been oystering?
A. Well I have been oystering now about 23 years.
Q. Where?
A. Out in the marsh. On the reefs.

Q. What part of the marsh have you been in within the last 23 years?

A. Well we have been working the most in the northern part of it.

Q. Name some of the places?

A. We have been working in Karako bay and Indian Mound bay and Drum bay and in through there.

Q. Were you ever up in the neighborhood of Nine Mile bayou?

A. Yes sir.

1600 Q. Do you know where that is?

A. Yes sir.

Q. Three Mile bayou?

A. Yes sir, Three Mile bayou.

Q. Johnson bayou?

A. Yes sir.

Q. Turkey bayou?

A. Turkey bayou.

Q. Creole gap?

A. Creole gap.

Q. Grand pass. You know all of those places?

A. I know them all.

Q. When you were in those places what State were you in, Louisiana or Mississippi?

A. Well I always thought I was in the State of Mississippi.

Q. Why did you think that?

A. Because I always heard that the line run due south from the mouth of Pearl river.

Q. How far south?

A. I have always understood that it was 18 miles.

Q. Did you ever read the laws on this subject?

A. No sir, I am a mighty poor scholar.

Q. And what you heard is by tradition and what the people say about it?

A. Yes sir, that is all.

Q. Have you noticed any changes in the bayou and islands in the marsh?

A. Not a bit. It has been the same to my knowledge. Only one place, and that is on account of the tide running so hard I suppose. That is Three Mile bayou.

Q. What change did you notice there?

A. Well they washed away there I expect about 100 feet. That is about all.

Q. At what place?

A. At Three Mile bayou, about on the west point of it.

Q. On the west point of Three Mile bayou?

A. Yes sir.

Q. About 100 feet washed away?

A. Yes sir, to my knowledge. It has been 23 years.

Q. State whether or not you have noticed any change in the

height of the islands. Whether they are higher or any lower than they were when you first noticed them?

A. I don't suppose that there is an inch.

Q. You don't suppose that there is an inch?

A. No sir, it has always been the same, only in some places the strong stream of the tide will take the mud off. That is all.

Cross-examination.

By Mr. DYMOND:

Q. You say that you have been fishing oysters for 23 years?

A. Yes sir.

Q. You live at Ocean Springs?

A. Yes sir.

Q. Did you ever fish oysters back here in Back bay about Gravelling?

A. No more than to get a catch of them, a mess for my own use.

Q. Why did you go over to the marshes to fish oysters?

A. That is where I always went. I never made it my business to work here at all.

Q. Were the factories here when you first started to fish oysters?

A. Well no sir, not exactly. When we first started running we got them for shop use.

Q. You think that is 23 years ago as well as you remember?

A. Yes sir, about 23 years ago.

Q. When was the last time you passed through Three Mile bayou?

A. About a month ago.

Q. And you say that the only difference in Three Mile bayou in the last 23 years is that about 100 feet of the west side is washed away?

1601 A. The west point on the bayou is washed away.

Q. Did you ever measure it there?

A. No sir, I did not go to that much trouble.

Q. How wide was Three Mile bayou when you first saw it?

A. Well I suppose that it was about three or four hundred feet or something like that. I would not say exactly.

Q. That is 23 years ago?

A. Yes sir, 23 years ago.

Q. How wide is it today?

A. Today I don't suppose that it — more than 500 feet.

Q. What is the condition of the west side of Three Mile bayou today. What does it look like when you go in there? What is the difference between the west side and the east side?

A. The west side of it comes in to a point like and the east side is a body of land.

Q. What is the condition of the point on the west side?

A. Well it comes right narrow just like I am telling you, to a point.

Q. And that is all there is to it?

A. Yes sir, that is all.
Q. You are positive about that?
A. Yes sir.
Q. You could not be mistaken?
A. No sir.
Q. And you were out there a month ago?
A. Yes sir, there is a narrow point comes there and makes a little mud shoal.
Q. Is not there a little grass on it. Is there not a little island down there on the west point?
A. Yes sir, it is from the point washed away like I tell you.
Q. Is not it much more than a hundred feet from that island back to the main shore on the west side?
A. It may be. I have not measured it.
Q. Well now did it not use to run away beyond this little point that is left there. Did not this point use to run much further north east and did you not use to have to come in on a south west course?
A. You have to now.
Q. Did you not have to come in on a much more southwest course 23 years ago than you do now?
A. Not much.
Q. How much then?
A. Well no more than a couple of hundred feet anyway.
Q. Now Captain if you were told that certain witnesses knew that bayou when it was not more than seventy five feet wide would you be prepared to say that the witnesses were not stating the truth?

By Gen. McCLURG: Counsel for Mississippi notes an exception to this question on the ground that it is incompetent to have this witness express his opinion as to the truthfulness or untruthfulness of what other witnesses have testified in this case. It being left to him to tell what he knows, and then it to be compared by the court with what other witnesses have to say, and who have not been impeached.

Q. Now Captain, if I were to tell you that certain witnesses knew hat bayou when it was not more than seventy five feet wide, would ou be prepared to say that those witnesses were not telling the uth?
A. I don't know. It might have been seventy five feet beyond y knowledge.
Q. Now Captain were you ever stopped from fishing oysters in the arshes Did any body ever stop you from fishing them there?
A. No sir.
Q. Did you fish there last year?
A. Yes sir, I fished there last year.
Q. Did you have a license when you fished there?
A. Yes sir.
Q. A Louisiana license?
A. Yes sir.

Q. With that Louisiana license did not you have as good a chance as any one else to fish in there?
A. Yes sir.
Q. What did you do with your oysters?
A. I brought them to the Rigolets.
Q. To the Louisiana Oyster Company?
A. Yes sir.
Q. It did not work any hardship on you because you had to get a Louisiana license?
A. Not to say a hardship. I paid $16.50 for it.
Q. How many boats did you have?
A. One big boat.
Q. How much was the Mississippi license?
A. The Mississippi license cost ten dollars.
Q. You had to send your oysters to Louisiana. You could not take them to Mississippi?
A. No sir.
Q. You had as much opportunity to fish down there as you did before except that you fished under a Louisiana law?
A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. When did you first buy a Louisiana license?
A. This winter past. Last year.
Q. When did you first buy a Mississippi license?
A. I got that two years ago.
Q. Where did you fish under the Mississippi license two years ago?
A. We fished as far as Grand pass.
Q. Have you ever fished any in the marshes under the Mississippi license?
A. No sir.
Q. What has that marsh been called down there?
A. I have always called it and heard it called Grand marsh, or the marsh.
Q. You have heard it called Louisiana marsh have not you?
A. Yes sir, here lately.
Q. Since when?
A. It has not been more than a couple of years since I have heard it called that.

LOUIS RYAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. How old are you?
A. I am 65 years old.
Q. Where do you live?
A. At Ocean Springs, Miss.
Q. How long have you lived there?
A. I was born and raised there.
Q. Do your parents live there?
A. Yes sir.
Q. How long did they live there?
A. I don't know how long they lived there. I know that I was born and raised there so far as I know. I could not tell you how long they have lived there.
Q. What is your present business?
A. Boating.
1603 Q. How long have you been boating?
A. Almost all of my business is boating in these waters. Running pleasure boats and so on. That is the most of my work.
Q. Are you familiar with the waters between Ocean Springs and Pearl river?
A. Yes sir, as far as Pearl river, yes sir.
Q. Do you know any thing about Nine Mile bayou and Three Mile bayou and Turkey bayou?
A. No sir.
Q. Do you know any thing about the marsh?
A. No sir.
Q. How long have you been knowing the eastern mouth of Pearl river?
A. Well I guess that I have been knowing the eastern mouth of Pearl river somewhere around 25 years.
Q. Where have you been generally running your pleasure boats?
A. Between here and Pass Christian and Scranton and so on.
Q. Did you ever go out south of Deer island and Ship island?
A. Yes sir, I have gone as far as Horn island.
Q. How long have you been going in that territory. Out in the Ship Island territory?
A. Well I have not been at Ship island for I don't know how long.
Q. When did you first see Ship island?
A. I guess I must have been about 14 years old. That is when I first went there.
Q. Well tell us what you know about the boundaries of Mississippi and Louisiana, Captain.
A. I don't know any thing about it sir.
Q. You have never read any books on it at all?

A. I never have.
Q. Have you ever heard the old people say any thi
A. Only lately I have heard the people talking abou
the boundaries of Louisiana and Mississippi, that is all
about it. As far as my own knowledge is concerned I
any thing about it.
Q. You don't know where the line is?
A. No sir, I do not. All that I heard, that the line t
the State of Louisiana and Mississippi they say is Pearl
Q. You know where East Pearl river is do you?
A. Yes sir, I know that.
Q. Have you any idea which way the line runs out of
of East Pearl river?
A. No sir.
Q. You don't know?
A. No sir.

L. FAYARD, a witness introduced on behalf of the State
sippi, beirg duly sworn, testified as follows:—

By Gen. McCLURG:

Q. Where do you reside?
A. Ocean Springs.
Q. How old are you please sir?
A. I will be 55 in July.
Q. How long have you lived at Ocean Springs?
A. I came to Ocean Springs five years after the surrende
Q. Where from?
A. I was in Mobile during the war. My native home i
town of Biloxi.
Q. What is your present occupation?
A. My present occupation is attending to a county bridg
Q. What is your occupation during your past life?
A. An oysterman.
Q. From Ocean Springs?
A. Yes sir.
1604 Q. Where did you take oysters?
A. You mean the place that I took the oysters from
is what we call Grand marsh.
Q. When did you first take oysters in Grand marsh?
A. I think as near as I can recollect it was about 1870.
Q. How long did you continue to take them from 1870?
A. Well along for about 15 or 20 years.
Q. So then you took oysters from about 1870 to about 189
A. Yes sir.
Q. From what place in the Grand marsh did you take oyst
A. Well from the two point lagoon and Karako bay, and
pass, and Creole gap and Jack Williams bay.

Q. In what State are those places?

A. Well I have always heard it called the Grand marsh.

Q. Is it in the State of Mississippi or in the State of Louisiana?

A. We have always been under the impression that it was in the State of Mississippi.

Q. Why?

A. I have always heard that it was that way.

Q. Do you know where Isle à Pitre is?

A. Yes sir.

Q. It is north of these places that you have mentioned or north east is it?

A. It is north east.

Q. You know where the mouth of Pearl river is?

A. Yes sir.

Q. Malheureux point and all of those places out there?

A. Yes sir.

Q. How long has it been your understanding that these places that you have mentioned are in the State of Mississippi?

A. About 12 years.

Q. Did you ever buy any license 12 or 15 years ago to fish oysters in the State of Mississippi?

A. No sir.

Q. Did you ever buy any license at all?

A. No sir.

Q. Did you ever buy one from Louisiana?

A. No sir.

Q. Tell us how it was that you first come to the understanding that these places we are talking about were in the State of Mississippi?

A. Well I just knew that in running for these different firms along down the coast, and running some times down to Mobile.

Q. For what?

A. Oysters.

Q. At what points here did you deliver your oysters to?

A. Well I delivered them —; it was what was called the raw oyster business at that time.

Q. Was this before the canneries started?

A. I run with Mr. Gornflo and Mr. Lopez, and I used to run for Mr. Desports down here and I run back to Back bay too.

Q. When were you in the marsh the last time?

A. It has been a good while. I freighted oysters out of Three Mile bayou about three years ago.

Q. What was the draft of your boat?

A. My boat that I run on when it was loaded was carrying 450 to 500 barrels and drawing five feet of water.

Q. How far down Three Mile bayou did you travel thus loaded?

A. I did not go any further than about a half a mile or three quarters inside of the bayou.

Q. Do you know whether or not that trip could be made through

Three Mile bayou out into the sea about Door point and San
island and Brush island and down in that country?
A. Do you mean to go down into the marsh?
Q. Yes sir.
A. Do you mean what draft?
Q. Yes sir.
A. I have run a schooner through with about 150 barrels of
ters on board, drawing three and a half feet.
1605 Q. What course did you take?
A. It is generally northeast all the way through.
steered about south southeast to get through the Karakos and
up north east.
Q. Through Three Mile bayou?
A. Through Three Mile bayou into the marsh?
Q. Yes.
A. I come out to what they call Deep Water point.
Q. Where is that?
A. It sets about north east also.
Q. Through Three Mile bayou?
A. Yes sir, coming out that way through the marsh.
Q. How long have you been knowing that marsh?
A. I have been knowing that marsh ever since I can remembe
Q. What has it been called?
A. I have always heard it called Grand marsh.
Q. Did you ever hear it called the Louisiana marsh?
A. Well I have heard it called Louisiana marsh about two yea
to my knowledge.
Q. Before that time it was called what?
A. Grand marsh.

Cross-examination.

By Mr. DYMOND:

Q. You never heard it called Mississippi marsh, did you?
A. No sir.
Q. Now when you were freighting oysters was not it the custom
of the big boats like you were on to lay in the mouth of Three Mile
bayou and wait for the little boats to come there and deliver their
loads to you?
A. Yes sir, not in the mouth. From one half to three quarters
of a mile inside.
Q. Is it not a fact that the freight boats did not go further out
into the marsh. That they lay as you say less than a half a mile
on the inside of the marsh. Take these boats that Dunbar and
Ducate and Lopez had. Are not they accustomed to lay less than
half a mile on the inside of the mouth of the bayou?
A. Well that is customary, yes sir.
Q. When you spoke of going through with a boat drawing three

and a half feet of water. You referred to Deep Water point. Is not that also called Deep pass?

A. Well they have different names for it. We have always called it Deep Water point.

Q. Is that not just south of Brush island?

A. Yes sir.

Q. And that is on the course east from Raccoon island, is not it?

A. Yes sir.

Q. Well now you state that it was north east. Where did you get the idea that it was north east Captain?

A. I mean sailing from the coast.

Q. You mean that when you left Deep Water pass that you have to sail north east to get to the coast?

A. Yes sir.

Q. You sailed east up this way, did you?

A. Yes sir.

Q. Now the boats that usually fish in the marshes. They were small boats so far as the draft was concerned?

A. Some are small draft, but as a general thing the boats would run into the marsh for good oysters. As a general run of the boats none of them drew any less than my recollection is three feet. Since we have had these canning factories of course the canning factories have made smaller draft barges and run them in there.

Q. Those boats can not go through the marshes?

A. Yes sir, if you know your route you can go through the marshes with a boat drawing three or three and a half feet of water, all through there but you have to know your road.

1606 Q. When did you first start in the oyster business?

A. In 1870.

Q. At that time where did you fish mostly?

A. Mostly in the Grand pass.

Q. Did not you ever fish around here at Back bay and at any of these reefs in this locality?

A. Yes sir.

Q. How were the oysters then in 1870 in this locality. Were there many of them?

A. Yes sir, there was a right smart of them.

Q. What sort of trade did you supply with these oysters?

A. We fished for the Mobile market and would also fish and take a load to New Orleans.

Q. There were no canning factories here then were there?

A. No sir.

Q. What was it that caused you to start fishing over there in what you call the Grand marsh?

A. We went out there fishing and found the oysters plentiful.

Q. You did not have to work so hard to get a certain amount of oysters?

A. No sir.

Q. Well now you saw boats from the old basin and other pl in there fishing also?

A. Yes sir.

Q. Did any one stop you from fishing there when you were f ing out there in the marsh?

A. No sir.

Q. When was the last time that you fished out there Captain?

A. Well it has been according to my recollection about ten ye ago.

Q. Well now you say that you think that it is about two ye ago that this place was first called Louisiana marshes? Are y not mistaken about that and has it not been longer than that it h been called Louisiana marshes?

A. No sir, not to my recollection.

Q. If you have not been there for ten years how do you know th it has only been two years that it has been called that?

A. Well that is the general talk when they originated this licen business.

Q. Was not it called Louisiana marshes before this license busine was started?

A. Not to my recollection, no sir.

Q. How do you account for the fact that the lawyers for Missi sippi admitted that it was called Louisiana marshes?

A. I could not say sir.

Q. How do you account for the fact that the witnesses on thi stand who have testified this morning; Mississippians say that t their knowledge it has been called the Louisiana marshes for ten years?

A. I have not heard it.

Q. You just simply have not heard it?

A. No sir.

Q. Now, Captain as a matter of fact have not you fished in Drum bay?

A. Yes sir.

Q. Did you consider that you were in Mississippi when you were fishing in Drum bay?

A. We considered that we were fishing in Mississippi waters, yes sir.

Q. You don't know whether Drum bay is within 18 miles from the Mississippi shore or not do you?

A. No sir, I have not measured it and I could not tell you that.

Q. You fished at Martins island?

A. Yes sir.

Q. You thought that you were fishing in Mississippi then?

A. Yes sir.

Q. Well now Captain is it not a fact that you never did consider whether you were fishing in Mississippi or not. That never came up for you to consider it. Nobody never disputed it with you down

there and said that you were not in Mississippi and must stop fishing?

A. No sir.

Q. Is it not a fact that you never had that question to come up in any way at all to make you say positively that you were not
1607 in Mississippi?

A. No sir.

Q. Well now did the thing ever come up in any way to make it necessary for you to determine whether you were or whether you were not in Mississippi?

A. No sir.

Q. You say when you fished in Drum bay you thought you were in Mississippi?

A. Yes sir.

Q. Well now let's look for a moment Captain at this map which is called Mississippi "A" attached to the testimony of W. K. M. Ducate, and I will ask you to look at this red ink line which is called the Mississippi line?

A. Yes sir.

Q. And I will ask you to see whether Drum bay is north or south of the red ink line?

A. It is south.

Q. I will ask you to look at Martin island and see whether that is north or south of that red ink line?

A. It is south according to that line.

Q. It is what?

A. It is south.

Q. Well now if the 18 mile line is represented by this red ink line, if that is the end of the Mississippi line, then when you were fishing in Drum bay and at Martins island were you or were you not fishing in the State of Mississippi?

A. We always thought we were fishing in Mississippi but according to that business there it looks like we were not.

Q. Well is it not a fact Captain that there was not any boundary line or post down there or any thing of that sort so that you could not really tell whether you were or were not in the State of Mississippi?

A. I could not say no sir.

Redirect examination.

By Gen. McCLURG:

Q. Your attention was called to this map south of the Mississippi line and you were asked whether any measurement had been taken or any line had been marked out?

A. No sir.

Q. Did you see any marks or posts indicating where the southern boundary was?

A. No sir.

Q. You supposed that you were within 18 miles of the Mississippi shore?

A. Yes sir.

J. S. CATCHOT, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. How old are you?

A. I am going on 44 years old.

Q. Where do you live?

A. At Ocean Springs.

Q. How long have you lived there?

A. All of my life. I was born and raised there.

Q. What is your present business?

A. The oyster business.

Q. How long have you been in the oyster business?

A. Since I was a child.

Q. Where have you been taking oysters?

1608 A. The most of my oysters I have taken since 1869 was from the Grand Louisiana marsh, and Cat island. I have been in the oyster shipping business and shipping in Alabama.

Q. When you were taking oysters down there in what State were you?

A. Well we were taking the most of them from Louisiana marsh. Getting most of our oysters from Louisiana marsh.

Q. Where did you carry them?

A. To Ocean Springs. Most of our business was shipping oysters. Alabama, Tennessee and Georgia.

Q. Did you ship raw oysters?

A. Yes sir, we got them for the shops around here. The local use.

Q. Why did you go down to the marshes to get them?

A. I had not been out there very much, but we had boats running them. We had as high as seven or eight schooners, or twelve, running oysters.

Q. How often did you go out there yourself?

A. My first visit in the Louisiana marshes was in 1874. I had a schooner of my own, not of my own, but my father rented a schooner from Mr. Nelson by the name of Effie May. My father built a schooner afterwards and I went out there running oysters at Creole gap and Grand pass, and I have gone as far as what they call Cranetown pass down there.

Q. What sort of boats did you go in there in?

A. Boats carrying 150 barrels of oysters.

Q. What draft?

A. Light draft. Drawing about three feet or three and a half at the most.

Q. Did you ever go through Three Mile bayou?
A. I don't know much about Three Mile bayou. I have been out in the Grand marsh a great many times.
Q. Did you ever go through Grand pass?
A. Yes sir, I have fished oysters there many a time.
Q. How deep did your boat draw?
A. My boat never drew over three and a half feet of water.
Q. Did you ever go through Johnson bayou?
A. I think I have but I would not state.
Q. Have you ever been through Turkey bayou?
A. I could not state. I might have been but I don't know.
Q. Have you ever been in the Karakos?
A. Yes sir.
Q. How deep did your boat draw through there?
A. Well I could go through there with a boat drawing three feet of water or three and a half.
Q. Were you ever in Indian Mound bay?
A. No sir.
Q. Drum bay?
A. No sir, I could not state.
Q. You have been about Bayou Greecue?
A. Yes sir.
Q. How deep was your boat drawing there?
A. I could go in Bayou Greecue in some places drawing ten feet of water.
Q. I am talking about going through it?
A. I could go through there all right.
Q. At what draft?
A. At three and a half feet yes sir.

Cross-examination.

By Mr. Dymond:

Q. What was the name that you knew the marshes to be called by?
A. Well sir, I have known those places that I have been at there. There is Creole gap and Grand pass and Karako bay, and Cranetown pass and Brush island and Martin island. I have been as far down as what they call Martin island.
Q. Was this in Louisiana or Mississippi?
A. It was in Louisiana. Yes sir, I think it was. It was pretty far down south. Now I will tell you. I don't know much about Louisiana and Mississippi boundary, but it was stated it was Louisiana. It was pretty far down. I was never a great oyster man to say running schooners and making a living out of them. I
1609 was in the oyster business, shipping oysters and buying them.
Q. Is it not a fact Captain that you understood that these oysters were coming from the Louisiana marshes?

A. Well now the men would state that.

Q. They would tell you that they were getting oysters from the Louisiana marshes?

A. Yes sir, and you see why. You see all of these shell banks from Cat island were considered in the State of Mississippi, and down 25 miles down they called it the Louisiana marshes oysters. But to know about this business I am ignorant of it.

Q. Now these Louisiana marsh oysters. Did they not come from Karako bay?

A. Yes sir.

Q. And Three Mile bayou and Grand pass?

A. Yes sir.

Q. In fact all of the oysters that they caught down there in the marshes were better oysters for your shuck business than the oysters gotten out here on the reefs?

A. Oh my God, yes sir, those were finer oysters.

Q. You had to go there to get them?

A. Yes sir, and without those oysters—I will tell you my friend, the people are in need of them, because they are the best oysters. The shell bank oysters are no circumstance to the Louisiana marsh oysters, and there are millions of barrels of oysters in these Louisiana marshes. They will never destroy them in hundreds and hundreds of years to come. Cull the oysters and throw the shells back. Mississippi or any other State can go there and catch for 100 years and never destroy them. There will always be oysters there. There are oysters there for centuries and centuries and they never could destroy them for hundreds and hundreds of years to come. Mississippi or any other State could not destroy them I am going to get me a schooner and go there and catch me a load of oysters, and they can put me in jail if they want to.

Q. When did I understand you to say that you were going down there to get them?

A. I don't know when. I don't know when. I say if I ever take a notion to.

Q. If you take a notion you are going there to get your oysters whether they put you in jail or not?

A. I made my first visit there in 1874. I fished there in 1874, 1875 and 1876 and 1878. I went out and got a load of oysters in the marsh in 1880, 1881 and 1882.

Q. You don't believe that one State has the right to use that place down there and say that another State can not go in there and fish?

A. I will tell you if I could vote a few times on that. I would say that I would try and prohibit it. I would say let's go there and be friends and catch oysters. It is some thing that grows and increases. You know there is nothing on the face of the earth that increases like oysters.

Q. You do not think that one State ought to stop another State from fishing in there?

A. No sir, Louisiana ought not to stop Mississippi from going in there, because they could go in there and catch oysters year after year. I know men that have been fishing in the marsh before the war and after the war, and they fished up to the time that the laws of Louisiana prohibited them from going in there. It is ridiculous.
Q. You think that is all wrong?
A. It is wrong and very wrong. It should be stopped sir.

Redirect examination.

By Gen. McClurg:

Q Did you ever see a whale down there?
A. No sir, I never saw a whale there.

The commission here adjourned until tomorrow morning at nine o'clock.

1610 Tuesday Morning, June 14th, 1904.

The commission met this morning at 9 o'clock. There were present Col. F. C. Zacharie, representing the State of Louisiana as counsel, and Gen. Monroe McClurg, and Hon. J. N. Flowers, on the part of the State of Mississippi as counsel, and Hon. William D. Bullard, commissioner.

Z. T. Champlin, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McClurg:

Q. How old are you Mr. Champlin?
A. 57 years old.
Q. Where do you reside?
A. In Biloxi, Miss.
Q. How long have you resided in Biloxi?
A. 17 years.
Q. Do you hold any office in this county?
A. Yes sir.
Q. What office is it?
A. Justice of the peace and county administrator.
Q. This is Harrison county?
A. Yes sir.
Q. What district?
A. District No. 1.
Q. Of Harrison county?
A. Of Harrison county.
Q. How long have you held that office?
A. A little over 16 years. Going on 17 years.
Q. This is an office of record?
A. Yes sir.

Q. And it uses no seal?

A. It uses no seal.

Q. It has jurisdiction of civil matters within a certain limit, a final jurisdiction of misdemeanors under the laws of this State?

A. Yes sir.

Q. And has had during the whole time that you have been ju tice of the peace?

A. Yes sir, the whole time, 16½ years.

Q. Are the books and records of this office in your keeping?

A. Yes sir.

Q. I have here a certificate signed by you on the 14th day of Jun 1904 certifying to the correctness of final judgments entered b you on the 14th of March 1890 against divers persons for market ing unculled oysters to-wit: —— Miller, —— Fulford, M. Edwards J. Pervisich, Capt. Strong, Marco Ladina, Dominick Dulcich, John Baker, M. Bagatella, Emile Borsorge, George Smee, R. B. Galloway John Raymond, Jack Covacovitch, John McAdy, Capt. Raymond, Tony Bonacich. I will ask you to state whether you have ex amined and compared these certificates with the original entries made by you on your docket and see whether they are correct?

A. I have compared them and found them correct.

Q. I notice in your certificate that you say that you have made search for the affidavit and other papers accompanying these rec ords and have not been able to find them. Is that correct?

A. Yes sir, I have. It has been so long ago since they were made.

Q. Your docket shows the charges against these several persons "The marketing of unculled oysters," but the docket fails to dis close where the offense was committed. I will ask you to state whether the affidavit or warrant made any specific statement other than in the county as to the commission of the offence?

1611 A. No sir, the affidavit only states that it occurred within my county.

Q. Have you any personal knowledge as to where these offences occurred?

A. All that I know is they were here in *in* this district. Right here in the city of Biloxi or in this neighborhood that the oysters were unculled. That is the violation of the law. To market them in that way.

Q. I notice here on your certificate it is noted "In channel, wharf unloading, in front of Lopez factory" and memoranda like that. What does that mean?

A. I think that it is merely to indicate where they were at the time they were arrested by the officers or as a memoranda for the officers to locate them. Perhaps the man who made the affidavit told that. I have no recollection about that.

Q. As to the place where they got these oysters have you any personal knowledge?

A. None in the world.

By Gen. McCLURG: Counsel for Mississippi here now offers to introduce in evidence the certified copies of the records above mentioned, and furnishes to the counsel for the State of Louisiana a true copy of the same. The records now offered in evidence are marked Mississippi Document No. 23.

Q. I have here also Mr. Chamberlin copies made from your docket of final judgments, one in the case of The State of Mississippi *vs.* M. Bagatella, for violating oyster ordinance of Harrison county, in which you imposed a fine of ten dollars and costs, and also the case of The State of Mississippi *vs.* Jake Stanovitch for violating the oyster ordinance of Harrison county Miss. in which you fine- him ten dollars and the costs. Those two cases were tried it seems on the 20th of January, 1894, upon affidavits filed on the 27th of November 1893. I also have a copy from your docket in the case of The State of Mississippi *vs.* John Bowen charged with resisting arrest, affidavit filed December 22nd, 1893, and final judgment entered on February 17th, 1894, upon a verdict of the jury acquitting him. I wish you would please see if you have compared these certificates with the original entries on your docket to see whether they were correct?

A. I have compared them and found them correct.

Q. I notice in your certificate that you say that you have made diligent search for the affidavit and other papers in your office and all places where they are usually kept or likely to be found and that you have been unable to find them?

A. That is so.

Q. Have you any personal knowledge as to where these violations of the ordinances of Harrison county occurred?

A. Nothing except that they were in my county. Nothing more than they are on the record. No personal knowledge at all. I have a recollection of the Bowen case.

Q. The case against John Bowen for resisting arrest, you have the same certificate, not being able to find the affidavit and warrant and other papers?

A. Yes sir.

Q. Have you any personal knowledge as to the place where that offense was alleged to have been committed?

A. I have a recollection as to where it occurred. It was said to have occurred in the evidence before me to the best of my recollection now that it occurred some where below Grand pass or Sundown island or some where down in there.

By Col. ZACHARIE:

Q. You have no personal knowledge of it?

A. No sir, no personal knowledge except that the evidence was before me.

By Col. ZACHARIE: This evidence is objected to on the part of

the State of Louisiana for the reason that this is mere hear-
1612 say evidence, and can not be admitted even as secondary evidence under the circumstances detailed by the witness.

By Gen. McCLURG: Counsel for the State of Mississippi here produces and offers in evidence on the part of said State the certified documents being transcribed from the docket of Z. T. Champlin, justice of the peace, in the cases of The State of Mississippi vs. M. Bagatella, Jake Stanovitch, and John Bowen and furnishes the counsel for the State of Louisiana a copy of the same, and marked Mississippi Document No. 24.

Q. I understood you to say that you had been holding the office of justice of the peace for district No. 1, of Harrison county, Mississippi for nearly 17 years, and that you have been exercising jurisdiction as shown by the certificates which have been taken from your dockets and certified by you to some extent on the waters of the Mississippi sound. I will ask you to please state how far to the southward of the Mississippi shore line you have exercised jurisdiction during the time that you have been holding office?

A. A distance of six leagues from the main shore.

Q. Where is that if you know. The southern boundary of the State of Mississippi?

A. The southern boundary of the State of Mississippi. Do you mean to locate the place?

Q. No?

A. It would be six leagues or 18 miles from the main shore line of the State of Mississippi. I have always considered that my jurisdiction was 18 miles due south. In fact I have exercised it often as far as Ship island until I was stopped by the Supreme Court deciding that the United States had jurisdiction of that island, and within one mile of the waters surrounding it. Then I have gone as far east of here as Grand pass.

Q. Did you ever go any further than Grand pass?

A. That is considered the limits of Harrison county.

Q. What county to the westward of Harrison county?

A. That is Hancock county.

Q. I will ask you to look at the map Exhibit "A," exhibited with Mississippi's answer and cross bill and see if you can find Grand pass on the map?

A. Yes sir, here is Grand pass (the witness shows the location on the map).

Q. And Sundown island?

A. Yes sir, this is Sundown island. This is about the place where Bowen is said to have committed the offense for which I tried him.

By Col. ZACHARIE: The same objection is entered on the part of the State of Louisiana in regard to hearsay testimony as was entered above.

Q. About how far is it from the Mississippi shore about the center of Bay St. Louis to Sundown island?

A. Well I don't know only approximately. I would judge that it was 14 or 15 miles or some thing like that.

By Col. ZACHARIE:

Q. You have never been there?

A. No sir. I have never been to these islands.

By Gen. McCLURG:

Q. Have you ever been on Isle à Pitre?

A. No sir, I never have been on it.

Q. Did you know Mr. James B. Holly in his lifetime? The justice of the peace?

A. I knew the justice of the peace, but it does not seem to me that that was his name. It is L. B. Holly.

Q. L. B. Holly. Yes sir, that was his name.

A. Yes sir, Lyman Holly was his name. I knew him.

Q. What office did he hold if any?

A. The office of justice of the peace of district No. 1. This district.

1613 Q. When?

A. My recollection is that he was holding the office of justice of the peace when I came here in 1887.

Q. Whom did you succeed to that office?

A. I succeeded W. M. Jordan, because I believe Holly was elected with me that year. We are entitled to two justices of the peace in this district. I think that he was elected with me and Jordan was the one that went out. One of these dockets is Jordan's docket that he handed to me when he went out.

Q. Where is L. B. Holly?

A. He has been dead for some years.

Q. Where is Jordan, the other justice of the peace that you spoke of?

A. He also is dead. Has been for a number of years.

Q. Can you say whether or not these officers exercised jurisdiction to the same extent that you have been exercising it since that time?

A. Well I can not say except, I know of no particular instance where they exercised it, except that it was thoroughly understood that our jurisdiction was as I have stated it.

Q. You have no personal knowledge about it?

A. No sir, I have no recollection of where they exercised it.

Q. I will ask you this question. What the general understanding of the public was, has been in and about Biloxi and within your district as to the southern boundary line of the State of Mississippi, and Harrison county?

A. The general understanding of the public, deriving it from the description of the boundary of Harrison county, is that it takes in

18 miles south or six leagues south of the main shore, includ islands within that distance. It has always been so, and few years ago I never heard a contradiction of that question.

Q. About how many years ago, Captain?

A. Well I would say six or eight years ago. I do not rem exactly.

Q. Mr. John Bowen is the man here that you tried for res an officer?

A. Yes sir.

Q. Is this the gentleman that is present here now?

A. Yes sir, that is the gentleman over there. He is Capt. Bowen.

Q. That is the man whom you tried as certified to by you i record, which we have introduced in evidence here?

A. The same man, yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Chamberlin, in all of these cases which you say brought before you, these first cases alluded to in the certific first offered by the counsel for the State of Mississippi. The offe charged was for marketing unculled oysters was not it?

A. Yes sir.

Q. Now I see here "In channel, unloading, in front of Lopez' tory." Those parties were committing those offences in the im diate vicinity of Biloxi were not they?

A. Yes sir.

Q. Now I see in some of them that the State failed to lay t venue. What does that entry mean?

A. It failed to show that it occurred in my district, district No. of Harrison county. It did not show where it was. If you wi pardon me right here it has occurred to me that those entries wi show that when they were out there getting the oysters they we not committing any offense. The statute seems to be marketin them. The mere having them in possession would not be a viola tion of the law.

Q. What do you mean in there by channel. That is the channe in front of Biloxi?

A. Yes sir, out in front of Biloxi. I see here one time i
1614 says unloading. He made the trade at that time and was marketing his oysters.

Q. Do I understand that these entries that are here as they appear here are exact transcripts of what appears on your minutes?

A. Exactly what appears on my dockets word for word.

Q. There are no papers or documents connected with these suits?

A. I have none. I have made a diligent search for them, but on account of the changes and the time that has elapsed I have been unable to find any of them.

Q. Now will you please explain what you mean by district No. 1. Is Harrison county divided into districts?

A. Yes sir, Harrison county is divided into three districts fronting the shore line. The coast. District No. 1 runs from the eastern limits of Harrison county to what is known as Beauvoir, which is west of us, and then there commenced district No. 2. It runs north between parallel lines you know, then from Beauvoir district No. 2 commences, and I believe it is my understanding that it runs to about Long Beach on the coast. Then No. 3 commences to run and goes to the western limits of Harrison county.

Q. That is to Bay St. Louis?

A. To the center of the draw bridge at Bay St. Louis

Q. I notice in the case of Bagatella, as it is mentioned in what purports to be a transcript here, that it is a general charge of violating the oyster ordinance of Harrison county, Mississippi. What was the specific violation?

A. Just now I could not tell you. I would have supposed that the affidavit would have stated in what way he violated it, but I have no recollection as there was the usual ordinance passed and I was enforcing it.

Q. You could not tell the locality where the violation took place?

A. No sir, except that it was within my county.

Q. Now in the case of Stanovitch. Do you recollect what was the particular offence?

A. No sir, I don't remember. Just as in the other case.

Q. Now in regard to John Bowen. As I understand your testimony in chief he was charged with resisting an officer?

A. Yes sir.

Q. And you testified merely from hearsay that it occurred at Grand pass?

A. Yes sir, I said near Grand pass. I think that it occurred somewhere about Sun Down island, or between Sundown island and Grand pass. That is my recollection. I remember having the map there, or rather a chart of the coast. Not exactly a map because it showed the depth of the water and everything of that kind. I had that in my court at the time the case was tried.

Q. Now will you please examine this map Mississippi Exhibit A, and say run a line due south from Bay St. Louis. Would not both Sun Down island and Grand pass both fall without your jurisdiction and within the jurisdiction of the justice of the peace of the third district, if it was at all within the jurisdiction of Mississippi. You will notice on this map where Bay St. Louis is?

A. Yes sir.

Q. Now run this south line down there?

A. The south line would come over in and take in the west ward of Grand pass down there.

Q. Would not they fall then, both Sun Down island and Grand pass. Would not they fall outside of your jurisdiction?

A. I am a conservator of the peace for the whole county. I can try cases where it occurs outside of my own district.

Q. As I understand you as the justice of the peace, *has* general jurisdiction over the whole country?

A. Yes sir.

Q. What does that extend to, misdemeanors?

A. Yes sir, misdemeanors.

1615 Q. Do you remember what was the character of the resistence — the officer. Was there a warrant issued?

A. Yes sir.

Q. What for?

A. For resisting arrest.

Q. Oh I mean what was the original offence?

A. No sir, I have no recollection of that at all. I have no recollection outside of what the record shows, except the fact where it occurred and that I recollect from the use of the map to locate it.

Q. Well now, what time were you inducted into office? First as justice of the peace?

A. January 1st, 1888.

Q. January 1st, 1888?

A. Yes sir.

Q. Had you been residing in Biloxi before and if so how long?

A. I moved to Biloxi in March 1887, and was elected justice of the peace at the November election following, and have held the office continually since.

Q. Well now you were asked the question in your examination in chief by the counsel for Mississippi as to the general public opinion as to the southern boundary line of the State of Mississippi and you answered to that question that you had always considered the boundary as extending six leagues of 18 miles south of the main shore. Now is it or is it not a fact that this marsh territory to the southern has been from time immemorial, as far back as you can remember, considered a portion of Louisiana and a portion of the parish of St. Bernard?

A. No sir, I don't know that to be a fact.

Q. I am speaking of the general understanding?

A. I think if you will look at my answer I stated that the general understanding of the public was that the Mississippi territory extended that far.

Q. Well now is it or is it not a fact that those marshes over there were generally called both amongst the fishermen and others the Louisiana marshes?

A. Well I have heard them called both Louisiana marsh and Grand marsh.

Q. Is it not a fact that the more general appellation was Louisiana marsh?

A. Well I don't know just which one was called Louisiana marsh. It might have been the southern portion of them and it might have been the northern portion of them.

Q. I am speaking of the generic name for the whole of these low lying marshes over there. Has it or has it not been the general expression when the mosquitoes got bad on this coast, that they would say that they came from the winds bringing them from the Louisiana marshes?

A. I have heard that many a time. There is no question about that.

Q. I understood you to say in your examination in chief that you personally did not know where this Mr. Bowen resisted arrest?

A. No sir, personally I know nothing of it at all. All that I know is what my records disclose, and my memory that the question of jurisdiction was brought up and I decided that it was in my jurisdiction.

Q. As magistrate have you or have you not derived your idea of the boundary, of the southern boundary of the State of Mississippi from the inspection of an act admitting Mississippi into the Union in 1817, and also from the boundaries laid down in the Mississippi laws?

A. That is what I have worked on. That is my authority.

Q. Did you ever take into consideration the fact that in the act admitting Louisiana into the Union five years prior to the admission of Mississippi; that is Louisiana was admitted in 1812 and Mississippi was admitted in 1817. Did you ever take into consideration that the prior act admitting Louisiana gave Louisiana all islands within three leagues or nine miles of her coast?

A. Yes sir, I have always taken that into consideration and
1617 believed that Congress when it made that allowance had reference to her southern coast entirely. I never did believe that they had any thought of the northern coast of Louisiana. I believe that it has reference entirely to the south coast of Louisiana just as it did to the south coast of Mississippi, and the south coast of Alabama and the south coast of Florida.

Q. Did you ever take into consideration in arriving at that opinion that the geography of this country was very little known and that Congress unintentionally brought about a conflict there?

A. I don't know whether they did it intentionally or otherwise. I never thought that Congress understood that Louisiana had a north coast. When she gave her that boundary she had reference entirely to her southern boundary and not her northern boundary. This part that is in dispute would seem then to be the north part of St. Bernard parish. That would give her a northern as well as a southern boundary down there. That would give her a double boundary down there. Nine leagues on the northern shore as well as nine leagues on the southern shore.

Q. Have you ever known any effort on the part of the Mississippi authorities to collect any taxes over in the disputed territory in the marshes?

A. No sir.

A. No sir.

Q. You never have?

A. I never have.

Q. Do you know whether any portion of that property there is assessed on the tax rolls of Harrison or Hancock counties?

A. No, sir, I know nothing about it.

Q. Do you know whether the islands north of the coast between the Mississippi main land and that coast have ever been assessed in any county or any effort made to collect the taxes?

A. No sir, I do not, no sir.

Q. I thought you said that you had never visited this territory?

A. I never have. The nearest I suppose I was ever to it was three or four miles. I have been out there with the steam dredge.

Q. Is there such a thing as a printed regulation or rules of the board of supervisors. Oyster supervisors, or what is the name that you call it?

A. The supervisors of Harrison county. They pass ordinances and have them entered upon their minutes as a record, and I believe that in some instances they have them in a printed pamphlet form. I have a recollection of having seen some of them but I have none of them now.

Q. Where do you think that a copy could be procured up to date?

A. I should think that the Biloxi Herald might have copies of them. You know that they have been nearly all of the time in the county paper, and published all of the proceedings, and I know that some of their ordinances have been printed. Their road ordinances and such as that.

Q. Now if it be a fact as you have stated that to a considerable extent this marsh territory in dispute was called the Louisiana marshes, how do you reconcile that with the statement that you have made that it was only six or eight years ago that the question was ever agitated as to this disputed territory belonging to Louisiana?

A. Simply because I did not know whether these marshes are within the limits of what I concluded to be Harrison county or any county 2. I did not know. These marshes may be the other side. These are islands out there and the Louisiana marshes may still be to the southward of that, but I don't know about that because I have never been there. I don't know really what are called the marshes.

Q. Will you please examine this Mississippi Exhibit A to which your attention has been called, and you see these red lines delineated as Mississippi's claim?

A. Yes sir.

Q. Now then that broken mass of marshes and islands and
1617 water delineated there within these red lines. Are those the marshes that have been alluded to and only spoken of as the Louisiana marshes?

A. That I could not say. I never have been there. I would call this Isle à Pitre and I do not know whether there is a marsh on it.

ve been there at all and I don't know whether these
oken are of are to the southward and on a line with
or whether they are further up here. I don't know any-
t it as I never have been there. Here on this map it
islands.

as a matter of fact, Mr. Chamberlin, although you per-
a magistrate might have read the laws of Mississippi
admitting the State of Mississippi into the Union, has
been any question or discussion amongst the people
regard to the southern boundary of Mississippi extend-
marshes until this controversy arose?
always been understood that Mississippi owned all of
within six leagues of the main shore of Mississippi.
ore of Jackson, Harrison and Hancock counties.
u ever hear the matter discussed among the generality
e prior to this suit?
heard it discussed, but I could not say how much. I
has been mooted in my court. We have had the maps
o prove my jurisdiction down there.
y that you went into office in 1888?
y 1st, 1888.
u ever hear it discussed or mooted prior to 1888?
because I was here only a short while. As short as I
be elected justice of the peace.
did you live before you came to Biloxi?
here from Centerville, Miss.
ou know nothing about what people said about it prior

l only might have heard it when I was here six or
s before I was elected justice of the peace.
know Mr. Champlin when for the first time the legis-
State of Mississippi ever fixed the southern boundary
ounty, first included all of the islands and territory
gues of the Mississippi main land?
l could not say.
ver examined it to see?
never examined the matter.
your occupation now?
f the peace, county administrator and notary public
interested in the oyster industry in any way?
ot in the least particle, except as all others are in-
now.
hat is no part of your business?
art of my business at all. I have not any interest in
ll. No business with them. It is very seldom that

e only the common interest?
he common interest.
ng this territory?

Redirect examination.

By Gen. McCLURG:

Q. You answered Louisiana's counsel awhile ago that Mississippi had never collected any taxes in this disputed territory. I suppose you had reference to ad valorem taxes. Can you say whether she ever collected any revenue taxes in this territory?

A. She has collected the oyster taxes. That is all that I know of. I know of her collecting the oyster taxes.

Q. Since when?

A. In the last two years. She collected a license I think. Some of those fellows that I have got there. Some of those fellows
1618 were perhaps for not procuring a license. I don't know just what it was, and the records don't show, but I expect it was for a failure to procure a license.

Q. The cases here for violating the ordinances of Mississippi might have been for that?

A. Yes sir, it might have been for that It might have been for that I could not say.

Q. In 1887 when you were elected was before the constitution of 1890?

A. Yes sir.

Q. And you were not disqualified under that law?

A. No sir.

Recross-examination.

By Col. ZACHARIE:

Q. So far as you are concerned you know of no other prosecution for violating the oyster laws or oyster regulations of the county of Harrison prior to March 14th, 1900? That is the date given here in your transcript?

A. I don't think I know of any prior to that.

Q. That is two years after your induction into office?

A. Yes sir, I have no recollection of any prior to that.

Redirect examination.

By Gen. McCLUEG:

Q. In that connection you spoke of some cases as to the question in which the southern boundary line of the State was involved and in which you had the maps before you?

A. Yes sir.

Q. About when was this?

A. I have been raking my brain to find just exactly. I have just about come to the conclusion that it was during the trial of John Bowen that we had the maps so as to show that we had jurisdiction over it. Whether it occurred in the county of Harrison. I may be mistaken in that.

Recross-examination.

By Col. ZACHARIE:

. Your record shows that this case was tried on February 17th, 4, that is in the Bowen case?
. Yes sir.
. That is correct, is it?
. Yes sir.

OHN BOWEN, a witness introduced on behalf of the State of sissippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

. Mr. Bowen were you ever tried before Squire J. T. Champlin?
. Yes sir.
. For resisting an officer?
. Yes sir.
. The record shows that the trial of John Bowen was had before on the 17th day of February 1894, upon an affidavit filed on ember 22nd, 1893?
A. Yes sir.
Q. Are you that man?
A. Yes sir.
. Where was it that you are charged with having resisted an er?
. Between Grand pass and Sundown island.
. Between Grand pass and Sundown island?
. Yes sir.
. In what State?
. Mississippi.
. What county?
. I suppose that it was Harrison county. I don't know much it the counties. I was tried in Pass Christian before Judge Espy he offense.
. What officer did you resist?
. Placida Lazana.
. What were you doing?
. Taking oysters sir.
. Were you tried for any other offense at about that time at that e?
. For taking oysters without a license I was tried for.
. Where were you tried for that?
. Before Judge Espy at Pass Christian. He is the collector of oms at Bay St. Louis now.
. For fishing oysters between the mouth of Grand pass and Sun- n island?
. Yes sir.
. Without a license from Mississippi?
. Yes sir.

Q. When was this?
A. In 1893 in November.
Q. Pass Christian is in what State?
A. The State of Mississippi.

Cross-examination.

By Col. ZACHARIE:

Q. What was the result of the trial before Judge Espy in November 1893?
A. I got clear by getting a license from Mississippi City to fish oysters.
Q. Now when were you arrested for resisting an officer?
A. In February 1894.
Q. Will you please state the circumstances of your resisting an officer and tell us what occurred?

By Gen. MCCLURG: The counsel objects on behalf of the State of Mississippi on the ground of irrelevancy.

A. When he came out aboard the schooner where I was I did not even know that he was an officer, or had any authority to arrest me out there in the first place. I did not know who he was.
Q. Did he exhibit a warrant?
A. No sir.
Q. Who was he, do you know?
A. That gentlemen there. Mr. Lazana.
Q. What official position did he occupy?
A. It seems that he had been appointed for that purpose. To arrest if they fished oysters without a license, but I did not know he was the one that was appointed. *I* man named Young was before that.
Q. Why did you resist his arrest?
A. The same that I would resist any one else that I did not think had any authority to take me out of a schooner.
Q. Now Mr. Bowen, did you not resist that arrest because you thought you were in Louisiana territory?
A. No sir, I did not.
1620 Q. Did you believe that you were within the jurisdiction of Harrison county and the State of Mississippi?
A. Well I did not think much about it, but I was satisfied that I was in the State of Mississippi, and it did not bother me much at that time what county I was in. In fact I never thought of it.
Q. What was that marsh country over there generally called amongst the fishermen?
A. Well some years ago when I first went there they generally called it the Grand marsh. That is about 1893, but the last few years it has been called Louisiana marsh.
Q. Was not it prior to 1883 called the Louisiana marshes?

A. I could not say. I was on the upper lakes before that and I don't know what they called it.

Q. Did you ever hear it spoken of as being in the parish of St. Bernard or the State of Louisiana?

A. Which part of the marsh?

Q. I mean the marshes extending from Isle à Pitre westward towards Malheureux point?

A. No sir, too tell you the truth I don't know much about that. I know a good deal about the marshes and through there, but to tell you what parish they are in I don't know any thing like that.

Q. Then you simply resisted this officer because he did not exhibit any warrant and you did not know that he was an officer?

A. I did not know that I was violating any law. I did not feel like letting any body come to a schooner and take me out of a schooner for nothing, and he also wanted to take all of the crew, so I resisted just like I would resist any other private or any thing else coming after me that way.

Q. Where do you live?

A. On Main street in Biloxi. No. 722.

Q. You commenced in this oyster business when?

A. The first time that I went oystering was in the latter part of 1883?

Q. Have you continued since then in the oyster business?

A. Not entirely. I never have been off the coast: Sometimes I have been running lumber to New Orleans.

Q. Are you in the oyster business now?

A. Yes sir, I have been for years.

Q. Who were you supplying with oysters?

A. Almost any body. The steamers that come over here. I run a steamer for a canning factory for three years.

Q. You were employed for three years in one of these canneries?

—. *No sir, we have fished for any of the factories.*

Q. You were employed by the factory running the steam process?

A. No sir.

Q. You were simply supplying oysters to these factories?

A. Yes sir.

Q. Which factory?

A. Any of them. Any of them that would buy them.

Q. That is your means of livelihood. That was your means of supporting yourself?

A. I was running a steamer dredge. The steamer belonged to Mr. Heidenham, but the factory was not open. We were selling oysters to Mr. Lopez and Julien and any body that would buy them.

Redirect examination.

By Mr. McCLURG:

Q. Where did you go and get oysters in this time?

A. At that time we were fishing in the sound. Any where over

here in the sound, from where the oysters commenced down aroun
Cat island. Over there about Grassy island and the mouth of Pea
river.

Q. Did you go out much into Grand pass then?

A. No sir, the steamers were drawing too much water to go ou
there.

Col. ELLIOTT HENDERSON, a witness introduced on behal
1621 of the State of Mississippi, being duly sworn, testified as fol
lows:

By Gen. MCCLURG:

Q. What is your age Colonel?

A. I am 71 years old.

Q. Where do you reside?

A. I reside at Pass Christian.

Q. How long have you been residing there?

A. Well sir I can hardly say. The first recollection I have wa
being a child at Bay St. Louis as a child with my father. He wa
secretary to —— —— grant at Bay St. Louis.

Q. Did your father ever hold any office of any kind in the Stat
of Mississippi?

A. Yes sir, he was United States Senator in 1840.

Q. Have you ever held any official positions since Colonel?

A. Yes sir.

Q. At what place?

A. I was mayor of my town I think for about five years.

Q. What town. Pass Christian?

A. Yes sir.

Q. About what time?

A. I think that it must have been about; I will say between 186
and 1875 or some where along there. I have forgotten the exac
time.

Q. What other positions if any have you held?

A. I was State senator for one term consisting of two years. 188
and 1884, and I was a member of the constitutional convention i
1890.

Q. Now from your childhood where has your home been Colonel

A. My home—I was absent of course—I was partly educated i
the North. I was sent away to school but my home proper ha
always been Pass Christian up to 1859 when I went up on the Mis
sissippi river intending to locate there, and then the war was goin
on in 1860. I was in the army of Virginia for four years and re
turned to Pass Christian and have been there permanently eve
since.

Q. What do you know about the southern boundary lines of th
State of Mississippi?

A. Well of course I know generally that the southern boundar
of the State of Mississippi as long as I can remember, and as a law

yer I had occasion to examine it, has extended six leagues from the southern boundary of the land, the seashore of Harrison, Hancock and Jackson counties.

Q. You know of course that Pearl river is the western boundary?

A. Yes sir, I know that.

Q. Mr. John Walker has testified in this case that he conferred with you at one time with reference to getting an act passed through the legislature authorizing the appointment of bay pilots at the mouth of the Mississippi river, perhaps representing the steamboatmen interested in the business. That you advised him on that subject after investigating the law. Do you remember about that Colonel?

A. I don't remember ever having done so. If I did so at all it must have been either in 1882 or 1884 when I was in Jackson attending the terms of the legislature. It might have occurred because you know those things pass in the daily routine of introducing bills and I might have overlooked it, but if I did advise him at all, if the conversation occurred I would certainly have advised him that it was not within the jurisdiction of the State of Mississippi. That they would have to go to Louisiana because the mouth of the Mississippi is in the State of Louisiana. If that conversation took place. I don't say that it did not. I don't recollect it just now. I know Mr. Walker and have known him for a number years.

Q. I understand you to say as a practitioner of law that you have examined the question as to the limits of the State?

A. Only so far as our constitution and statutes and the
1622 inauguration of the State. That is all I can be governed by.

Q. Were you a member of the old board of police. What is called the board of supervisors of the county now?

A. I never was. I never have been.

Q. Do you know of any civil or criminal jurisdiction that the courts of your county have taken of the waters in front of Harrison county?

A. I happen to remember a case——

By Col. ZACHARIE: The counsel for the State of Louisiana objects to any testimony in regard to any judicial proceedings unless the foundation is first laid by showing that such records have been lost or destroyed, in which event alone can parol evidence be introduced as secondary evidence.

By Gen. MCCLURG: Counsel for Mississippi asked for no proof of the contents of any official record, but merely wanted to draw out from the witness any fact that might lead up to the record, or any knowledge that he had of any judicial act without undertaking to state what the proceedings or result was.

Q. Do you know of any civil or criminal jurisdiction that the courts of your county have taken of the waters in front of Harrison county?

A. It was not a case. The event that I remember particularly

came to me while I was a member of the senate. I was asked to introduce a bill to permit prize fighting in the State of Mississippi and I refused, and then the gentleman who was promoting the enterprise said Very well, if you do not do it we can fight over on Ship island. I remarked to him "Well that is in the jurisdiction of the State of Mississippi. I presume that he looked into it and the fight never took place. I refused to do it I knew that if he had the fight there that it would be in our jurisdiction. I don't know of my own personal knowledge but I am satisfied there was a case in which a man was arrested at Ship island and brought here and tried. For what offense or misdemeanor I don't know.

Q. There is no controversy about Ship island being in Mississippi?

A. Well sir that is one of the islands. So far as their taking control of the waters they have done it, and are doing it now under the oyster commission.

Q. Can you say whether or not in this county, Harrison has ever had any ordinances passed by her board of supervisors regulating the taking of oysters in the sound?

A. Well I know that such have been passed, and I know that we convicted a man, which is previous to the Bowers law, we convicted a man of trespassing upon oysters under the law in Pass Christian.

By Col. ZACHARIE: The counsel for Louisiana renews his objection as made above in the prior objection, in regard to the introduction of primary evidence of the judicial record before the secondary evidence is admissable at all the record must be proven to have been lost or destroyed.

Cross-examination.

By Col. ZACHARIE:

Q. I think you have stated Col. Henderson that you are a practicing attorney and have been for many years?

A. Yes sir, I have been practicing for nearly 36 years.

Q. You have stated that under the statutes of Mississippi you have always regarded the southern boundary of the State of Mississippi as extending six leagues or 18 miles to the south. Have you ever examined the act admitting Louisiana into the Union?

A. I never have no sir.

1623 Q. Have you ever visited the territory in dispute here.

A. This marsh territory. Yes sir, frequently.

Q. Is it or is it not a fact that up to a very recent date that marsh country in dispute here has been generally known as Louisiana marshes?

A. I have always heard them called Louisiana marshes, yes sir.

Q. Is it not a fact that at Pass Christian when the mosquitoes were bad that the common expression is that they come from the Louisiana marshes, meaning this territory in dispute?

A. I cannot say, meaning the territory in dispute, but I will say they come from the Louisiana marshes. As I understand the territory in dispute is not only the Louisiana marshes but the adjacent waters thereto. Now i am directing my answers to the marsh country, which have been marked upon the map as a part of the parish of St. Bernard.

Q. When did you first hear generally of these marshes being claimed as a part of the State of Mississippi. I mean amongst the people at large?

A. Well they were called generally as I say to you the Louisiana marshes but I never have heard that the boundary of the State of Mississippi was disputed, so far as the southern boundary being 18 miles from the adjacent shore. It was necessary to pass through a portion of these marshes and a portion of these marshes would be then included in the southern boundary of Mississippi as I understand it.

Redirect examination.

By Gen. McCLURG:

Q. Have you ever heard these marshes called by any other name?

A. Well I don't know sir. Fishermen are in the habit of going through there, and they will give two or three names to a small island or bayou and things of that sort and it fixes itself to it, and some times it is forgotten and some times it is renewed, but as a general rule these marshes over there were called Louisiana marshes because they were adjacent to the State of Louisiana. How far the Louisiana line came out there we never stopped to inquire.

Original question by agreement.

Q. Col. Henderson, do you know what is usually termed the deep water channel running out of the mouth of Pearl river and the Rigolets through Lake Borgne and around and north of Half Moon island and to the southwest of Cat island?

A. Well sir there is a channel that runs out here, and it comes down here and it branches and runs down by Goose point, but that channel, a good many vessels carrying lumber come on the north side of Cat island, and run up to the light house here and run up Pearl river.

Q. This channel that I speak of runs between Cat island and the point of Isle à Pitre?

A. Yes sir.

Q. In her original bill of complaint Louisiana claims that is the real boundary line between the two States. Have you any knowledge of that?

A. I never heard that contended at any time until I saw some of the testimony in some of the papers.

Q. Is that the first time you ever heard of that?
A. That is the first time I ever heard it contended.

By Mr. FLOWERS:

Q. You mean since this controversy arose?
A. Yes sir, since this controversy. It came out while they were examining the witnesses in Louisiana. I read the reports of the testimony.

1624 Recross-examination.

By Col. ZACHARIE:

Q. I think you stated that you never have read the act admitting the State of Louisiana into the Union?
A. No sir, I never have.
Q. That act says "including all islands within three leagues of the coast?
A. Yes sir.
Q. And the claim I will state to you as a lawyer is not only based upon that, but the rule of international law between States, is that where there is a deep water channel, the jurisdiction of each State extends to the middle of the thread of the channel, but you have never examined it to understand it from that stand point?
A. That is confined to rivers is not it?
Q. It also applied to a number of decisions of international commissions to decide boundaries. The Alaska boundary was decided that way, and also the decision of the Emperor William in the San Juan islands?
A. I will say that if that marsh that we have always called the Louisiana marshes; if the State boundary of Louisiana extends three leagues in a northern direction from that I think it will go pretty near back to Cat island, and would come along over here, because that marsh from over here I don't think it is over 18 or 20 miles, or maybe 25 miles, and therefore I hardly think that such a conflict as that could have occurred, as Mr. Champlin suggested that must have had reference to the southern portion of Louisiana, fronting upon the Moratuie property to the mouth of the Mississippi river. If it was not that their boundary would run up in here.

The commission here took a recess for the noon hour, until 2 o'clock.

The commission reassembled at 2 o'clock with the same presences as this morning, and resumed the taking of evidence as follows:

By Gen. MCCLURG: The counsel on the part of the State of Mississippi now introduces in evidence a certified transcript of the original proceedings. The record and judgment, in the matter of the inquest held by L. B. Holly, justice of the peace at Biloxi, Harrison county, Mississippi, during the latter part of October or the 1st of

November, 1886, over the body of John Kennedy, found at Creole gap. The original copy certified by the circuit clerk of Harrison county being filed as Document No. 25, and a true copy thereof furnished the counsel for the State of Louisiana.

F. P. LIZANA, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you reside?
A. At Pass Christian, Miss.
Q. How old are you?
A. 45.
Q. What is your occupation?
A. I am now constable and deputy sheriff of Harrison county.
Q. Have you ever had any connection with the oyster laws
1625 of Mississippi?
A. Yes sir, I was appointed by the board of supervisors.
Q. Of what county?
A. Of Harrison county, Mississippi. In 1893 in October.
Q. You were appointed by them to do what?
A. To go out and see that the licenses were obeyed for fishing oysters, and to see that the oysters were properly culled.
Q. What was your office called?
A. It was called oyster inspector.
Q. You were appointed first when?
A. In 1893, right after the October storm. I was appointed on the third day of October and the storm was on the first.
Q. What was your territory?
A. 18 miles. Supposed to be six leagues from the shore.
Q. Running from what points?
A. Supposed to be the eastward point of Chandeleur island running in a westerly direction to the mouth of Pearl river.
Q. That is your territory?
A. Yes sir.
Q. Where did your eastern territory strike the shore line?
A. On Harrison county was supposed to be right on the eastward side of Ship island.
Q. Were you appointed for the whole of the county or a portion of it?
A. The whole county. There was only one inspector.
Q. And the eastern shore of Harrison county is supposed to be where?
A. The eastern shore is right here at the bay of Biloxi. Between Biloxi and Ocean Springs.
Q. And the western shore is at Bay St. Louis?
A. Yes sir.
Q. That is the shore front of Harrison county?

A. Yes sir, a little beyond the draw bridge.

Q. Well as oyster inspector had you authority under the laws of the State of Mississippi to arrest persons violating the laws?

A. Yes sir.

Q. Do you remember to have arrested one John Bowen?

A. Yes sir, I arrested one John Bowen.

Q. Did you see him here this morning?

A. I did sir.

Q. The same man that you arrested?

A. The same gentleman that I heard testify here this morning.

Q. We have a record in these files that he once resisted arrest by an officer. Are you the officer?

A. Yes sir, I am the officer, and he resisted me.

Q. Where did this happen?

A. Right in the southern part of Grand pass. Between Grand pass and Sundown island, but more towards Grand pass.

Q. What was he doing?

A. He was fishing oysters.

Q. What did you arrest him for?

A. I arrested him on two charges I believe. I am not quite certain, but one charge that I arrested him on was for not having a license to fish in Mississippi waters.

Q. For not having a license from whom?

A. From Mr. Hewes, in Harrison county.

Q. Why did he resist arrest?

A. I went to him and boarded him and asked him if he had a license and he told me no. At first he told me he did not know whether he had any right to answer me or not. I told him that he did. I told him that I was an oyster inspector, and he said he did not know whether I was or not. He said "Where did you get your authority from." I says "I have been appointed by the board of supervisors for the oyster inspector of this county. He said, "I don't know whether you have or not. I did not have my commission with me at the time. I told him I had my assistant with me, he is now dead Joe Busick. I says "Captain, I can show you the law or the certificates I have. He said "Never mind your certificates. Show me your authority. I says I will show my authority, and I jumped on board his schooner, and I told him I would bring them to the Pass. He said
1626 "I guess you won't." I says "I guess I will." I did not have anybody but an old man with me, and when I got aboard of him he started to get his crew, and I supposed to throw me overboard. I did not know what he was going to do I says "You need not try anything like that. I guess there will be some funny business about here, and I told him to throw up his hands. I told the crew to come on and raise up the anchor. I had nothing but a little sloop and I told the men with me to hoist up your sails and we would take him to the Pass. It was right after the storm and I had taken a great deal of responsibility on my shoulders. The most

of these schooner men had suffered a good deal from the storm. I took a great deal of pity on them. If I would catch one out there without having their license I would always give them a chance to go inside and get their license, and make their first load so that they could make money enough to get their license. When he saw that I meant business and that he could not bluff me out of it, I told him that it was my duty and I was going to do my duty whatever it cost, he said that he would come to Biloxi and get a license the next trip. The next trip I missed him and I found that he had gone out and had not gotten his license from Mr. Hewes, and I went down to Biloxi and had him arrested as a fugitive from justice.

Q. In executing your office as oyster inspector from November 1893, what territory did you inspect or patrol?

A. Well sir I patrolled from this coast here up to Door point. I cannot remember all of these islands. It has been quite a while ago. But I took a chart and took the code and several of us, Mr. Easly and Mr. Bowers, and all of us sat down there with a compass and a code, telling us where the code said the line was. We took the compass and measured, and the lines of Mississippi run a little west up on Door point, not very far. What we call Door point is Deep Water point. Some of them call it Door point, and some of them call it Deep Water point.

Q. According to that line in what State is Isle à Pitre?

A. Well according to that line Isle à Pitre should be in Mississippi in Harrison county.

Q. Do you know about where the line would strike this marsh between Harrison and Hancock counties?

A. Between Harrison and Hancock. I believe that the Hancock line runs somewhere to the eastward of Half Moon island. I am not sure. It has been so long since I looked over these charts that I don't remember exactly. I think that it is somewhere to the eastward of Half Moon island.

Q. You know where Grand pass is?

A. Yes sir.

Q. What county is Grand pass in?

A. It is supposed to be by the Mississippi code and what I have always heard in Harrison county.

Q. And you patrolled these water there as inspector?

A. Yes sir.

Q. Did you make any other arrests?

A. Well I suppose that I made 15 or 20 arrests while I was there.

Q. Where were they when you arrested them?

A. Well there were some in Grand pass, and some between Sundown island and Grand pass, and some in Creole gap.

By Col. ZACHARIE: Counsel for Louisiana here reserves an exception to the testimony in regard to arrests and judicial proceedings, until the loss of the documents or the destruction of the records has been shown, the proof cannot be admitted as to their contents.

Q. Did you have warrants for the arrest of these persons or did you arrest them by taking them in the actual violation of the law?

A. In the actual violation of the law.

Q. Was it necessary to have a warrant?

A. No sir, the laws of the State of Mississippi says whenever
1627 an officer finds a man in the act of violating the law, that is the way that I understand it, he has a right to arrest the man right in the act.

Q. You think that you made fifteen or twenty arrests?

A. Yes sir, probably more than that. I cannot remember exactly.

Q. In that neighborhood?

A. Yes sir, between Creole gap and Grand pass, and between Sundown island and Grand pass, and between Cat island and Isle à Pitre and all around these places and at Pass Christian, and at Pass Marianne, and I made some arrests on what they call Telegraph reefs.

Q. Do you know where what they call the deep water channel is coming out of the mouth of Pearl river and Lake Borgne, north of Half Moon island, and between Cat island and Isle à Pitre. What they call the deep water channel?

A. Yes sir, we have three channels We have the channel that goes by Pass Christian. That is Pass Christian channel. That is what Pass Christian is named from. Then we have the channel that goes up by Pass Marianne light house and comes to the northward of Cat island, and then we have the deep water pass, another channel that comes to the southward of Cat island. We have three channels right there.

Q. Now these arrests that you made. On which side of this deep water channel were they?

A. I made some of them southward of these channels, and some in between these channels and some to the north of these channels.

Q. State what you may know if any thing about this deep water channel being the true boundary line between Louisiana and Mississippi?

A. Well sir, I have been going up there out through these islands I went out there with my father when I was quite a young boy, I suppose ten or twelve years of age, and the way that my father always spoke and these old people, they always told me that we were in Mississippi when we went there.

Q. Mississippi for how far?

A. We have been as far as Isle à Pitre.

Q. In miles or leagues?

A. About six miles.

Q. Six miles.

A. Six leagues I mean. I went out there when quite a small boy with my father.

Q. I don't believe you answered me directly as to whether you have heard of this deep water channel being the true dividing line between the States?

A. No sir, I have not.

Q. How old was your father?

A. He has been dead going on thirty years. He was 58 when he died.

Q. So he would have been eighty years old now?

A. Yes sir, more than that.

Q. Have you heard him speak of the limits of the State of Mississippi?

A. I heard he and my uncle just like two brothers that always lived together, they used to talk very often about Louisiana and Mississippi. I have always heard him talk about the Grand marsh.

Q. You spoke of the Grand marsh. Is that what this disputed territory down there is called?

A. Yes sir, that is what I understand to be the disputed territory.

Q. What about it being called the Louisiana marsh up there?

A. Some people that I heard talk about these Louisiana marshes, and the others I have always heard talk about the Grand marsh. All of these old people. Captain Louis Shruff was very old when he died, and my father, and my uncle, and all of these people always talked about the Grand marsh. They were all foreigners you know and they came here when they were very young. I always heard it from a young boy. They would see the land up there, from the east point if I am not mistaken; from the north east point of Chandeleur islands, in a westerly direction to the mouth of Pearl river. That is what I always heard the lines were.

1628 In fact my grandfather was a Spaniard, and my father and my uncle, they were just like two brothers. They were two brothers in law. They would go out and get to talking, and one would say "You are in Mississippi now." They were always joking one another. The other one would say "Now you are in Louisiana." I can recollect it when I was a little boy.

Cross-examination.

By Col. ZACHARIE:

Q. You say that you have frequently heard this disputed territory called Louisiana marshes?

A. Frequently, and then I have heard it called Grand marsh.

Q. How far back can you remember that you have heard it called Louisiana marsh?

A. Well sir, it has not been very far back. From a young boy I have heard my father and them call it Grand marsh, but after I got of age and I got to be an oyster inspector, I used to hear a good many of these New Orleans boats that used to come around there call it Louisiana marsh.

Q. Now as a matter of fact have you not heard any number of these fishermen and Mississippians call it Louisiana marsh?

A. I have heard a part of it called Louisiana marsh.

Q. Would not that extend twenty or twenty-five years back?
A. Well no sir.
Q. Can you fix the date when you first heard it called Louisiana marsh?
A. No sir, I can not. I don't think that it would date far back. The only time I ever heard it a great deal was between a New Orleans and a Mississippi boat disputing.
Q. That has been very recently?
A. It has been since about 1878.
Q. At that time did any of the fishermen call it Louisiana marsh?
A. Not that I know of no sir.
Q. You say that you live at Pass Christian?
A. Yes sir, I was born and raised there.
Q. Is it not a fact that from time immemorial there whenever the mosquitoes were bad at Pass Christian all of the people would say that they were due to a wind coming from these Louisiana marshes?
A. No sir, you go there and stay a week and you will find out whenever we have a wind from a westerly direction, from towards the Rigolets you will find that we are pestered with mosquitoes. That is what we call the Louisiana marshes.

Redirect examination.

By Mr. FLOWERS:

Q. Explain what you mean by the Louisiana marshes?
A. What we call over there the Louisiana marshes whenever we have a westerly wind look out for mosquitoes, that means around the Rigolets or some where around there. It is a terrible place for mosquitoes. In fact that marsh out there is very bad, but you very seldom see any mosquitoes in around our coast with southwardly or southeast winds.

Recross-examination.

By Col. ZACHARIE:

Q. How far it it from the Rigolets to Pass Christian?
A. I think that it is about 35 or 40 miles.
Q. Do you mean to say that the mosquitoes that you are troubled with in Pass Christian come 35 miles from the Rigolets?
A. I mean to say this. You can start from Pass Christian or from Biloxi, and the further west you go the worse the mosquitoes are.
1629 Q. That is not an answer to my question. I asked you the question, do you mean to say when Pass Christian is infested with mosquitoes that they come 35 miles from the Rigolets?
A. I think they will sir for this reason. We hear up the country here 35 or 40 miles up the country last summer, it was a thing that was not known to have mosquitoes there, and the whole country was

infested with them with these westerly winds, and I attribute it to that.

Q. Do you know that the most recent scientific investigations show that mosquitoes are never known to travel or be carried more than two or three miles from their locality?

A. I have never studied it in that way, but I can simply tell you that you may be here now and not a mosquito here and in five hours you can not run away from them.

Q. That is simply your idea that these Louisiana mosquitoes come from the Rigolets and that they travel 35 miles to Pass Christian?

A. I think that they will travel most any where that the wind will blow them, and I have fished and hunted all over the Rigolets. I have fished oysters and hunted all through the marsh out here, and that is the worst point I have ever seen for them is right around the Rigolets. I have sailed all through there from place to place as a boy.

Redirect examination.

By Gen. McCLURG:

Q. I understand you to say that you have never studied the mosquito problem scientifically?

A. No sir, I have not.

Q. You speak from observation and practical experience?

A. Yes sir.

Q. Did you ever have any observation of or practical experience with musk rats?

A. Well I have killed a few.

Q. You don't know whether they are active agents in the destruction of the marshes or not?

A. No sir, I do not. I know that they make holes in the marsh and you will sink up to your body in them, in the holes that they make. They dig under the ground and you will sink up to your arm pits in the holes. Right here in any of this marsh. You can go there and see.

Q. There are no alligators there?

A. No sir, not where the musk rats are.

Q. You know where there are alligators they will destroy the musk rats?

A. They destroy the musk rats.

Q. Louisiana once passed a law making it a misdemeanor to kill an alligator because the alligators killed the musk rats?

A. We don't have to go far to find that. We go out into our little marshes here, and since the trappers have been killing the alligators you can hardly walk through the little marshes that we have here.

Q. The musk rat undermines it?

A. Yes sir, the musk rat undermines them.

Q. There has been no ordinance passed by any of these coast counties against mosquitoes or muskrats has there?

A. No sir, I don't think there has. I don't think that they lost their time in doing any thing like that.

EMILE BOSARGE, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. MCCLURG:

Q. Where do you reside?

1630 A. Biloxi.

Q. How long have you lived here?

A. I have been here since 1886.

Q. How old are you?

A. 46.

Q. Where did you come from?

A. From Alabama.

Q. What is your present occupation?

A. Oystering.

Q. How long have you been in the business please sir?

A. About 30 years.

Q. Where have you been taking oysters?

A. Out in the marsh and the Mississippi sound here.

Q. What portions of the sound and of the marsh?

A. From St. Joseph as far as American bay.

Q. American bay?

A. Yes sir.

Q. That is the southern portion of the marsh?

A. Yes sir, that is in the southern part of the marsh.

Q. In saying from St. Joseph, you mean from St. Joseph island.

A. Yes sir.

Q. Southward to the American bay. What State were you in?

A. I supposed I was a part of the way in Mississippi. Part of the time and the other time in Louisiana. American bay I think is in Louisiana.

Q. What part of the time were you in Mississippi?

A. When I was up around this edge of the marsh. Around Grand pass and Three Mile bayou.

Q. Do you know how far the limits of Mississippi are south from her main shore?

A. I have always heard that it was 18 miles from the mouth of Pearl river.

Q. Did I understand you to say so far as you were within 18 miles of the Mississippi shore that you considered yourself in the State of Mississippi?

A. Yes sir, that is what I thought.

Q. How long has this been your understanding?

A. 13 or 14 years. Since 1893 I think we had the first inspectors here.

Q. Did you pay a license?

A. Yes sir.

Q. Where did you pay it?

A. Here in Biloxi.

Q. To whom did you pay it?

A. Captain ——.

Q. Who was he?

A. The inspector. The oyster inspector.

Q. Appointed by whom?

A. By the board of supervisors.

Q. Of Harrison county, Mississippi?

A. Yes sir, of Harrison county, Mississippi.

Q. Under this license did you fish in this territory that you have mentioned?

A. Yes sir, I have fished in this part of the territory. I never went any further than Three Mile bayou then.

Q. Were you ever in Three Mile bayou?

A. Yes sir.

Q. Under this license?

A. Yes sir.

Q. Did you go down through Three Mile bayou any distance?

A. Yes sir, I went down through the Karakos and up as far as Bayou Mussell.

Q. That is under this license that was issued to you that you have just mentioned?

A. Yes sir.

Q. Did any of the Louisiana authorities disturb you down there in 1893?

A. No sir.

Q. Were you ever as far west as Nine Mile bayou?

1631 A. Yes sir, I have been out through Nine Mile bayou a few times.

Q. Under this same license?

A. I did not have any license at that time. The law was out and no license was required at that time.

Q. That is afterwards?

A. Yes sir, after I had license.

Q. I believe you stated that you never got a license from Louisiana?

A. No sir.

Q. You have never been interfered with by the people from Louisiana in fishing there?

A. No sir I never have.

Q. Now I want to show you please sir Exhibit A to Mississippi's answer and cross bill. Here is Three Mile bayou marked on this map, and that is I understand the bayou that you have been through?

A. Yes sir.
Q. Are you acquainted with the Raccoon islands?
A. Yes sir.
Q. With Crooked island?
A. Yes sir.
Q. Wild Goose island?
A. Yes sir.
Q. Indian Mound bay?
A. Yes sir.
Q. Southwest pass?
A. Yes sir.
Q. And here is Cat Fish pass?
A. Yes sir, I have been all through there.
Q. When you went through Three Mile bayou as you stated awhile ago down to Bayou Mussell; point out now please sir which way you went down there. Commence at Three Mile bayou.
A. Three Mile bayou, Raccoon island, Crooked island, Dutchman's pass.
Q. Were you ever in Indian Mound bay?
A. Yes sir.
Q. How did you get there?
A. Through Three Mile bayou and by Wild Goose island.
Q. Here is Crane Town bay. Were you ever in that?
A. Yes sir.
Q. How did you get there?
A. Went through Karako bay and Three Mile bayou down through Karako bay and come out at Crane Town.
Q. How did you get out of Crane Town?
A. Through Elephant pass and I got to Biloxi through Ship Island pass.
Q. Where is Ship Island pass?

(Witness shows location on the map.)

Q. When you left Elephant bayou which way did you turn?
A. North east.
Q. Did you go in the neighborhood of Brush island?
A. Yes sir.
Q. Cheno bay?
A. Yes sir.
Q. Jack Williams bay?
A. Yes sir.
Q. How did you go into Jack Williams bay?
A. I come in through Creole gap by Sun Down island into Jack Williams bay.
Q. Were you ever in the neighborhood of Door Point?
A. Yes sir.
Q. How did you get there?
A. I come through Creole gap and come through Ship Island pass.

Q. Where is Ship Island pass?
A. Right here. South, southwest from Biloxi to Door Point.
Q. Now let me ask you. You will notice on this map Cat Island channel. Do you know where that is? The same figures that you notice along here come out through the sound into Lake Borgne, between Brush island and Door point on the Mississippi shore. Do you know where that deep water channel is?
A. Yes sir.
Q. Now where did you take your oysters? From the north side or the south side of this channel?
1632 A. I have gotten oysters from both sides of it.
Q. Where did you take most of your oysters?
A. On the south side.
Q. Were you taking them under the license that you spoke of awhile ago?
A. Yes sir.
Q. And since 1893?
A. Yes sir.
Q. Have you had any license before that?
A. No sir.
Q. Have you had a license from Louisiana?
A. No sir.
Q. Were you ever disturbed by any body from Louisiana?
A. No sir.

Cross-examination.

By Col. ZACHARIE:

Q. How long did you say you had been engaged in the oyster business?
A. About 30 years.
Q. At what points?
A. I began oystering in Alabama.
Q. When did you come to this coast here of Biloxi?
A. In 1886.
Q. To whom have you been delivering oysters? Selling them?
A. I began here for Mr. Lopez.
Q. Mr. Lopez carries on a cannery?
A. Yes sir.
Q. And afterwards to whom?
A. Well I carried some to the Barrataria, the Biloxi Canning Co., and some to Julian & Co.
Q. Those are all canning companies?
A. Yes sir.
Q. You are still engaged in that business of delivering oysters to the canneries?
A. Not at the present time?
Q. I mean to say when the season is on?
A. Yes sir.

Q. Well now in regard to this disputed territory. These marsh
Is it not a fact that these marshes have been generally called
Louisiana marshes?

A. No sir, my first knowing of the name of the marsh was Gra
marsh?

Q. Have you not ever heard it called the Louisiana marshes?

A. Yes sir, of late I have.

Q. How far back did you hear them called Louisiana marshes?

A. That I could not say. It has not been so very long thou
I have heard — the Louisiana marsh when I was a little boy.
father used to go to the Louisiana marsh to get gull eggs.

Q. Since you were a little boy?

A. Yes sir.

Q. How did you come to know about Mississippi claiming
leagues or 18 miles south of the Mississippi shore?

A. When this law come up in 1893 I think it was.

Q. You never knew anything about it until 1893?

A. No sir, I never knew anything about the 18 miles until th

Q. Prior to 1893 did Mississippi or any of these coast count
have any laws or regulations about the license for oyster fish
men?

A. None that I know of, no sir.

Q. Have you ever known of this disputed territory, this mar
being called a part of the parish of St. Bernard in Louisiana?

A. No sir, I don't really know any thing about it.

Q. Have you ever heard it spoken of as a part of Hancock coun
or Harrison county?

A. Yes sir, I have heard them speak about it.

Q. Since when?

A. In the last few years.

Q. How many years back?

1633 A. Well I could not say because I have not paid mu
attention to it.

C. S. STRONG, a witness introduced on behalf of the State
Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you reside, Mr. Strong?

A. In Biloxi.

Q. How long have you resided here?

A. Well at this time I have been here about three years. But
have lived here about ten years.

Q. How old are you?

A. I am 45.

Q. What is your present business?

A. Oystering in the winter time.

Q. How long have you been oystering?

A. I have been oystering all of my life, but I have been oystering around Grand marsh since 1881.

Q. Name some of the points in Grand marsh where you have been oystering since 1881?

A. Well I could take in the whole thing, and commence from Isle à Pitre to Creole gap, and Grand pass and Turkey bayou and Johnson bayou and Three Mile bayou. I have been down as far as Nine Mile bayou, but I never had much business down there. There are not many oysters in Nine Mile bayou, and I have been around Raccoon island, and as far as Bayou Treasure on this side. I could mention all of the places.

Q. Well when you were in there what State were you in?

A. Well we always considered that Mississippi had jurisdiction over the whole marsh.

Q. Did you ever have a license to go in there?

A. Yes sir, I had a license in 1891 I believe it was.

Q. Where did you get your license?

A. At Mississippi City at the court house.

Q. What was this license for?

A. It was to fish oysters in Mississippi.

Q. And under this license you fished where?

A. We were not limited. Where ever we wanted to go. Any where as far as Three Mile bayou. We could go down as far as Bayou Chico if we wanted to nobody would stop us.

Q. Did you ever go in Nine Mile bayou under this license?

A. I don't know that I ever went in Nine Mile bayou under this license, but we have been to Bayou Tresor, and through Three Mile bayou. You leave Nine Mile bayou to the north of you.

Q. In what size boat could you go through Three Mile bayou and Bayou Tresor?

A. I had a schooner that was drawing four feet of water loaded and we came out of Bayou Tresor.

Q. Could you go through Bayou Tresor and Three Mile bayou drawing four feet?

A. You could by watching your tide. There is a great rise and fall in the tide out there.

Q. I want to ask you whether you could go into Nine Mile bayou from the north east, and come back out through Three Mile bayou?

A. Yes sir, you can go in there.

Q. Could you go in there from the north through Three Mile bayou and come around out of Johnsons bayou?

A. Well you can do it with a boat not drawing much water. The trouble comes in here. You can go through Three Mile bayou with a boat drawing about two and a half feet of water and go through Johnson bayou.

Q. You can go in there at Johnsons bayou and come around and come out of Turkey bayou?

A. No sir, I don't think you could carry much water through t way.

Q. Well could you go in at Grand pass and come out at Bay Pierre?

A. Yes sir.

1634 Q. And come in Bayou Pierre and come out at Creole ga

A. Yes sir, I have done that many a time.

Q. Creole gap and come around Isle à Pitre?

A. Yes sir.

Q. Can you sail around Sundown island?

A. Yes sir.

Q. You can go through Grand pass into Jack Williams bay?

A. Yes sir, you can go in there.

Q. You can go from Jack Williams into Northeast bay here?

A. Yes sir.

Q. Have you ever been in Crane Town bay?

A. I have — all through Crane Town bay.

Q. You have been all through the marsh have you?

A. I have been all through the marsh from one end of it to t other.

Q. How long have you been going in there?

A. I don't know how long. It has been since 1881. It has be about 22 or 23 years I guess.

Q. And you believed that you were in what State?

A. They never barred us from Louisiana. We had Mississi license but we considered that we were all right as long as we h Mississippi license.

Q. How far would you go under these license- south of the M sissippi shore. South. How many leagues or miles?

A. I have heard it said that it was 18 miles, but we went furth than 18 miles if we wanted to.

Q. You have always heard that called the Louisiana marsh?

A. Yes sir, I have heard it called Louisiana marsh and Gra marsh too.

Q. How long since you heard it called Louisiana marsh?

A. When I was a boy I lived in Mobile on the bay, and we us to plant oysters and we would always say we were going to t Grand marsh. Since I have come to Biloxi, I have heard it call Louisiana marsh. I thought when we were transporting oyst down there to Mobile bay that we were getting them out of Miss sippi waters.

Cross-examination.

By Col. ZACHARIE:

Q. When did you take out your license in Mississippi?

A. I think that it was in 1891 or 1892. I did not try to reme ber the time.

The commission here adjourned until Wednesday June 22 1904.

WEDNESDAY, June 22nd, 1904.

The commission met this morning at ten o'clock, and then adjourned until 2 p. m. in the afternoon. There were present Gen. Monroe McClurg on the part of the State of Mississippi, and Col. F. C. Zacharie on the part of the State of Louisiana, and Commissioner William D. Bullard.

The commission met at two o'clock with the same presence as above, and adjourned until nine o'clock to morrow morning.

THURSDAY MORNING, June 23rd, 1904.

1635 The commission met this morning. There were present William D. Bullard, commissioner, Gen. Monroe McClurg, counsel on the part of the State of Mississippi, and Col. F. C. Zacharie, counsel on behalf of the State of Louisiana.

Capt. S. R. THOMPSON, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. How old are you Captain?
A. I am 65 years old.
Q. Where were you born?
A. Ocean Springs, Jackson county, Mississippi. W. B. Smith owns the residence now.
Q. Have you lived in Mississippi during your life?
A. Yes sir.
Q. And along this coast line?
A. Yes sir.
Q. What has been your business during your life?
A. Well my step father was a mechanic and I followed that. I went in the army later, before I was 21, and then after I came out of the army I went into the mechanic's business for a year or two, and then I went into this lake trade running vessels to New Orleans.
Q. About what time did you go into the lake trade?
A. In the beginning of 1867.
Q. How long did you continue it?
A. I run to New Orleans four years steady. The old basin and the new basin, with lumber from Denny & Co. I run lumber from their saw mill.
Q. There at Scranton?
A. No sir, at Mess point.
Q. What other firm?
A. Gautier, there at West Pascagoula. On the western side.
Q. What different places have you lived on the Mississippi shore?
A. Well I was in Lutchers Louisiana for seven months and then on the Mississippi shore. I have been at Bay St. Louis for four

months, and Pass Christian for three or four months, and I lived in Biloxi for ten years, and we have been in Ocean Springs about 15 years, and I have been in Pascagoula and Scranton.

Q. In this suit by Louisiana against Mississippi what is called the deep water channel line out of the mouth of Eastern Pearl river, through Lake Borgne to the Mississippi sound as far as Cat island, into the Gulf, is claimed to be the dividing line between the two States. What have you to say with reference to that claim?

A. Well I have been through that channel several times. When we came by St. Joseph island after we passed it three or four or five miles we steered to the southward, to what is called South channel there, and when it approached near Cat island we called it Cat Island channel. It is south of Cat island. It is deeper than the Pass Marianne channel. I have been that way going to and coming from New Orleans.

Q. You know where the deep water channel is then?

A. Yes sir, I have been through it.

Q. What have you to say about its being the dividing line between these two States?

A. Well I have never known it to be the dividing line.

Q. Have you never heard of its being the dividing line?

A. No sir, I never have.

1636 Q. State if you know where the line is between the two States?

A. Well the dividing line between the two States has always been understood with me and most of the captains that I talked with to be Eastern Pearl river. The line followed this river while it flowed in its banks, and after it left its banks and emptied into the lake we thought the line extended due south 18 miles. That is the way that we looked at it.

Q. Did you know any thing of any occupation or actual possession of any territory by any company or mill from Pascagoula or other place of any part of the territory within this 18 mile limit and if so state what you may know about it?

A. Yes sir, I recollect for instance going down there fishing in that marsh for oysters for Mississippi here, for Mississippi consumption and in the beginning of 1881 there was a factory located at Pascagoula river. On the east bank of the Pascagoula river.

Q. What was this?

A. It was the Mexican Gulf Canning Co. It was a canning factory and canned oysters for shipping purposes.

Q. What did it do?

A. Well they got their oysters from the Grand marsh. They sent their vessels down there under the control of a man by the name of Thomas Bendon.

Q. Where is he?

A. He is dead. He died in Florida. They employed a great many vessels in their oyster business. They went down there and built a camp at Cranetown pass. Right by Martin island, Martin

island and Brush island is just outside. They built camp there at Cranetown pass.

Q. Near Martin island and Brush island?

A. Yes sir, they built a camp about 75 feet long, and it had one big room in it. It was a long house with one solid room for the men to camp in. There was no partition in it.

Q. How long were they there?

A. Well they were there during the oyster season, the winter season of the year for two years. Two winter seasons they took possession and fished there.

Q. Can you state in what State they supposed themselves to be?

A. In Mississippi. They said that they were in Mississippi.

Q. Was there any interference with them by the Louisiana authorities?

A. No sir, I never heard any claim made by the Louisiana authorities against them. Mabury is dead. He was the foreman of the factory. He died here in Biloxi. Benton is dead also. He died in Florida. He has a son in Mobile by the same name now running a tug boat.

Q. What has that marsh been called since you first knew it?

A. Grand marsh.

Q. When did you first know it Captain?

A. The first time that I ever was out there was before the Civil war. I went in a small boat to Cat island fishing oysters. One time with one of the Holly boys, and we went over there by Isle à Pitre and they called it Grand marsh.

Q. Have you ever heard it called Louisiana marshes?

A. Here lately I have. It is only just lately that I have heard them call it that.

Q. Were you ever in Nine Mile bayou?

A. Yes sir—no sir, I have passed by it. My step father run in there in the Civil war to get provisions.

Q. Were you ever in Three Mile bayou?

A. No sir, I never went through any of these bayous except Grand pass. I used to go fishing and hunting around there. I did not fish oysters for a living.

Q. When were you there last?

A. It has been a good many years ago. It has been ten or twelve years. Twelve years or maybe more.

Q. There has been some testimony introduced in this case Captain to the effect that there is a subsidence of that territory. Sinking. What have you to say to that if any thing?

A. Well I don't know. On the northern bank of the Grand
1637 marsh I don't know that there is any change in that, except at the mouths of the bayous some times there are bars formed there, and makes them shoal and some times they get deeper. They are not permanent.

Q. What have you to say with reference to the subsidence?

A. My experience in this matter is that the deposit from the river,

all the rivers around there, instead of the land sinking it rises, from the fact that the deposit from the river is made there and it gets to the top of the water and the marsh grows up. I can see many places where the marsh has raised by the filling. You understand the river strikes the sea and the soil that it carries is deposited there, and that is the reason that we have these islands.

Q. I am not speaking of the mouth of the Mississippi. I am speaking of the territory in dispute?

A. I don't think there is much change in it.

Q. Do you know where Petit Pass island is and Grand island, Grassy island and Round island and St. Joseph?

A. Yes sir, I have seen them. They have different names for these islands. I believe they used to call that Rabbit island 25 years ago.

Q. You spoke of Isle à Pitre and Grand Pass?

A. Yes sir, you see that St. Joseph island is almost washed away. There is a portion of it that is there yet. But the storm of 1893 nearly washed it all away.

Q. When was it that you say you first became acquainted with Grand marsh?

A. Well that was in 1858 or 1859 when I first went out that way.

Q. And you last saw it ten or twelve years ago?

A. Yes sir.

Q. Now have you ever noticed any material changes any where between the first time you saw it and the last time you saw it. If you have seen any I wish you would please let us know what those changes are?

A. No sir, I never noticed any changes there. The things are about the same that they were when I first went there. There might be a change by a close examination. By sounding you might find it, but I have never inspected it that closely.

Q. Where was your father born if you know?

A. My father was born in England.

Q. When did he come to this country?

A. He came in 1834 to Boston and from Boston here in 1835.

Q. Do you know whether he was familiar with this country about which we are speaking?

A. He built a vessel at Ocean Springs for a man named Belmont before Texas was annexed to the United States, and that vessel was chartered by Ashbury and the Brandon Bank people there. They took her to Texas with a load of negroes and the vessel was lost by going into that territory, and it not being a part of the United States. She went out of here at night with the negroes on board and Belmont lost his schooner. It was seized and held over there.

Q. Can you tell us what the understanding and belief of your father was as to the limits of Mississippi territory?

A. No sir, he died when I was quite young and I could not say. I could not say what his belief about it was.

Q. What is your present occupation?

A. I am merchandising sir.

Q. Now I understand you to say that you have lived at several places along this coast?

A. Yes sir.

Q. I wish you would tell us if you can what the general belief and opinion of the people in the communities in which you have resided of these several places was as to the boundaries of the State of Mississippi and her jurisdiction south of her *her* shore line?

A. Well the first understanding that I had about the jurisdiction of the State to the south was a case that came up before the court and my step father was acting deputy sheriff of Jackson
1638 county, and there was a levy made on a vessel at Chandeleur island.

By Col. ZACHARIE: The counsel for Louisiana here enters an objection and exception to any testimony in regard to any suit or legal proceedings being testified to by this witness, unless the foundation is first laid by showing that the record or other proceedings in such suit have been lost, destroyed or mislaid. That is to say the counsel for Louisiana objects to any hearsay, verbal testimony as to any such legal proceedings.

By Gen. MCCLURG: The witness was only stating a fact and was not attempting to state the pleadings or the matters tried and adjudicated contained in any record.

Q. You were saying that there was a vessel levied on at Chandeleur islands?

A. Yes sir, the deputy sheriff levied on her.

Q. Who was the deputy sheriff?

A. That was my step father. He levied on her in the name of the sheriff, and when they investigated the matter they found that the State of Mississippi had no jurisdiction out there, because it was beyond the 18 mile limit.

Q. They levied on a vessel on what island?

A. On Chandeleur. They withdrew the attachment.

Q. About what year was this?

A. I think that is was in 1851 or 1852, before the yellow fever epidemic.

Q. Where is your step father?

A. He is dead sir. This levy was before the big yellow fever epidemic.

Q. Can you say whether or not the records of Harrison county and the court house have been destroyed since that date?

A. Yes sir, twice, by fire.

Q. Twice since that?

A. Yes sir, twice destroyed by fire. There is no record of this thing now I don't think. That has all been destroyed by fire.

Q. Did you ever have any connection with the ordinances of Jackson, Harrison, or Hancock counties, with reference to taking fish or oysters, or with reference to fixing quarantine regulations?

A. Yes sir, in Jackson county I have.

Q. When?

A. That is some years back. I was on the board of health for six years.

Q. What years were those about?

A. I believe that it was in 1876. Along that time.

Q. As a member of the board of health of Jackson county and dealing with matters of quarantine, what was taken as southern limit or outside water limit of Jackson county?

A. The same that it is all along the coast here. Six leagues from the main land, excepting the quarantine regulations you know, they would not allow a vessel south of 29 to come into port without being fumigated, and submitting to the regulations of the board of health.

Q. 29 you say?

A. Yes sir, 29 latitude. We are about 30. Between 29 and 30 along here.

Q. In dealing with quarantine and health matters your board at that time exercised jurisdiction did I understand you to say over six leagues limit from her shore line?

A. Yes sir, they claimed that.

Q. I asked you awhile ago about the jurisdiction of the board of health of your county. I wish you would say whether you were ever a member of the board of supervisors of your county?

A. Yes sir, I am a member of it.

Q. Now?

A. Yes sir.

Q. How long since?

A. I have been since the first Monday of January last.

1639 Q. Were you ever a member of the board before?

A. Yes sir.

Q. When?

A. 1876 and 1878 I think it was.

Q. The laws of Mississippi authorize the boards of supervisors of these coast counties to make regulations for the taking of fish and oysters and game. Will you say whether your county has ever had any regulations of that kind?

A. Yes sir.

Q. While you were a member of the board?

A. Yes sir.

Q. In making these regulations and enforcing them according to the powers conferred upon the board by the laws of the State, what territory south of the shore line if any was covered in the making of these regulations and in the enforcement of them?

A. Well the jurisdiction of the board of supervisors of these

atters is coextensive with the county. And upon the petition of e citizens of a locality we would pass an order by the board pro- cting the portion of the county where they desired it. That is the ay that we acted on it generally. Some times it would be on the ay shore east of the town of Pascagoula, and some times at the outh of the river, and some times north of the railroad bridge. ascagoula river and Bluff creek and those tributaries ordinances ave been passed by the board of supervisors protecting the fishing ere, and to prevent fishing with a smaller fish net than a certain ze. To protect the spawn of the fish.

Q. How far out from the shore did you exercise jurisdiction in is matter?

A. We never went any further than the Mississippi sound, but we new that we had jurisdiction coextensive with the county, the me as the State, 18 miles. We know that we can arrest any body ith a process that far out. As far as Ship island and out there.

Q. Were you ever mayor of your town?

A. Yes sir, for two years. I was mayor of the town.

Q. Mayor of what town?

A. Scranton.

Q. What years?

A. I have forgotten the years now.

Q. About how long ago?

A. I think that the town has been incorporated about fourteen or xteen years, and I was the first mayor of it.

Q. Now under the law the mayor of these incorporated cities and wns are made *ex-officio* justices of the peace?

A. Yes sir.

Q. You acted in that capacity also, did you?

A. Yes sir.

Q. Well do you know of any matters that came before you for ljudication involving civil and criminal trials out as far as Horn land?

By Col. ZACHARIE: The counsel for Louisiana objects and excepts any testimony of the witness as to any judicial proceeding before im as mayor of the town of Scranton or *ex-officio* justice of the eace whether civil or criminal unless the foundation is first laid y counsel for Mississippi by showing the loss, destruction or mis- ying of the record or other primary evidence of said judicial pro- eedings.

Q. I was asking you Captain whether you remembered as a fact f any matters civil or criminal that came before you for adjudica- on where the venue was on Horn island or to the southward of it?

A. No sir, none has come before me on Horn island or to the outh of Horn island.

Q. Can you recollect as a fact whether any such matters came up or adjudication in your county?

A. Yes sir, there has been an adjudication in the county.
1640 There was one case came up but it was settled amicably.
About Bayou Casotte. There was some infringement of the fishing there, but it was settled between them.

Q. Can you state as a matter of fact whether any matters civil or criminal have come before the circuit or chancery courts of your county respecting transactions on Horn island or to the southward of Horn island?

By Col. ZACHARIE: Counsel for Louisiana renews the same objection as made above to the witness testifying to any judicial proceedings before the courts until such time as the counsel for Mississippi may show the loss, destruction or mislaying of the judicial records in such cases, and to the introduction of all secondary evidence until such time as the impossibility of producing the primary or best evidence be shown and laid as a foundation for the introduction of secondary evidence.

By Gen. MCCLURG: The attention of the counsel for Louisiana is called to the fact that the destruction of the court house and the records of Jackson county has already been proven, and this question was initiative first, to show the fact of the adjudication of any civil or criminal matter and if any develops proceed to establish the matters in controversy by parol testimony, if it should appear to have been prior to the destruction of the court house and records, otherwise to produce the records themselves disclosed by the testimony of the witnesses.

Q. Now Captain I will ask Mr. Peyton to read to you the question that I asked you awhile ago and ask you to answer it? Can you state as a matter of fact whether any matters civil or criminal have come before the circuit or chancery courts of your county respecting transactions on Horn island or to the southward of Horn island?

A. No sir.

Q. There has been some testimony Captain in this case in respect to the destruction of the marshes by musk rats. Have you ever noticed any musk rats in that country?

A. Not in the marsh no sir.

Q. Where did you notice them?

A. On Chandeleur island there was proof of them. Before that heavy storm we had there were plenty of them on Chandeleur island.

Q. To which storm do you refer?

A. To the one in 1893.

Q. They were destroyed on Chandeleur by the storm of 1893?

A. Yes sir, they were washed off.

Q. Did you ever notice any on the Grand marsh?

A. No sir, I never noticed any particularly over there. I did not know there were any there at all. They were washed from Chandeleur islands. I guess they were washed over on the Grand marsh and that country over there in the storm.

Q. And that storm was when?

A. That was in October 1893.

Q. What have you to say if anything in regard to their destruction of the soil?

A. I don't think that they destroyed anything. I think that they tore down to make their habitation, but I don't think that they destroyed any part of the country at all. They did not carry any of it off.

Q. Have they any influence in the building up of the soil?

A. I think they have. They build a kind of a mound. They build a kind of a mound place for their nests, and they are like the raccoons, they stay there and eat roots and fish. They fish at low water. You find them outside of the reefs fishing. I used to go out there and catch them with a dog some times.

Q. Has that any influence on the sediment forming and collecting it?

A. They are something like a beaver would build his dam. They build their nests.

1641 Q. What about the wind carrying mosquitoes?

A. Well in 1858 we had a severe storm from the southeast. There was washed away all of the front of Biloxi in that storm. There was a store up here washed away in that storm. That is the worst storm that we have ever had along the coast that I can recollect.

Q. What about the mosquitoes?

A. I had to walk from Waveland to Ocean Springs. I was washed ashore in a small boat there in the storm. Every bush that I hit it looked like a thousand mosquitoes came out of it. I never saw as many mosquitoes in my life.

Q. Where did they come from?

A. They came from a southeast direction. I think that they came from the islands up there opposite the main land on the Florida coast.

Q. How far can they be blown by the wind?

A. I suppose that they were blown one hundred miles. There is no telling how far. When the wind blows they come. If we have a southwest wind here for a few days the mosquitoes will be blown from the mouth of the Mississippi river and come all along the coast.

Q. How far is it from here to the mouth of the Mississippi river?

A. A seventy-five or one hundred miles.

Q. What about mosquitoes on the marsh?

A. Well the mosquitoes on the marsh they inhabit it winter or summer. In the dead of winter you can walk in the marsh there and kick up a big tuft of marsh that has been lying dead on the soil there and the mosquitoes will come out from under it in the dead of winter.

Q. Are there more or less of them there than on the Mississippi shore?

A. Yes sir, there are more of them there than on the Mississippi shore.

Cross-examination.

By Col. ZACHARIE:

Q. What year were you born in Captain?

A. 1839.

Q. And you have been engaged in the lake trade since 1867?

A. Yes sir, that is the commencement of it.

Q. When did you first hear any discussion about the boundary line or the dividing line between Mississippi and Louisiana?

A. The first I heard of it was in running a vessel the captains would get to talking about the different places and about the dividing lines between Louisiana and Mississippi, and it was talked about a good long while before the quarantine regulations were put up, and of course then we had to know positive.

Q. About what time was it that you heard this discussion first?

A. It was way back yonder.

Q. Could you name about the time?

A. Well I heard it discussed in 1868 and 1869 and 1870 and along there among the schooner men.

Q. What did you say was the occasion that gave rise to that discussion?

A. The discussion about the boundary line was to know when we were in Louisiana and when in Mississippi.

Q. What if anything brought it up. Was it the quarantine?

A. No sir, the quarantine was not established then. That was later on.

Q. Can you give us some idea of how these discussions arose?

A. Yes sir, it was like all other matters that people on a vessel would want to know. So as to inform one another on things of that kind. That is what it was done for.

Q. You say that in 1881 the Mexican Gulf Canning Co., established on these marshes a factory?

A. No sir, not a factory.

Q. I mean to say a camp?

A. Yes sir, a camp.

Q. Did they have any store there?

1642 A. No sir, they did not have any store there. They brought the supplies on the vessels down there. Each vessel supplied herself when she went out.

Q. Did they sell to their employers or others?

A. No sir, I don't think that they did. Each vessel was furnished and she went down there with supplies for the trip.

Q. You say that they considered that they were in Mississippi territory?

A. Yes sir, that is what they said.

Q. How did you know that fact?

A. I did not know it as a fact? I know that they claimed that.

Q. How do you know that they claimed it?

A. I heard them talking about it. About the Mississippi line. Judging from the geography of the country they thought that we were in Mississippi. The Louisiana people never disputed it with them and I judged that they were right.

Q. Does not your impression on this subject arise from the fact that there was no objection or interruption on the part of the Louisiana authorities. Is not your opinion based on that fact, that the Louisiana authorities did not interfere or object.

A. Yes sir, I thought that if it was Louisiana territory that there would be an objection to their camping there and fishing oysters there.

Q. Well do you know as a fact that under the laws of Louisiana up to the year 1900 Mississippians, Alabamians and people from other States had the right to go there and camp and fish oysters?

A. No sir, I am not acquainted with the laws of Louisiana. I am not posted about that.

Q. Well your idea about their claiming this was Mississippi territory was derived from that impression?

A. Yes sir.

Q. Well now is it not a fact Captain that in speaking of these marshes in this disputed territory the common expression along this coast is to call them the Louisiana marshes?

A. No sir, not with the people that I mix with, and on the vessels that I sailed with they always called it the Grand marsh. It was always known as the Grand marsh.

By Gen. McCLURG:

Q. What is the meaning of the word Grand marsh?

A. It means Great marsh. I take the word grand to be a French word that means great.

By Col. ZACHARIE:

Q. I am asking you in regard to the general expression along this coast in regard to this marsh. Is not the expression in speaking of these marshes usually Louisiana marshes?

A. No sir, not along the coast.

Q. When the mosquitoes are very bad here is it not a common expression that they come from the Louisiana marshes borne in here by the southern winds?

A. A southwesterly wind brings them in here.

Q. Is it not a common expression that they come from the Louisiana marshes meaning the marsh within this disputed territory?

A. Within the Louisiana boundary yes sir The boundary line that is in dispute now, I have heard that was called the Grand marsh.

Q. Did you state that mosquitoes can be borne 100 miles and still live?

A. Yes sir.

Q. Don't you know it is a fact from the recent scientific study of the mosquito, that he can not be borne but a very few miles by the wind without being killed?

A. No sir, I do not know that.

Q. Where do these mosquitoes come from that you have along the coast here?

A. Well they come from water pools I suppose.

Q. I mean from what direction do they come?

A. They come from various directions. Some come from
1643 the southeast and some from the southwest. Some from Louisiana and some from Florida.

Q. I understand you to say that you have not been in this territory for ten or twelve years?

A. Yes sir. I have run a vessel since that on the regular route to New Orleans, but I have not been in that territory.

Q. Captain, you have never paid any close attention to the changes which might or might not have taken place in this disputed territory have you?

A. I have just by a casual observation. I have never made any extended observation of it.

Q. They you know nothing of the fact as to whether this territory has subsided or sunk?

A. I know nothing of it particularly only by observation, I don't think there is any material change in it.

Q. You say that you never have paid any close attention to it?

A. No sir.

Q. You have never paid any close attention to any changes which might have taken place as a result of these severe storms have you?

A. Yes sir, I have looked at them. After a storm I have usually looked very carefully to see what damage it has done.

Q. Have you ever gone ashore at any of these points on this coast extending from Malheureux point to Isle à Pitre, and noticed any changes that have taken place there in the mouths of these bayous and in the interior of these marshes. Whether the water area has increased. Have you ever been ashore to notice these particular things?

A. Yes sir, I have been ashore some on Isle à Pitre. I saw some little changes, but not any thing material.

Q. Have you been ashore at any point between Malheureux point and Isle à Pitre to notice any changes which might have taken place?

A. No sir, not lately.

Q. Have you ever been in the mouths of Three Mile bayou and Nine Mile bayou and Johnson's bayou and Creole gap and these other bayous and passes in order to notice whether they have widened any since your first visit there?

A. No sir, I have not examined them to see whether they have widened or not.

Q. They you know little or nothing about the territory to the westward of Grand pass?

A. Well I know by casual observation. I know that I have sailed along there and looked out.

Q. Well Captain is it or is it not a fact that these musk rats in burrowing under the ground leave a thin crust on top which will give away with the slightest pressure there from a person passing over it or from a body of water?

A. Yes sir, they are subject to be indented.

Q. Is it or is it not a fact that a person traversing these marshes on foot will often find himself going down to the arm pits where these musk rat holes are some times?

A. Yes sir.

Q. You stated that a vessel which had been attached and seized on the Chandeleur islands by the authorities of Jackson county was released because it was found to be beyond the 18 mile limit?

A. Yes sir, beyond the jurisdiction.

Q. How did you derive this information?

A. Well we found out by the limits of the State being 18 miles from the main land, and this was beyond the limit.

Q. Who did you know these things from?

A. My step father was the deputy sheriff and he was talking about it. He could not hold the vessel.

Q. You were only 13 years old then?

A. I was young then but I recollect what they said about it, because there was quite a talk about this vessel being seized out there.

Q. You merely got that as hearsay?

A. Yes sir.

1644 Q. You were not present in the court and saw the papers or any thing of that kind?

A. No sir, I know that he went out there and did this work and come back again. I know that they released the vessel. They put me on a horse and I went up above there 20 miles where the sheriff lived, that caused me to go up there to take the returns to the sheriff.

Q. When was the court house in Jackson county destroyed?

A. I think that it was first burned in 1872 or 1873 and then afterwards I think that it was 1874 or 1875. I am not sure about these dates.

Q. Do you know as a matter of fact whether all of the records were destroyed or whether there were any of them saved?

A. They were all destroyed from what I can learn. Every thing was destroyed in the court house. Nothing was saved. Every thing in the way of records was destroyed. Both of them were wooden buildings. They have a brick building there now.

Q. In regard to your quarantine regulations. I understand you from your testimony in chief that there were no special regulations as to the limit of your quarantine jurisdiction, and you simply passed a regulation that vessels coming from the south of the 29th, degree of latitude should be subject to quarantine and detention?

A. Yes sir, quarantine and detention.

Q. Were your quarantine regulations printed and published?

A. Yes sir.

Q. Have you got a copy or could you get a copy of these regulations?

A. No sir.

Q. There are none of them now?

A. No sir, none now I think. They had to publish them under the law.

Q. How were they published. In a newspaper?

A. Yes sir, in a newspaper.

Q. Was there a paper published at Scranton?

A. Yes sir.

Q. Do you think that could be found in the files of the paper? What was the name of it?

A. It is called the Pascagoula Democrat Star now. I believe that it was the Democrat Star then. A man by the name of Smith was the editor and publisher first there.

Q. When were these regulations of the supervisors in regard to the oyster fisheries and other fisheries first enacted?

A. Well they enacted regulations in regard to oysters and fishing I believe first in about 1876 or 1878, I believe were the first orders that were passed by the board regulating that.

Q. Was this in pursuance of the statutes of the State?

A. I believe the statutes of the State gives the board of supervisors the power to enact such orders to protect fishing and oysters.

Q. Do you know when this statute was passed?

A. Well no sir. It is not in the 1892 Code. The statute was long before that in the old code.

Q. You have spoken about the silt or deposit from rivers helping to build up these marshes and disputed territory. What rivers do you allude to from which the deposit was made?

A. Different rivers. The Pascagoula river for one, and the Mississippi river has gone a good deal down there since it was discovered by De Soto.

Q. You don't mean that the deposits from the Pascagoula river would go far enough west to build up these marshes?

A. No sir, my observation of the river is that islands have grown up from the deposits.

Q. Which river do you mean?

A. The Pascagoula river. I can show you the islands that have grown up there in my recollection.

Q. That would have no effect on the marshes?

A. No sir, the Pascagoula river would not.

Q. You have mentioned the Mississippi river. Do you know what is the demand of Louisiana or Mississippi? Louisiana
1645 was admitted to the Union in 1812 and Mississippi in 1817. Is there any silt of the Mississippi river that goes to the eastward?

A. Yes sir, I believe it does go to the eastward. That is my opinion in regard to these islands. My opinion is that the Chandeleur islands are a deposit of the Mississippi river in years gone by. I think that all of these places are deposits.

Q. Let me point out to you the distinction then. Of course it is pretty well admitted that prior to the stoppage of Bayou Manchac, the River Iberville and all of this territory was made by alluvial deposits?

A. Yes sir, Scranton is on an alluvial deposit from the Pascagoula river.

Q. Do you mean to say since the levees have been established by the State of Louisiana and along the Mississippi river, that there is any silt that comes from the mouth of the Mississippi river that would tend to raise these marshes in dispute?

A. That is my opinion that it does. I don't know that it always did.

Q. Did you ever examine the reports of the Government and the hydrographers and the engineers showing that there is a littoral current that carries all of this soil to the westward and that none of it goes to the eastward?

A. I never have examined their reports about it

Q. You spoke during your examination in chief in regard to St. Joseph island being nearly washed away?

A. Yes sir.

Q. Is it or is it not a fact that Round island has been entirely washed away?

A. I never have heard of its being entirely washed away, but there are Dog Keys between Horn island and Ship island that have been washed away and built up again.

Q. Do you know Round island?

A. Yes sir.

Q. Have you in the last few years passed there?

A. Yes sir.

Q. Have you ever noticed whether that island still appears there or not?

A. Yes sir, Round island. In Jackson county do you mean. What Round island do you mean?

Q. I mean the Round island lying between the north coast of these marshes and the Mississippi coast. Have you ever noticed that?

A. No sir, I have not noticed that.

Q. Have you ever noticed the changes which have taken place in Grassy island and Half Moon island?

A. Yes sir there are some changes in these islands.

Q. What is the change. Has not a large portion of the territory been washed away?

A. Yes sir, by this storm of 1893. That washed away St. Joseph island and some of the points of these marsh islands over there, be-

cause they were directly exposed to the force of the waves and the storm.

Q. Now you say that the storm of 1858 and the storm of 1893 produced very decided and remarkable changes along the Mississippi coast. Do you not say so?

A. No sir, I did not say that. I said the storm of 1858 was the most destructive storm we had done to the coast in the way of destroying bath houses etc., in front of the town.

Q. Then I will ask you. Did not the storm of 1893 produce remarkable changes?

A. Yes sir.

Q. A large portion of the beach along this coast was washed away?

A. It did not affect this coast country of Mississippi as much as the Louisiana coast, because the wind was a different direction. In the storm of 1858 the wind was southeast, and the waves were thrown against this coast, but the other storm started from the north east which blew on the Louisiana coast down in that country, and being from that direction it did not hurt this coast near as bad as the storm of 1858.

1646 Q. Do these great storms not generally originate from the wind blowing from the southeast for some time?

A. Well I have seen two great storms from the northeast. One time the city of Mobile was inundated, and then this 1893 storm.

Q. Do these great storms not generally originate from the wind blowing from the northeast for some time?

A. No sir, they don't originate from that.

Q. Then it is not your opinion and experience that these southeasterly winds blow away these signs by blowing up the water?

A. Easterly winds?

Q. Southeast winds?

A. Southeast winds. Well it does somewhat interfere with some of the passes between the islands. For instance Ship island and Horn island.

Q. Now in the majority of these cases if it be so that these southeast winds fill up and bank up the waters in these sounds and so on. Is it not a fact that very often in these storms the wind shifts around to the northwest?

A. Yes sir, some times it does. From the southwest to the northwest.

Q. Is not the effect of the shifting of the wind around to the northwest to blow out these waters which can readily escape through the passes and blow it through to the territory out to the south. Is not that your experience with the majority of the storms on this coast?

A. Yes sir, when the wind is northwest it blows the water out yes sir.

Q. And this water is banked up in this sound. And is not it blown with tremendous force towards the south?

A. It is blown with considerable force but not with the same amount of sea the southwest wind brings it in.

Q. Have you ever been out in any of these storms?

A. Yes sir.

Q. Have you ever been in the neighborhood of these marshes in these storms?

A. No sir, I never have been on the marsh in a storm.

JACOB CAVATCHOVITCH, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLUNG:

Q. How old are you?

A. I was born in 1834.

Q. Where were you born?

A. In Austria.

Q. When did you come to this country?

A. In 1859. In 1858, and then I went away again and then I came back in 1859 and stayed.

Q. Where have you lived since 1869?

A. Any where. I used to live on the Mississippi river, but in the summer time I would come on this coast here.

Q. What were you doing?

A. Fishing oysters in the winter time; in the summer time I would come here on the coast with boats.

Q. When did you first commence fishing oysters in this country?

A. On this side in 1866. On this side of the Mississippi river.

Q. On the east side of the Mississippi river you have been fishing oysters since 1866?

A. Yes sir.

Q. Are you familiar with the marshes?

A. Yes sir.

Q. What do they call these marshes?

A. There is one that we call Blind bay. That was shut up but it is open now. There is Petit pass.

Q. You mean Petit pass that is marked on the map?

A. Yes sir, when you come out from the Rigolets and coming to the marsh you strike then the Petit pass. If you don't go by Nine Mile bayou. You go in Petit pass.

1647 Q. Did you ever go through Nine Mile bayou?

A. Yes sir.

Q. How many times?

A. I have forgotten how many times.

Q. When did you first go there?

A. In 1866.

Q. Where else did you go there?

A. In Bayou Tresor.

Q. They call that Treasure bay now I believe.

A. There is a bayou. You have to pass through the bay and then there is a bayou coming in there. We fished in the bayou at that time.

Q. What sort of a boat did you go down there in?

A. In the Orient. A big boat that carried 160 barrels of oysters.

Q. How much water did she draw?

A. She drew three and a half feet.

Q. Did you ever go through Three Mile bayou?

A. Yes sir.

Q. When?

A. In the same year. In 1856.

Q. With the same boat?

A. With the same boat, yes sir.

Q. How far down did you go through Three Mile bayou?

A. We used to go through Karako and Drum bay and Cat Fish pass. Some times you would fish and make one place and then we would change and go to another, where we would see that there were better oysters.

Q. Did you ever go through Johnson bayou?

A. Yes sir.

Q. Did you ever go through Bayou Pierre?

A. Yes sir.

Q. Grand pass?

A. Yes sir.

Q. When did you go through Grand pass first?

A. I believe that the first time that I went there was in 1868 or 1869 or some where along there.

Q. Did you ever go through Creole gap?

A. Yes sir, Creole gap was first shut up when I first remember it, and then a fisherman cut out there with a spade. It was too far to go to the east end of Isle à Pitre, so they cut out there with a spade.

Q. When was this cut with a spade if you remember?

A. Well I believe that it was in 1867 if I am not mistaken. I can not remember just exactly what year it was.

Q. When were you through these places that I have asked you about. The last time that you went through there?

A. Pretty near every year sir.

Q. Are you in that business now?

A. Yes sir, I am.

Q. You are in that business now?

A. Yes sir.

Q. Do you know where St. Joseph island was?

A. Yes sir.

Q. Grassy island?

A. Yes sir, Grassy island.

Q. And Grand island?

A. Half Moon island now they call it.

Q. Grand island is now what is called Half Moon island?

A. Yes sir.

Q. There is a little island in there that they call Round island?
A. A small piece of it is washed away. Of Round island.
Q. And Petit Pass island. Do you know where that is?
A. Yes sir.
Q. Now these islands and this marsh territory that I have been asking you about. What State are they in. Mississippi or Louisiana?
A. I never heard any thing about it. We used to go inside of the marsh, and we never called any name Mississippi or Louisiana.
1648 Some times we used to ask Where are you going to fish, and they would say I am going to fish in Three Mile bayou. I am going to fish in Cat Fish pass. We did not call the name of it at all.
Q. You never knew about that?
A. No sir, I did not know about that. We never had no trouble there. Nobody ever troubled us there.
Q. Neither Louisiana or Mississippi ever bothered you about it?
A. No sir, only just a few years ago.
Q. Did I understand you to say that with a boat drawing three and a half feet of water you could go through any of these places?
A. Yes sir, or four feet yes sir. We used to go in Bayou Mussell fishing at low tide, and then you would have to stay there and wait until the tide comes and raises you up to go over. In getting fish it was just the same thing. There might be a low tide and you would wait for high tide to come in.
Q. Was there any difference in the marshes as it was then and now?
A. I don't find much difference. It looked like to me that it was just the same. Some times then in low tide you had to lose time in waiting for the tide just the same that you do now.
Q. It is the same now that it was in 1866?
A. Yes sir, it is the same thing now.
Q. That is about 48 years?
A. I don't know how long it is.
Q. 1866–1876—1886–1896?
A. It is about 45 years I believe.

Cross-examination.

By Col. ZACHARIE:

Q. Did you ever hear this territory in dispute called the Louisiana marsh?
A. I heard it about 20 years ago I believe or some thing like that.
Q. They called it the Louisiana marshes?
A. Yes sir.
Q. Were they not always regarded as a part of the parish of St. Bernard?
A. Yes sir, St. Bernard parish used to claim a place up there by—Mulatti bayou—Louisiana used to claim that.

Q. Well the fishermen from Mississippi as well as the fishermen from Louisiana recognized that territory as a part of the parish of St. Bernard?

A. I don't know sir. I could not tell you. We used to go fishing oysters on Pointe à Lahache. That is what they call it. That is on the Mississippi river where there is a church. Before we went to fish in Bayou Pascale.

Q. Well did you fish as low down as California bay?

A. Yes sir.

Q. Did you fish back of the quarantine?

A. Yes sir. When the oysters died here, I don't remember what year it was. Mr. Lopez took a steamboat and took me and showed me the place down there.

Q. That is after the crevasse?

A. Yes sir, after the crevasse. They took the steamboat and took me aboard and I went with them to California bay, and they showed me where there were oysters, and at that time the oysters were dying over here. Yes sir, I was all through the marshes. I can call names by name. In 1866 we made one trip by Point Pirate, and there an old man named Peter Roshandan on there and Castang Jack, we used to call him that down there, and there was a rock on that shore there on the island about a foot and a half square and that rock was there, and I asked the old man what was that rock and he said that it was the Louisiana line.

Q. Where is that?

A. On Pirate point. It was made about a foot and a half square and there was a hole in the middle of it, and a piece of iron in it put in there with lead.

Q. An iron filled with lead?

1649 A. The iron was put in there and the lead was put around it to hold it, and a year or two after that he was aboard out there—I was aboard and out there, I don't remember how long it was. He was on the edge of the marsh, and he told me that he took the rock aboard for ballast and took the iron out. He said before he would go overboard he took it out for ballast.

Redirect examination.

By Gen. McCLURG:

Q. Did you ever pay a license to fish?
A. Yes sir, in this State they make up pay a license.
Q. In Mississippi?
A. Yes sir, in Mississippi.
Q. When was the first year that you paid?
A. I don't remember exactly the year that it was.
Q. 1892. 12 or 14 years ago?
A. Yes sir, some thing like that.
Q. Did you pay it to Mr. Howes at Mississippi City?
A. No sir, I paid it here in Biloxi.

Q. Who did you pay it to?
A. I don't remember. I used to work for Mr. Lopez and he used to make me get the license. He would send for the license.
Q. Under that license where did you go?
A. We went out the same thing in the marsh.
Q. Under that Mississippi license?
A. Yes sir.
Q. And Louisiana did not interfere with you?
A. No sir.
Q. What was this license for?
A. I don't know sir.
Q. Was not it to take oysters?
A. Yes sir to take oysters.

The commission here took a recess until 2 o'clock p. m. for the dinner hour.

The commission reassembled at 2 o'clock with the same present as this morning and the following testimony was taken to wit:

K. L. THORNTON, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. Where do you reside, Mr. Thornton?
A. Pass Christian.
Q. How old are you?
A. 49 years old.
Q. Pass Christian is in Harrison county is it?
A. Yes sir.
Q. Have you ever held any office in this county?
A. I have held the office of justice of the peace of this county.
Q. What years please sir?
A. From about the middle of January 1894 to the first Monday of January 1900.
Q. What district of the county are you justice of the peace of, or were you justice of the peace of?
A. District No. 3.
Q. That embraces the town of Pass Christian does it?
A. Yes sir, that embraces the town of Pass Christian.
1650 Q. I believe under the laws of the State you had jurisdiction of civil matters not exceeding $200 in value and all criminal matters, final jurisdiction of misdemeanors, and you sit as a committing court in felonies?
A. Yes sir.
Q. Tell us please sir where your office was?
A. My office was really my residence. A part of it was a drug store.
A. In what town?

A. In the town of Pass Christian.

Q. Have you ever claimed or exercised jurisdiction as a justice of the peace of Harrison county south of the shore line and if so state how far. How far you claim to exercise such jurisdiction in either civil or criminal matters?

A. I claimed that I had the right to exercise jurisdiction in civil and criminal matters 18 miles from the shore in Harrison county. The distance of 18 miles.

Q. Did any cases ever come before you in that 18 mile limit?

A. A few criminal cases did.

By Col. ZACHARIE: The counsel for Louisiana objects and excepts to any of the testimony of this witness in regard to judicial proceedings had by him whether civil or criminal without the foundation first being laid. The production of the records or proof of the loss destruction or mislayal of that record.

By Mr. MCCLURG: The counsel for Mississippi has not attempted to prove the contents of any judicial record, but merely asks the witness to state as an independent fact whether any cases civil or criminal where the venue was laid to the south of the Mississippi shore ever came up before him and they understand that is all the witness is called upon to answer.

Q. I will now ask the stenographer to read the question to the witness. Did any cases ever come before you in that 18 mile limit?

A. A few criminal cases came before me. There were a few criminal cases came before me of a violation of the county ordinance in reference to the culling of oysters, but the same occurred within three miles of the shore of the town of Pass Christian. Nothing any further out than that.

Q. The venue of these cases was north of the deep water channel?

A. Yes sir, they were north of it.

Q. Who was your predecessor in office?

A. James H. Espy.

Q. Where is he?

A. He is dead.

Q. Who succeeded him?

A. John D. Northrop.

Q. Where is he?

A. In Pass Christian. F. L. Patenotte succeeden John D. Northrop and he is the present justice of the peace.

Q. Were you ever a member of the board of supervisors of this county?

A. No sir.

Q. Were you ever a member of the board of health?

A. I was a member of the board of health for the town of Pass Christian for a number of years.

Q. In what county?

A. No sir, not of the county. As a member of the board of health of the town of Pass Christian we only claimed to exercise jurisdic-

n over the health matters about two or three miles of the shore
ıth of us, and only two or three miles back of the town.
Q. How long have you lived in this county?
A. With the exception of ten years I have lived here since the 2nd
y of December 1865 in Pass Christian.
Q. Well during the forty years, with the exception of ten that you
ve lived in the county and at Pass Christian I would be glad if
ı would tell us if you can what has been the general acceptance
of the people of this county and of the adjoining counties along
51 the coast if you know as to the location of the southern
boundary line of the State of Mississippi?
A. Well as far as I can understand from hearsay and otherwise
ey have all claimed that the southern boundary is 18 miles from
shore, though it was not definitely located at any particular
nt. That is I have never heard them speak of any particular
nds or particular marshes or coast or any thing else as being the
thern boundary, but we have always spoken of it as being 18
les from the shore.
Q. Do I understand from your answer that that has been the
neral understanding during the forty years there in your neigh-
rhood?
A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Thornton, since when has this understanding prevailed
t the Mississippi boundary extended 18 miles south from the
ssissippi main land?
A. My recollection was from hearsay when I first came down to
coast as a child.
Q. Was this the general acceptation amongst the fishermen and
people along here?
A. Yes sir, I remember then at that time the people at Pass
ristian. Of course the most of them are dead. I reckon all of
m are dead. I have heard them speak about the Louisiana
ts fishing oysters about Pass Marianne light and in sight of the
re, and some times speaking of going out and running them
ıy from there. That they had no business in that territory.
Q. Is it not a fact that the marsh land which lies south of the
in land of Mississippi, that is south of these islands have been
nerally known by the fishermen and others along the coast as the
ıisiana marshes?
A. I have some times heard them called the Louisiana marshes,
I think they are generally known as the Grand marsh.
Q. Is it not a fact that whenever Pass Christian and these other
ces are visited with mosquitoes, that they are attributed to the
th winds blowing them from the Louisiana marshes. This dis-

puted territory. Is not that the way that they generally speal them?

A. No sir, we only have mosquitoes when we have a west w Not a very hard or a very high west wind.

Redirect examination.

By Mr. McCLURG:

Q. Judge Zacharie asked you about the mosquitoes that gathered over here, and in discussing the matter he says that t are some forty or fifty different varieties, and he has had some cussion as to how far they could be blown by the wind alive, the witnesses. I read in the Times Democrat this morning some scientists advance the theory that the mosquito has 32 te If you have any information on that subject as to how far quitoes can be blown by the wind and how many teeth they h and how many different kinds of species there are I would be to have you put it in the record?

A. I don't know much about them any more than their bi qualities.

Q. Do the- bite like they have teeth?

A. They bite like they might have some thing besides teeth.

Q. Claws?

1652 A. I suppose you might put it daggers. I know that t are a number of varieties. How many I don't know.

Q. What about the distance that they might be carried alon the wind?

A. I don't know that, but I would judge that they might be ried forty or fifty miles without any trouble at all.

Q. You are not up on the subject of musk rats are you?

A. No sir, I have seen a few at Pass Christian. I don't k where they come from.

Q. They were not disturbing the surface of the marsh or hav it to wash away the coast or the marsh to go down with them?

A. No sir, there were alligators in the edges of Pass Christi few years ago. I think there are still some there but I don't k any thing about the musk rats.

Q. I am told that they are the deadly enemy of the musk rat

A. That is what I have heard.

Q. Did you ever from your knowledge and experience during last forty years of this disputed territory and of musk rats, t that musk rats ever had much effect on the location of the bou ary between the States?

A. I did not.

Q. It is claimed by Louisiana that the deep water channel ning out of the mouth of Pearl river and to the north of Half M and Grand islands and the north of St. Joseph I believe, and aro to the southwest of Cat island into the gulf of Mexico, to the of the Chandeliers—. During the forty years that you have li

here state whether or not you know or have ever heard of that channel constituting the dividing line between these two States?

A. I don't know that I have ever heard of it until since this dispute. Just since this suit came up.

J. R. KELLY, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you live, Mr. Kelly?
A. Gulfport.
Q. In Harrison county?
A. Yes sir.
Q. Do you hold any position in this county?
A. Yes sir.
Q. What is it?
A. Justice of the peace of district No. 2.
Q. How long have you been justice of the peace?
A. Since the 19th of July 1902.
Q. Of what district?
A. District No. 2.
Q. *How long have you been justice of the peace?*
A. *Since the 19th of July 1902.*
Q. *Of what district?*
A. *No. 2.*
Q. That embraces the city of Gulfport?
A. Yes sir.
Q. Have you had before you during that time any civil or criminal cases where the venue was south of the shore line at Gulfport?
A. Yes sir, I have.
Q. Where were they. Where was the venue?

By Col. ZACHARIE: The counsel for Louisiana makes the same objection and exception as entered before to similar testimony.

A. Well I had several cases under this new oyster law, and I had one case from Cat island, that is about nine miles from Gulfport.
Q. How far south of the shore line at Gulfport does your jurisdiction extend?
1653 A. We consider it 18 miles. It takes in Cat island and Ship island.
Q. Why do you fix it at 18 miles Mr. Kelly. Why do you fix the limit at 18 miles?
A. That is what the general understanding has been ever since I have known any thing about it. Since I have been here.
Q. Is that southern limit of Harrison county to the limit of the State of Mississippi?
A. Yes sir, it is 18 miles out.
Q. Where is the court house of Harrison county?

A. It is in Gulfport.

Q. How far is it from the shore?

A. About 500 feet.

Q. How far is it from the court house to the northern limit of your county?

A. I think that it is 42 miles, but I am not sure. I know where the line is very well. I know where the county line is. I think that it is 42 miles.

Q. It is shown that the bay of Biloxi is on the eastern line of this county. How far is it from your court house to the bay of Biloxi?

A. It is about 13 and one half miles I think.

Q. Bay St. Louis is shown to be the western boundary of your county, of Harrison county. How far is it from the court house to this bay?

A. It is about the same distance.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Kelly will you look at the map and see that broken portion south of the main line of Mississippi. What name has that been known by amongst the fishermen and the people generally. Has it not been called the Louisiana marshes?

A. You mean south?

Q. Yes sir?

A. No sir, southwest. The Louisiana marsh is out that way, but I have always understood that the Louisiana marsh was 35 miles from Gulfport. That is where those oysters come from. I never have dealt in oysters and I don't know very much about it.

Q. I am not asking you what you have understood. I am asking you as to the general name common to that section of the country lying between Malheureux point and Isle à Pitre. What is that generally called amongst the people along this coast and amongst the fishermen. Is it not called the Louisiana marshes?

A. I can not answer it because I never have been out there. I understand that the Louisiana marshes are out that way.

Q. I am not asking you if you have ever been out there. I am asking you what that territory is called the Louisiana marshes?

A. Will have to answer it as I did before. I have heard that the marshes are out that way.

Q. Are you not willing to say that this particular territory is called the Louisiana marshes?

A. No sir, I am not.

Q. How did you derive your information that the southern boundary of Mississippi extended 18 miles south of the main land and south of the east mouth of Pearl river?

A. I just got it from the lawyers. They said it was the general understanding that Mississippi extended 18 miles out.

Q. You say that you got it from the lawyers?

A. The lawyers and general information around.

Q. Did you ever hear it discussed amongst the ordinary run of people. The laity. That is the ordinary run of people. You never heard it discussed among them did you?

1654 A. No sir.

Q. You do not know do you that in the act admitting Louisiana all the islands within three leagues of her coast were declared to be within her boundaries. In the act admitting the State of Louisiana into the Union, the islands within three leagues of her coast were declared to be within her boundaries. You have never taken the trouble to investigate that have you?

A. No sir.

Q. The territory that you have spoken of as the Louisiana marshes. Is that the territory from which the great mass of oysters are brought to this coast?

A. I understand that it is yes sir.

Q. Then if the large amount of oysters that are brought here come from the Louisiana marshes, and the large amount of oysters are brought from this territory in dispute, then it would fix in your mind that this territory was called the Louisiana marshes?

A. Well I just heard that it was the Louisiana marshes. I never have investigated it.

Q. Was it not the common saying among the people along this coast when you have a plague of mosquitoes that they come from the Louisiana marshes?

A. Come from the marshes. We don't say Louisiana marshes.

Q. As a matter of fact what direction do they come from?

A. Well these last come from out in the woods.

Q. What direction by compass?

A. That is north.

Q. What is the generality of the direction from which they come ordinarily?

A. Well that is what they say along here. From the south west.

Q. Well these marshes that you have spoken of as the Louisiana marshes are to the southwest of Gulfport?

A. Yes sir.

Q. Now is it not a common saying when you have these mosquitoes that they come from the Louisiana marshes? Is not that the common expression along the coast here?

A. That they come from the marshes when they come off the water.

Q. I am speaking of the common expression when the mosquitoes are abundant here. That they come from the Louisiana marshes?

A. Yes sir, they come from the marshes.

Q. You are not willing to say that the people do not say that they come from the Louisiana marshes?

A. Some do, but the common expression here is from the marshes.

Q. And some of them say that they come from the Louisiana marshes?

A. Yes sir, Louisiana marshes.

Q. You have spoken of a case that came from Cat island before you as justice of the peace. What was the character of this case. Civil or criminal?

A. Criminal.

Q. What was the charge?

A. Assault and battery.

Q. It came direct from Cat island, did not it?

A. Yes sir, the difficulty occurred on Cat island.

Q. On the western or the eastern coast of Cat island?

A. I would consider it on the northern shore of it.

Redirect examination.

By Gen. McCLURG:

Q. How far is Cat island from Gulfport?

A. Now there is a little difference in opinion. The keeper claims that it is nine miles.

Q. What keeper?

A. The keeper of the light house. Capt. McCall. Nine miles from the light to Gulfport. Now the east end of this island
1655 is a little nearer.

Q. You have been asked about what these marshes were called out there. State whether or not you have ever heard them called Grand marsh?

A. Yes sir.

Q. Is that in the same direction as the Louisiana marsh?

A. Down in the marshes. Grand marsh.

Q. You have never been down there in that section.

A. No sir.

F. W. ELMER, being recalled on behalf of the State of Mississippi testified as follows:—

By Gen. McCLURG:

Q. Mr. Elmer, were you ever a member of the county board of supervisors of Harrison county?

A. Yes sir.

Q. When?

A. Possibly ten or twelve years back. I have not fixed the date in my own mind. I was on the board some eight consecutive years.

Q. In the exercise of jurisdiction conferred by the constitution and statutes of the State upon this board. I believe that the board has jurisdiction co-extensive with the county has it not?

A. Yes sir.

Q. I wish you would state whether or not the board claims or exercises any jurisdiction south of the shore line of the county and if so how far?

A. Well I don't know if while I was a member of the board if we exercised any certain jurisdiction but it is an indisputable fact that we always claimed jurisdiction for the 18 miles south. I can not say that the exergency arose while I was there, and that we had to assert it.

Q. Were you ever a member of the county board of health?

A. No sir.

Q. You never have been a member of that?

A. No sir.

FRED. H. MCCALEB, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you live?

A. Biloxi, Mississippi.

Q. How long?

A. 58 years. I was born and raised right here in this town.

Q. Have you held or do you hold now any official position in this county?

A. No sir.

Q. Have you ever held any?

A. Yes sir.

Q. What was it?

A. I have been a member of the board of supervisors.

Q. When?

A. The best that I can remember was in 1888 to 1890. I would not be positive now, it has been so long ago, but I am almost certain of it.

Q. During the time that you were a member of the board of supervisors of this county, did the board have authority to pass quarantine regulations, and regulations for taking and fishing oysters?

A. Yes sir.

Q. In the exercise of this authority and jurisdiction how far south of the shore line did you claim to exercise jurisdiction?

1656 A. We claim back to the State limits.

Q. Where did you claim the State limits to be Captain?

A. The State limit was 18 miles. Six leagues or 18 miles.

Q. From where?

A. From the main shore.

Q. During the 58 years that you have lived here, and which I understand to be all of your life, can you say what the general understanding and acceptation of the people of this county has been as to the limits of the State and county boundary?

A. Well as far as I have always heard them express their opinions about it, it has always been as laid down in the Code, 18 miles.

Q. From the shore?

A. From the main shore including all islands.

Q. It is claimed by the State of Louisiana in this suit that the real line between the two States follows the deep water channel which flows out of the mouth of Pearl river north of Grand and Half Moon islands, and Brush island in the neighborhood of St. Joseph and around to the southwest of Cat island. If you have any knowledge or information which goes to establish that channel as the line between these two States I would like for you to state what it is?

A. No sir, I have none.

Q. You never heard any thing of that sort?

A. Nothing of it before this controversy came up.

Q. You never heard of it before this controversy came up?

A. No sir.

Q. You know where the marsh is to the southwest of here?

A. Yes sir.

Q. Were you ever there, Captain?

A. Yes sir, I have been there.

Q. How long ago?

A. That would be right hard to say. I have not been in the marsh for ten or fifteen years.

Q. What do they call that marsh down there?

A. It used to be called the Grand marsh.

Q. Have you ever heard it called by any other name lately?

A. It is the Louisiana marsh now.

Q. How long since you first heard it called the Louisiana marsh?

A. I could not say that, I have heard it called the Louisiana marsh out there for some time before the Louisiana controversy came up, but how far south they claimed that as the Louisiana marsh I could not say that.

Q. Could you say whether or not there is a marsh to the south of our 18 mile limit?

A. Yes sir, that is if I understand you right. There is a marsh south of our 18 mile limit.

Cross-examination.

By Col. ZACHARIE:

Q. Captain McCaleb, has it or has it not been the expression as to the large amount of oysters brought to these canneries here. Is it not that they come from the Louisiana marshes?

A. Before this controversy.

Q. I am speaking about before this suit or controversy arose. For instance I have been visiting this coast since I was a child, and I have always heard and been told by these people here that that territory over there was called the Louisiana marshes.

By Mr. McCLURG: Counsel for Mississippi excepts to this statement by the counsel for Louisiana.

By Col. ZACHARIE:

Q. Is my statement borne out by them now?

A. No sir. You say that since you have been coming here that it was always called the Louisiana marsh. They might have
1657 called it that to you but the old citizens around here called it Grand marsh.

Q. You stated in your examination in chief that it was called the Louisiana marsh You stated that it was called that before this controversy arose?

A. Well I have heard it a short time before this you see, I suppose it has been about five years now, but before that it was always called the Louisiana marsh.

Q. Is it or is it not a fact that whenever you have a plague of mosquitoes here that the general expression is that they come from the Louisiana marshes, meaning that territory?

A. Some times they come from the Louisiana marshes and some times they do not. It is according to the way that the wind blows.

Q. If there is a south breeze blowing is it not a general expression that the mosquitoes come from the Louisiana marshes, meaning this disputed territory?

A. I have heard of them coming from the Louisiana marsh, and I have heard of them coming from the Grand marsh. Both places.

EARNEST DESFORTS, a witness recalled on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Mr. McCLURG:

Q. I understand that there is and has been for a long number of years a board of pilot commissioners in this county?

A. Yes sir.

Q. And I presume for each county bordering on the coast?

A. Yes sir.

Q. Were you ever a member of that board?

A. No sir.

Q. You have been a pilot?

A. I am now a pilot and I have been for six years previous to this. I was harbor master of Ship island and I am now a pilot.

Q. Subject to the orders and the jurisdiction of that board?

A. Yes sir, the board of pilot commissioners.

Q. They license you?

A. Yes sir.

Q. Well under that license what is your duty as a pilot?

A. The duty is to pilot the vessels coming in and going out of any of the ports leading into this county.

Q. How far does this license authorize you to go?

A. Ship island. Outside of Ship island.
Q. Outside of Ship island?
A. Yes sir.
Q. Are there any passes outside of Ship island that it is nec
for you to pilot boats through?
A. No sir, the Ship Island bar is on the south side of Ship i
About a mile. That is the bar where the licenses go.
Q. How far is that limit that you take boats from the sh
Biloxi?
A. Between 13 and 14 miles.
Q. How far is it from Gulfport?
A. I would judge that it was about the same distance of ma
little less.
Q. How far from Pass Christian?
A. The course from Gulfport would be south east. I su
about 18 miles from here.
Q. How far would you say that a pilot's license of this co
would have to take a boat out of Bay St. Louis?
A. We would have no jurisdiction in Bay St. Louis. That
Hancock county.
Q. Is not the middle of the bay the dividing line between H
son and Hancock counties?
A. Yes sir.
1658 Q. One coming out of the bay through this count
would be your duty to take it out?
A. Yes sir.
Q. How far would you have to carry it?
A. I never have measured the distance. I would suppose in
neighborhood of 25 miles perhaps.
Q. Is it necessary at any point 18 miles from the shore of
county for you to carry a boat. To pilot them out or in.
necessary for you to go as far as 18 miles?
A. No sir, I have never handled a vessel any further than f
Ship island to Gulfport. There outside of Ship island into
Gulf would be perhaps 13 or 14 miles or some thing like that,
after we cross the bar on the outside of Ship island then we
done with the vessel there, but we go out as far as Chandeleur
ands and get aboard of the vessels there. We can get aboard of
vessels on the outside. When we get aboard of a vessel we t
command of it, and the captain turns her over to the pilot and
bring her in.
Q. How far is Chandeleur islands from the Harrison Cou
shore?
A. The north end of the Chandeleur islands is about 20 mil
Maybe 21 or 22 miles in a direct line.
Q. Any boats coming into Gulfport or Biloxi or any other port
Harrison county you go to the Chandeleurs and bring them in?
A. We go out in that direction, and any where we find them
take charge of them out there, but previous to my appointment

harbor master or pilot; the pilots of Ship island and the harbor master of Ship island always handle the vessels coming into Chandeleurs quarantine, when the quarantine was established at Chandeleurs and destroyed in 1893, that was previous to my appointment even as harbor master, and all pilots handling these vessels came into the Ship Island quarantine.

Q. Where did you get your appointment as harbor master?

A. From the board of pilot commissioners.

Q. And they got their authority under the laws of the State of Mississippi?

A. Yes sir, they are appointed by the board of supervisors of each county. There are pilots in Biloxi today who will tell you that they have handled these vessels 29 or 30 years off of Chandeleur when the quarantine was there.

FRIDAY MORNING, June 24th, 1904.

The commission met this morning at 9 o'clock and there were present Hon. William D. Ballard, commissioner, Gen. Monroe McClurg, on the part of the State of Mississippi as counsel, and Col. F. C. Zacharie, counsel on the part of the State of Louisiana, and the following testimony was taken, to wit:

R. M. MOSLEY, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. Mr. Mosley, where do you reside?
A. Biloxi, Mississippi.
Q. How long have you resided in Biloxi?
A. This next month will be eight years.
Q. How old are you?
A. I am forty years old.
Q. What is your occupation?
A. I am chief oyster inspector.
Q. How long have you been chief oyster inspector?
A. The first of September will be two years. Ever since
1659 this new law went into effect.
Q. You mean the law of 1902?
A. Yes sir.
Q. You were appointed then oyster inspector under the law?
A. Yes sir, under the law.

By Gen. McCLURG.—NOTE.—The counsel for Mississippi will introduce in evidence in this case the law to which the witness refers; all of the laws of the State of Mississippi, including the ordinances passed by the board of supervisors of the counties of Jackson, Harrison and Hancock bearing upon the authority for the passage of ordinances by these counties, and also upon the subject of quarantine and pilot commissioners.

Q. What is your duty in filling the office of oyster inspector?
A. Well my duty is to see that all oysters that are caught culled properly according to this law and to collect all of the t due the State of Mississippi under the oyster law.
Q. Over what territory have you jurisdiction?
A. The State of Mississippi.
Q. That includes these three coast counties?
A. Yes sir, these three coast counties.
Q. During the last oyster season, which as I understand it beg on the first of September and runs to the 1st of May?
A. From the 15th of September to the 15th of May.
Q. I wish you would just state about how many barrels of oyst for all purposes have been handled at Biloxi?
A. About 500,000 barrels in the town of Biloxi. Now that is sides the private bedding grounds. That is what they pay taxes I collect these taxes at two cents a barrel.
Q. What would you estimate the out put of the private beddi grounds about the city of Biloxi?
A. Well I suppose that it will run between 20,000 and 30,0 barrels, maybe more. That is as near as I can get at it.
Q. From what territory now was this five hundred and twenty five hundred and thirty thousand barrels of oysters taken?
A. They were on what we call the Pass Christian reefs and Isle Pitre, and Grand Pass and Half Moon. And all of those reefs o there, to St. Joseph light.
Q. None of them were taken from what we call the Grand marsh
A. No sir, none of them were taken from what we call the Gran marsh.
Q. If I am correctly informed the oyster commissions hav entered into some kind of an agreement by which the Mississipp oystermen do not go into the Grand marsh?
A. Yes sir.
Q. Beyond Grand pass?
A. Beyond Grand pass. That is a sort of neutral ground.
Q. You mean that it is neutral so far as Mississippi is concerned
A. It is neutral this side. Louisiana and Mississippi both fish o this side of Grand pass, but in the marsh they don't allow Missis sippi to go in at all. The two commissions met in 1902 I believe and established the line.
Q. I believe that you are not a party to the crime committed against the State of Mississippi which prohibited Mississippians from going into this territory?
A. No sir, I was not.
Q. Mississippians however as I understand it have been respect- ing that agreement?
A. Yes sir.
Q. Do you know of any authority under the law for the oyster commission of this State or of the State of Louisiana to enter into

such an agreement as that and bind the people of the two States to it?

A. No sir, I do not.

Q. I would be glad to find some man that does?

A. I have been all over those places out there.

Q. I understand that there is a tax fixed as you stated awhile ago upon the oysters taken in this territory where by the grace of the commissions Mississippians may take oysters. What is that tax?

1660 A. Two cents a barrel that is on the oysters. They pay a privilege on their boats of so much a ton.

Q. If you can recollect I wish you would state about how much the sum total of the two cent tax has amounted to during last season?

A. It will run something over four thousand dollars. About that.

Q. The two cent tax?

A. Yes sir, the two cent tax.

Q. That is for your territory?

A. Yes sir.

Q. And the privileges amount to how much?

A. I can get pretty close to that. We have got about 300 boats or 350. They will average five dollars a boat privilege. That is $1500, and we have eight factories and that is $800, and then on the raw oyster shops about $400. They are $25.00 a piece.

Q. The sum total then would amount to about what?

A. Say about $2800.00. That is for the revenue of the factories. The other is for the two cent tax.

Q. I mean altogether. The two cent tax and the privilege tax on factories and boats?

A. We collected this year some thing over $17000 all told. That is for the three counties.

Q. And outside of the marsh?

A. Outside of the marsh. You know another thing. You know what they call the neutral territory out there we don't collect any taxes. We have boats to fish in there and carry them to Louisiana but we don't get any taxes for them.

Q. Louisiana prohibits any oysters being taken from her territory and taken out of the State?

A. Yes sir, under this agreement on both sides fishing out there each side collects what is coming to it.

Q. Under this unlawful rule made by the oyster men?

A. Yes sir, I don't know what right they had to do it.

Q. They were the Solomen Zars of Louisiana and Mississippi. Well eight years ago when you first came here were there or were there not any of these restrictive rules that you speak of as to the place for taking oysters?

A. No sir, there was not. The boats went and got oysters anywhere. There was not any tax on them at that time.

Q. What have these marshes down here been called?

A. Grand marshes.

Q. Have you not some times heard them called Louisiana marshes?

A. Yes sir. I have heard that the last few years. I have heard that when I first came here.

Q. What has been your understanding Mr. Mosley during the eight years you have passed on the coast as to the limits of the territorial jurisdictional boundaries of the State of Mississippi?

A. Well I have heard these fishermen say that Pearl river was our dividing line.

Q. How far south?

A. Well all of these boats fished—you can find oysters in what they call the marsh, and they fished all down in there.

Q. Were you ever down in this marsh?

A. Yes sir, I have been in there.

Q. Have you ever fished oysters in that marsh?

A. No sir, I never fished for any oysters. I have fished for fish, but I never fished any oysters there.

Q. How far in the marsh, or how far from the south of the Mississippi shore is the southern boundary line of Mississippi?

A. The southern boundary line of Mississippi is six leagues. That is what I have always understood from the code and the books and everything that I have read.

Q. State whether or not you have understood that to be the boundary line and her territorial jurisdiction that far during the eight years you have been here?

A. Yes sir, I have always understood that. One reason why I understood it that way. I was an officer before I was chief inspector, and if any thing happened out there they would report it to me.

1661 Q. What office did you have?

A. I was marshal of the city of Biloxi.

Q. And I believe *ex-officio* constable for your beat?

A. Yes sir, I have arrested people at Ship island.

Q. How far is Ship island from here?

A. About 12 miles.

Q. And if there were any matters cognizable by the courts either civil or criminal between here and Ship island would your courts take possession of it?

A. Yes sir, I recollect one time I think I got 14 men out there and brought them in here.

Q. Now to the eastward of this neutral line, unlawfully established, or sought to be established unlawfully by the oyster commission of these two States, being due respectively to the people of Mississippi going southward from the shore line through Grand pass to the east of Isle à Pitre. How far does your jurisdiction as oyster commissioner extend from the shore southward?

A. From this shore here?

Q. Yes sir.

A. Well the way that I understand it it would be 18 miles.

Q. Have you been doing that since you have been oyster inspector?

A. Under this agreement?

Q. I am talking aside from that agreement.

A. Yes, sir, always 18 miles. I always consider it my duty. If there was any violation there I would go there and arrest them the same as if it was right here.

Q. Who issues the licenses to the factories and the boats now?

A. The secretary of our commission.

Q. Who is he?

A. F. S. Hewes.

Q. He is the chancery court clerk of this county?

A. No sir, he is the son of the chancery court clerk. It is F. S. Hewes, Jr.

Q. Under this license where can these boats and these factories take oysters?

A. They can take them anywhere 18 miles from the shore line. Take Bay St. Louis, and anywhere from the shore they can take them that way in the State of Mississippi within six leagues of the shore.

—. Then I understand that after respecting this supposed agreement between the two oyster commissions that the oyster commission of Mississippi exercises jurisdiction otherwise 18 miles from the shore line?

A. Yes sir, generally, I will tell you they made that agreement. Whenever a boat would come to me and aske me a question about it. They would come to me for information about fishing. I would tell them that they could go 18 miles to fish. If they kick about it I says Let them arrest you. They won't arrest you but once.

Q. Do you know what the penalty in Louisiana is for violating her oyster laws?

A. No sir, I do not. I have forgotten it.

Q. They make it a penitentiary offense. Has that severe penalty any effect in keeping our men out of there?

A. Yes sir, I think they would be scared to death to go in there. You know they got one boat over there and claimed that it had been confiscated.

Q. Can you tell me whether or not Louisiana boats take out any license in this State?

A. They do not. I know that they do not.

Q. I have here a list of licenses issued by authority of the laws of Mississippi in 1892, 1893 and 1894, which I propose to introduce in evidence today, and I will ask you to run through this list, and tell me whether you recognize the name of any boats belonging to Louisiana that took license in this State during those years and if so name them?

A. That is further back than I am able to state. That was before I came here.

1662 Q. The bill of complaint alleges in this case that the deep water channel, or what is shown on the face of the chart to be the sailing line, extending from the eastern mouth of Pearl river through the upper corner of Lake Borgne, north of Half Moon island and eastward to Cat Island pass, north of Isle à Pitre and southwest of Cat island which has been buoyed by the Coast Survey of the United States Government as the true dividing line between these two States. I wish you would please tell us whether you so understand it, and what information you may have as to that being the dividing line between these two States?

Q. You mean at Cat island down there?

Q. Yes sir?

A. Well I did not understaud that as the dividing line.

Q. Have you ever understood that to be the line between these two States?

A. No sir.

Q. This bill further alleges substantially that prior to the date of its filing, which was in the latter part of the year 1902, in October, 1902, that the affairs, referring of course to the taking of oysters by the two States, had reached such a crisis that it became necessary to avoid an armed conflict between the sheriff or officers of the parish of St. Bernard, and the sheriff and officers in Harrison county, State of Mississippi, that steps be taken to establish the boundary between these two States in the waters lying between them. If you have any knowledge or any information of any actual or threatened conflict between the officers of St. Bernard parish and the officers of Harrison county, Mississippi I wish you would tell us?

A. When was this?

Q. Prior to October 1902?

A. That is the first that I have ever heard of that. I have been out there since 1902 every week or two and I have never had any trouble.

Q. Have you ever heard of any threat of a conflict between the officers of Louisiana and Mississippi on this subject, and if you have I would be glad for you to state it?

A. No, sir, I have never heard a word of that. That is a new one.

Q. If you have ever heard of any such declaration since you have been here, I would be glad if you would state it?

A. No sir. I never heard anything about it. I never heard any thing of it.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Mosley you say that you have heard a portion of this territory here in dispute in this suit called the Louisiana marshes?

A. Yes sir.

Q. When did you hear it called that?

A. Well I have heard it in the last two or three years.

Q. Now is it not a fact that since time immemorial that territory has been called all along this coast the Louisiana marsh?

A. I could not tell you. I have not been down here. I don't know much about it until eight years ago.

Q. You are positive that is only within the last two years since this suit was started?

A. That is the first I heard of it Judge. Of course I could not say about it before that time I have heard it called Grand marsh.

Q. When Mr. Mosley was there any law first of Mississippi or regulation of the oyster fisheries in Mississippi?

A. Well now that is some thing that I cannot tell you. That is before my time. I understand that there was some law in Mississippi before the board of supervisors took hold of it. Of course I don't know about that.

Q. Well now according to the best of your knowledge and recollection, when — the first law was passed or ordinance in re-
1663 gard to the culling of oysters and making a close season during the spawning season?

A. You mean under this law that we are working under now?

Q. Yes sir.

A. I think that is January 1st, 1902.

Q. Prior to that time was there in existence any law or ordinance in regard to the culling of oysters or prohibiting fishing during the spawning season?

A. I understand there was. That is about the spawning season. I don't know about the culling.

Q. About what time as near as you can remember was this law passed?

A. No sir, I could not tell you when the law was passed. I don't know *know* about that. That was before my time. The reason I know about the season, they closed up here on the first of May. They told me that it was the law to close down on the 1st of May, and no boats could go out after that. That is the way I understood it. A boat that was out on the first of May had to come in. They could not fish out there.

MIKE LANIUS, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you live Mr. Lanius?

A. Biloxi, Miss.

Q. How long have you lived here?

A. For 56 years.

Q. What has been your occupation during that time?

A. Well up to the war I was pretty young and did not do much

of any thing. I just knocked about the boats. When I was a little over 14 years of age I joined the army, and I came back in 1865, and followed the lakes; the water between New Orleans and Mobile, as far down as Pascagoula and Sabine pass. I got married in 1870 and settled down in Biloxi. Shortly after the oyster business started here I went into the oyster business. I steamboated a good deal between New Orleans and Mobile on the Morgan line of steamers. The steamer Creole and the New Chameleon, running between Pass Christian and Biloxi, and Pascagoula once a week. In the winter time on the Morgan boats from New Orleans to Mobile before this railroad was built carrying cotton and passengers.

Q. You commenced this business when?

A. In about 1866.

Q. How long did you follow it continuously Mr. Lanius after that?

A. Well up to 1870 that is steamboating and schoonering on the lakes.

Q. How long after that?

A. Well almost up to the present time. About three years ago. In the summer time I was on a lumber boat and charcoal boat running between New Orleans and Mobile.

Q. Since 1866 you have been on the waters pretty well all of the time?

A. Pretty well all of the time until the last three years.

Q. In what capacity were you? Master or pilot or what?

A. Every thing from deck hand up to master.

Q. Are you familiar with the waters between Pearl river and Pascagoula, referring to the marsh lands to the south of Pearl river?

A. Yes sir, I am to the marsh.

Q. What part of the marsh have you been in?

A. Well I have been in Grand pass, and in the mouth of Creole gap, and in the mouth of Three Mile bayou; Grand pass and Three Mile bayou with steamboats. Three Mile bayou towing barges. Oysters were caught in the marsh with tongs, and they come over these bars and I towed them to Biloxi.

Q. When were you first out at these places?

A. That is about seven years ago.

1664 Q. The first time that you were there?

A. Yes sir, the first time I was there with a steamboat. I have been there shrimping and such things as that. I have fished oysters off Grand pass.

Q. When?

A. In 1897.

Q. Were you ever in the neighborhood of Door point and Sundown island and Brush island?

A. Yes sir, I went through Grand pass on a schooner and went that way.

Q. Drawing how much water?

A. About three and a half feet.

Q. When was this?
A. That was about 1895.
Q. In 1895?
A. Yes sir, 1895.
Q. How far did you go down?
A. I went to Door point and by Brush island.
Q. When you were at Door point and Brush island what State were you in Louisiana or Mississippi?
A. We thought that we were in the jurisdiction of Mississippi.
Q. Why did you think so Mr. Lanius?
A. Well they claim that this 18 miles strikes in just about Door point. You understand that is the 18 mile line south of the mouth of Pearl river.
Q. How far south of the main shore line of Mississippi did you understand Mississippi's jurisdiction to reach?
A. Six leagues or 18 miles.
Q. How long has that been your understanding?
A. I guess it was for thirty-five years.
Q. Louisiana has attempted to establish the channel which comes out of the Rigolets and Lake Borgne, north of Half Moon island, formerly called as we understand it Grand Island and as far as Cat island, and between Cat island and Isle à Pitre around into the Gulf, as the true dividing line between the States of Louisiana and Mississippi. I wish you would tell the court what you know or have been informed as to that line being the true line between these two States?
A. I know nothing about that being the line, and I never heard that it was the line. Now the channel did not run north of this Half Moon island.
Q. North?
A. It runs north of Half Moon island until it gets to St. Joseph, and you shift your course to the south of eastward, to the red buoy off Goose point and you take your course down by the Chandeleur islands.
Q. Who buoyed it there?
A. The United States Government.
Q. When?
A. I could not tell you. It is buoyed since I can recollect.
Q. What was it buoyed for?
A. To show where the deep water was.
Q. Do you mean by that the sailing line?
A. Yes sir.
Q. That is the deep water channel?
A. Yes sir, it is the only deep water entrance that there is into Lake Borgne and Lake Pontchartrain.
Q. Have you ever known or heard of its being the line dividing these two States?
A. No sir, I never did.

Q. You spoke of Grand pass. That is to the westward of Pitre, is not it?

A. Yes sir, it is.

Q. Can you sail around Grand pass in a boat. Can you around it?

A. Go around it?

Q. Around the pass, yes sir?

A. Yes sir, you can go through it and come back and go thr it again.

Q. What is an island?

1665 A. It is a piece of land surrounded by water.

Q. Is Isle à Pitre an island?

A. Yes sir.

Q. Can you sail around Grand pass and around through John bayou?

A. I don't know anything at all about Johnson's bayou.

Q. Three Mile bayou?

A. I never have been through that either.

Q. You have been only in the mouths of the bayous?

A. In the mouths of the bayous I have not had any thing t with the sailing vessels inside there?

Q. When did you first see what they call Grand marsh?

A. 1858.

Q. When was the last time that you saw it?

A. Last April was a year ago.

Q. I wish you would state whether you have noticed any s sidence of the marsh or whether it is sinking in from the first ti that you saw it, and whether there has been any violent or mater change in the coast line of the marsh from the first time you saw until the last time.

A. No sir, there has not. It looks like the same thing to me.

Q. There is no sinking of it?

A. No sir.

Q. You never noticed any thing of that kind?

A. Wha- do you mean. The land sinking?

Q. Yes sir?

A. No sir.

Q. Was it as high above the mean tide and sea level when yo last saw it as it was the first time that you ever saw it?

A. Yes sir, I could not locate any change. If there had been an of it washed away or any thing like that I would have noticed it.

Cross-examination.

By Col. ZACHARIE:

Q. I understand you to say Mr. Lanius that when you spoke about towing with a steamboat and so on that you never entered into this territory. This marsh. That you simply went in the mouths?

A. I never have been oystering since this dispute came up.

Q. Have you ever been to the interior of these marshes? In from the shore line?

A. I suppose I have been in a mile or a half mile or some thing like that except Grand pass, I have been through that, and Isle à Pitre and Jack Williams bay.

Q. Did I understand you correctly to say that any change in the general aspect of this territory; that you had never made any close observation for any change?

A. No sir, I did not. I used to be out there a good deal at one time shrimping. That was in the summer time.

Q. You never paid any particular attention to any changes?

A. No sir, I did not.

Q. You never observed whether the mouths of these bayous had been enlarged, or whether there was more water in the interior or whether the land had subsided or was sinking or any thing of that kind?

A. No sir.

W. A. TERRELL, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. Where do you live Mr. Terrell?

A. At Pass Christian.

1666 *A.* How old are you?

A. 56.

Q. How long have you lived at Pass Christian on the Mississippi coast?

A. Thirty some odd years. I think that I went there in 1866 or 1867, I disremember now.

Q. What is your present occupation.

A. Saloon keeper.

Q. Have you ever held any office in the State of Mississippi?

A. Yes sir, I have been justice of the peace some twenty odd years ago. Since that I have held little local offices there. Town marshal, councilman, and so on.

Q. Have you ever been a member of the board of supervisors?

A. No sir, I never was.

Q. Were you ever a member of the board of health?

A. No sir.

Q. I understood you to say that some twenty years ago you were a justice of the peace of Harrison county?

A. Yes sir. District No. 3.

Q. District No. 3 of Harrison county?

A. Yes sir.

Q. That included the town of Pass Christian?

A. Yes sir.

Q. While you were justice of the peace some twenty years ago of district No. 3 of Harrison county, over what territory did you exercise jurisdiction?

A. I understood that I could exercise it for 18 miles due to the south and up to the lines of my district.

Q. North?

A. Yes sir, north. And east.

Q. Where was the eastern boundary of your district?

A. It was somewhere up about Long Beach. I don't know exactly where it was, but it was somewhere in the neighborhood of Long Beach.

Q. That is the eastern boundary?

A. Yes sir, the eastern boundary. The western boundary of course is at Bay St. Louis.

Q. I understand you to answer that you understood that you had jurisdiction 18 miles to the south?

A. Yes sir.

Q. South from what point?

A. From the coast line.

Q. The coast line?

A. Yes sir.

Q. Were you ever in the marshes?

A. Well yes sir, to some extent, not very much, but I have been all along there mostly on the outside. I never have been way back in the marshes.

Q. Do you know how far it is from Pass Christian to the first touch of the marshes?

A. I could not say that I do. It must be some eight or nine miles or probably ten. I could not say.

Q. That would bring seven or eight or ten miles of the marshes in your jurisdiction?

A. Yes sir.

Q. What have these marshes been called since you have been acquainted with them?

A. They usually call it Grand marsh. Some times I have heard it called Louisiana marsh. Different people have different names for it.

Q. Is Isle à Pitre within your jurisdiction?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Which marshes were you speaking of?

A. Just south from our line. They lay from the west southwest from here.

Q. These marshes were generally called the Louisiana marshes, were not they?

1667 A. Some times some people have one name for them and some another. Generally they call them the Grand marsh or Great marsh.

Q. How long have you heard them called Louisiana marshes?

A. Some people called it the Louisiana marsh ever since I can remember. Some people have one name for it and some another.

Q. Is it not the common expression over this coast when the wind is from the south and the mosquitoes come they say that they come from the Louisiana marshes?

A. We don't have them from the south. The south wind never brings us any mosquitoes. I wish the wind had been blowing that way the last few days.

Q. From what source did you consider that your jurisdiction extended 18 miles south from the Mississippi shore?

A. I first gathered it from reading the boundary lines of the State, and it seemed to be generally accepted by every one that I came in contact with. The question was never particularly raised.

Q. Have you ever read the act admitting Louisiana into the Union?

A. No sir.

Q. You have gotten it simply from the laws of Mississippi and your Code?

A. Yes sir, but it was never denied. I never heard it denied until the last two years.

F. L. PATENOTTE, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. How old are you?
A. I am 39 years old.
Q. Where do you live?
A. Pass Christian.
Q. How long have you lived there?
A. All of my life.
Q. What position have you ever held in Harrison county if any?
A. I have held all sorts of positions. I have been holding offices of different denominations for the last 18 years.
Q. Commence at the first office that you have held and tell us what ones you have held since you have been in the county?
A. I was deputy marshal and constable and justice of the peace.
Q. When?
A. That has been 18 years ago.
Q. What others?
A. I have been marshal
Q. Marshal of what?
A. Marshal of Pass Christian and deputy sheriff of Harrison county?

Q. When were you deputy sheriff?
A. That has been eight years ago.
Q. Commencing with your first official career I will ask you please state what jurisdiction if any have been exercised over waters of the shore line, and how far south that jurisdiction been exercised by you, as marshal and *ex-officio* constable and d sheriff from the time you first held office up there to this time
A. I am at present the justice of the peace of beat 3, I have ways exercised jurisdiction as far as my office allowed. 18 mi six leagues out from the shore for the 18 years.
Q. In these several offices?
A. Yes sir.
Q. Have you ever met with any obstruction in the exercise your jurisdiction 18 miles out during this period from the St Louisiana?
A. No sir, none at all.
Q. I believe that your town of Pass Christian is in Harr county, is not it?
1668 A. Yes sir.
Q. Mississippi?
A. Yes sir.
Q. The bill of complaint in this case Mr. Patenotte alleges prior to its filing in October 1902, that the affairs from the tak of oysters in this territory now in dispute had grown to such a cr that there was a threat of armed conflict between the sheriff officers of St. Bernard parish Louisiana, and thos sheriff and cers of the county of Harrison, Mississippi. Do you know any th about any disturbance or threat or menaces of that kind. If you I would be glad of you would tell us what it was.
A. I never have heard of any sir.
Q. When were you deputy sheriff?
A. I was deputy sheriff until the 1st Monday in January 19 and then I was sworn in as justice of the peace.
Q. Up until that time?
A. Yes sir, I had been deputy sheriff then for eight years.
Q. You had been for eight years previous to January 1904?
A. Yes sir.
Q. During this time did you ever hear of any serious conflict controversy between the officers of St. Bernard parish Louisiana a Harrison county Mississippi?
A. No sir, none whatever.
Q. And as deputy sheriff, how far did the process of Mississip extend out from your shore south?
A. 18 miles. Six leagues. I have arrested parties, that has bee three years ago, but I judge a mile and a half or two miles south the Pass Marianne light house.

By Col. ZACHARIE: The counsel for Louisiana objects and except to any testimony in regard to any judicial proceedings or suit

whether civil or criminal, unless the record is produced, or the foundation is first laid to show the loss, destruction, or mislaying of the record as a condition precedent to the admission of secondary evidence by this witness.

By Mr. McCLUNG:

Q. In what capacity did you make these arrests?
A. As deputy sheriff.
Q. Of Harrison county?
A. Yes sir.
Q. Who was the sheriff then?
A. Mr. Ramsey.
Q. I believe that Mr. Seal is your present sheriff?
A. Yes sir.
Q. I understood you to say that you had lived in this county all of your life?
A. Yes, sir, Harrison county has been my home all of my life. Of course I have gone away and returned home.
Q. It is claimed by Louisiana in this controversy that there is a channel that passes out of the Rigolets to the eastern, and south of the mouth of Pearl river, running eastwardly north of Half Moon island, and what I believe was formerly called Grand island and as far as Cat island, and to the north east of Isle à Pitre and into the gulf of Mexico, as the line between these two States. Do you know of your own personal knowledge or do you have any information by history, tradition or otherwise as to this line having ever been recognized by either State as the real dividing line between those two States, and if so I would be glad if you would tell us what it is?
A. Well in answer to that I will say that I have always been guided by the officers above me, and have always stated that we had 18 miles. Our jurisdiction in other words extended 18 miles and we reach some where south of Creole gap, and I therefore exercised during my term of office jurisdiction any where north
1569 of Creole gap. I never did go beyond Creole gap.
Q. Have you any connection with the Mississippi Oyster Commission?
A. Not at present sir. I have had.
Q. When?
A. I was one of the members first appointed. I was appointed for four years.
Q. When?
A. I don't remember. When the oyster commission was first appointed. That has been September going on I think will be two or three years. I don't remember exactly.
Q. During this time that you were a member of the Mississippi Oyster Commission, how far south of the shore line along the coast counties. Jackson, Harrison, and Hancock, did this commission undertake to exercise jurisdiction?

A. Well we undertook to exercise jurisdiction 18 miles south. In other words we had a joint meeting between the Louisiana Oyster Commission and the Mississippi Oyster Commission and we then settled on—until this question would be settled and guide ourselves under certain restrictions.

Q. If you can recollect what those restrictions were let's have it?

A. That the disputed territory would be known as—, I don't know whether I can recollect it now or not. It was due south to the marshes following the marshes and Grand pass, near the edge of Grand pass and Sun Down island, and from Sundown island to the deep water channel south of Cat island, and then following said channel—I cannot remember it. Any way the records will show it.

Q. That agreement that you are speaking of. Was that by virtue of any law or was it just an agreement between the two commissions?

A. Not at all. It was an agreement between the two commissions pending this suit. We were advised that if we did not desist fishing; if we insisted on taking oysters in that territory we would be prohibited. That an injunction would be sued out by Louisiana to prevent either side from fishing in this territory.

Q. You mean the territory as it is in that line that you have just described?

A. Yes sir.

Q. And the agreement left this territory west of this line open to be fished in by Louisiana. I mean to ask you if Mississippi under this agreement:—In other words whether the people and citizens of Mississippi under that agreement may go into the marshes west of Grand pass and on down to Brush island and Treasure bay and fish down there?

A. No sir, they were not allowed there.

Q. But the people from Louisiana and fishermen from that State might go there?

A. Yes sir.

Q. In other words under that agreement by these two commissions the fishermen and citizens of Mississippi are prohibited from fishing west of Grand pass?

A. Yes sir.

Q. And west of Sundown island?

A. Yes sir.

Q. And that is left open and free for the people of Louisiana?

A. Yes sir.

Q. But in the sound north of Turkey bayou and Three Mile bayou is left open to both States?

A. Yes sir, to both States.

Q. And all out north of Cat island is left open to both States?

A. Yes sir.

Q. And the whole of the Misssisippi sound if left open to both States under that limitation?

A. Yes sir.

Q. Am I to understand from what you say that you were a party to this agreement?

A. Yes sir.

Q. And that the Mississippi Commission entered into it to prevent the threat of the injunction by the State of Louisiana being
1670 carried out to prevent either State from fishing in there?

A. Yes sir.

Q. And so far as you are informed am I to understand that you know of no law; that the commission acted under no law in making that agreement?

A. Not a particle sir.

Q. No law on the subject?

A. No sir.

Q. And that was an arbitrary rule forced on Mississippi by the threat of Louisiana?

A. Yes sir. We had a further meeting I will say with the Louisiana commission to try and get them to allow Mississippi to fish in 18 miles of her shore.

Q. What was the result of this conference?

A. Louisiana emphatically refused to go into any further agreement.

Q. By whom was this threat of an injunction made?

A. By Mr. John Dymond, Jr.

Q. Is he the man that is marked in these pleadings as counsel for the State of Louisiana?

A. Yes sir.

Q. Where was this meeting?

A. At their office in New Orleans.

Q. In Mr. John Dymond's office?

A. Yes sir.

Q. And he was the attorney for the State of Louisiana; for the Louisiana commission?

A. Yes sir.

Q. And attorney as I understand it for the Lake Borgne Basin Levee Board?

A. I don't know any thing about that.

Q. And attorney for the St. Bernard Parish Oyster Commission was not he?

A. Yes sir, so I am informed. I don't know it personally.

Q. The two commissions had several meetings in the city of New Orleans did not they?

A. Yes sir.

Q. Mr. Dymond was present at each one of these meetings was he?

A. Yes sir.

Q. And appeared as attorney for the Louisiana commission?

A. Well he appeared as attorney for the Louisiana commission and I will state further that the Louisiana commission would not take any motion or pass any resolutions pertaining to this disputed

territory until they had further investigated or conferred with Mr. Dymond. In other words he was the whole cheese.

Q. You mean to say that he was then chief cook and bottle washer for the Louisiana commission?

A. Yes sir.

Q. How long have you known this marsh down there Mr. Patenotte?

A. Well I have always heard of it sir, but I presume that the first trip that I made there was twenty-five years ago. About twenty-five years ago.

Q. Since you have known it and heard of it what have you heard it called?

A. It goes by different names.

Q. What is the most general name?

A. Some people call it the Grand marsh, and some people call it the Louisiana marsh.

Q. How long have you known it to be called Louisiana marsh?

A. I don't know what portion of it they call the Grand marsh and what portion they call the Louisiana marsh.

Q. There is a marsh south of the Mississippi 18 mile limit is there not?

A. Yes sir, in Hancock county.

Q. I mean south of the Mississippi limit. South of Hancock county?

A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

1671 Q. Mr. Patenotte, you say that this arrest was made about a mile and a half east or west of Pass Marianne?

A. It was made south east of the Pass Marianne light.

Q. What was that arrest for?

A. Violat*ain* the dredging law. Dredging oysters in less than 14 feet of water.

Q. You say that some people along this coast call these marshes to the south, this disputed territory between Mississippi and Louisiana, the Louisiana marshes. How long have you known them to call it that?

A. Well as I stated in my testimony for the last 25 years more or less, and I also stated that they called it the Grand marshes.

Q. Where did you derive your information from about the southern line of the State of Mississippi extending out six leagues or 18 miles from the Mississippi shore to the southward?

A. Well sir I have had a code and a form book since I first took the oath of office.

Q. When was this?

A. Some 18 years ago.

Q. Did you ever hear the question discussed or mentioned prior to that time?

A. No sir.

Q. Then it is only from this code and form book that you derived your information?

A. And the writs that I received from different justices of the peace to exercise jurisdiction within 18 miles.

Q. You have never read the act admitting Louisiana into the Union have you?

A. No sir.

Q. Then you don't know that under that act the islands within three leagues or nine miles of the Louisiana coast are embraced in the State of Louisiana?

A. I never heard it in my life until the two commissions met jointly in New Orleans.

Q. Do you know or do you not know that this territory in dispute, these marshes have always been considered as a part of the parish of St. Bernard in Louisiana?

A. No sir.

FRED. ELEUTERIUS, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you live?
A. In Biloxi.
Q. How old are you?
A. 28 years old.
Q. How long have you lived here?
A. I have lived here all of my life.
Q. Have you ever held any office in Harrison county?
A. No sir.
Q. What is your present business?
A. Oystering.
Q. How long have you been oystering?
A. About 15 years, I have been running a boat.
Q. In what capacity?
A. Well I have been running boats.
Q. Captain?
A. Yes sir, I have been running boats since I was 18 years old. ave been a captain for 15 years.
Q. During this time where have you been taking oysters?
A. I have been taking oysters out of the Louisiana marsh. Out Grand marsh as they call it. Great marsh, and out of the Mis- ippi sound. I have been taking oysters as far south as the American bay. Right close to the Mississippi river.

Q. Where is the southern boundary line of the State of Mississippi?

A. I don't know sir. I have always heard though that it run 18 miles south of the Pearl river, but which way it went after it got that far I don't know. I never heard.

Q. Did you ever pay a license to fish oysters?

A. Yes sir.

Q. Where?

A. From Mississippi.

Q. When?

A. I don't know what year it was. I got a license from Mr. Lazana. It was in 1893.

Q. Under that license where did you take oysters?

A. Well we got oysters everywhere in the marsh I got oysters in Morgan harbor.

Q. Did you get oysters under this license as far south as Treasure bay and Brush island?

A. Yes sir.

Q. Let us know whether under this license you went in Nine Mile bayou?

A. No sir, I never went in there.

Q. In Three Mile bayou?

A. Yes sir, I have bought oysters inside of Bayou Boudreaux. That is inside there Grassy island.

Q. Karako bay?

A. Yes sir.

Q. Sundown island?

A. Yes sir.

Q. Brush island?

A. Yes sir.

Q. Door point?

A. Yes sir.

Q. Off as far south west as Indian Mound bay?

A. Yes sir, I have been in there.

Q. Under that license?

A. Yes sir.

Q. Well during the time you have been going in there Captain have you ever noticed any subsidence or sinking of the marshes, or any material changes in the conformation of them. If so I wish you would please state about it?

A. Well no sir. Maybe the mouth of Little point may be opened a little bit, but if there were any changes down there I think I would notice it.

Q. Is there any violent changes in these bayous and islands?

A. No sir, none that I know of. I think that Sun Down island was cut in two. That is about the only change that I know of.

Q. In what State is Sundown island?

A. Well it is just the same as the balance of the marsh. Just the same.

Q. Within 18 miles of the Mississippi shore?

A. Yes sir, it is inside of the 18 miles. I guess it is.

Q. Where were you born?
A. Biloxi.
Q. Your parents lived in Biloxi?
A. Yes sir.
Q. Are they living yet?
A. No sir, they are dead.
Q. How old was your father when he died?
A. My father when he died was about 62.
Q. How long had he lived here?
A. He had lived here four or five years when he died.
Q. Was he a native Mississippian?
A. No sir. He lived in Pass Christian awhile.
Q. When he died?
A. No sir, he died in Biloxi. He was living here only four years hen he died.
Q. Was he born in Mississippi?
A. No sir.
Q. How long had he lived at Pass Christian?
A. About ten years.
573 Q. Are you able to say what the general understanding of the people along this coast, especially of Harrison county has en as to where the southern boundary line of the State of Mississpi has been recognized to be?
A. No sir, only 18 miles south of the mouth of Pearl river, and er it got there I don't know which way it went. I never had ybody to tell me.
Q. What about the shore line to the eastward of Pearl river to oxi. How far south of Biloxi is the southern boundary of the te of Mississippi?
A. I suppose that it is 18 miles. That is what I have been told. ave been told that.
Q. Can you say whether it has been the understanding generr with the public during your time that that is the line?
A. Yes sir, that has been the general run of it. That is what I e always heard.
Q. Well you were in the marshes and these places that you have ken of. What were you doing there Captain?
A. Catching oysters.
Q. Were you ever interfered with by the authorities of the State Louisiana?
A. No sir, not while I was in the marsh.
Q. You spoke of the Louisiana marsh?
A. Yes sir.
Q. And the Grand marsh?
A. Yes sir, I thought that it was far down as the river. We ld go down there in the summer time close to the river and diamond backed terrapins.
Q. Where were you then?
A. In the Louisiana marshes.

Q. Where were you in the Mississippi marshes?
A. To the north of American bay.
Q. What marsh was that. Louisiana or Mississippi?
A. We thought that it was Mississippi.
Q. Do you know of any civil or criminal action that happened out in the marsh taken cognizance of by the officers of Mississippi?
A. Yes sir, I know of one.
Q. What was it?
A. At the time that Mr. Lazana was sheriff of——

By Col. ZACHARIE: The same objection as stated before to the testimony above introduced is here renewed by the counsel for Louisiana to this class of testimony.

A. He arrested my brother in Creole for not culling oysters.
Q. What year was this?
A. I don't know sir.
Q. How long ago?
A. About 12 years I guess it was. It was in 1893.
Q. Were you present at the time?
A. No sir, I was not there. I just know of this.

By Col. ZACHARIE: The same objection is noted by the counsel for Louisiana in regard to the secondary proof as stated above.

Q. How did you get information of it?
A. I got it from my brother here in Biloxi.
Q. You were not present?
A. No sir.
Q. Have you any personal knowledge as to the fact of any arrests in or about the marsh other than the one that you have mentioned?
A. No sir, only this Johnnie Bowen.
Q. Were you present?
A. No sir.
Q. You know that only from hearsay?
A. That is only from hearsay.

Cross-examination.

1674 By Col. ZACHARIE:

Q. Do you know that portion of the territory in dispute in this case between Malheureux point and Isle à Pitre?
A. Yes sir. I know it pretty well.
Q. You have stated in your examination in chief that at that time it was sometimes known as the Louisiana marshes and sometimes as Grand marshes?
A. Well I have heard that yes sir. We considered it Mississippi when we got this side of American bay.
Q. I am now asking you about the general way in which it was called?

A. Yes sir.

Q. You say that it was called Louisiana marsh?

A. Yes sir.

Q. And Grand marsh?

A. Yes sir, and Grand marsh.

Q. Which was the more general appellation?

A. The general run there would not call it neither one. They would call it the marshes.

Q. How long have you been knowing it to be called the Louisiana marshes? Ever since you have been fishing in there?

A. Yes sir, ever since I first started. The Louisiana marsh and the Grand marsh. Most of them called it the marsh.

Q. You have been examined in regard to the subsidence of this land and any changes?

A. Yes sir.

Q. Did you ever pay any particular attention in regard to any changes in this territory, or was it merely a casual notice as you passed along? You did not notice particularly did you?

A. I will tell you how we did and paid particular attention to it. We dug into the lagoons. They were in there and entirely surrounded by land. They had fine oysters in these lagoons, and we would dig our way in there and let the current go in there and we would say that the next time we come back it would not be any trouble. But in the lagoons it would take a long time, maybe a year to dig out so there would not be any trouble in going in and out of these places.

Q. You stated in your examination in chief that you had never been interfered with by the officers of Louisiana in the marshes?

A. Yes sir.

Q. Have you ever been interfered with outside of the marshes?

A. Yes sir, I have been interfered with by the Mississippi authorities.

Q. Have you ever been interfered with by the Louisiana authorities?

A. No sir, I never have.

Q. Where did you derive your information about the southern boundary of Mississippi being 18 miles south of the mainland?

A. It was hearsay. Asking older men than myself about it. The boatmen.

Q. How did you come to ask these questions. What occasion gave rise to it?

A. This oyster law when they first started it in 1893. That was when it was first started.

Q. You never heard any discussion about the matter prior to 1893?

A. No sir, not until here of late.

Q. Did you refer to the 18 mile limit of which you have spoken as extending as far south as American bay?

A. No sir, I don't think. I always thought and have heard that

it run east after it got the 18 miles south. Now I don't know what part of the marsh that would bring you in.

Q. You did not go down to American bay to fish oysters?

A. Yes sir.

Q. I thought you went there for terrapins?

A. No sir, we went there one season for oysters.

1675 F. P. LAZANA, recalled on behalf of the State of Mississippi, testified as follows:—

By Gen. MCCLURG:

Q. You testified in this case once before I believe?

A. Yes sir.

Q. Mr. Eleterius, who has just been on the stand, testified that you arrested his brother once some where about Creole gap or Grand pass or some where in there. Is that true?

A. Yes sir, I arrested his brother, but I could not say whether it was in Creole gap or Grand pass. I am not certain. It has been so long ago.

Q. Did you have a warrant for his arrest?

A. No sir, I arrested him while he was in the act of committing the offense.

Q. The laws of the State authorized you to do that without a warrant?

A. Yes sir.

Q. What act was he committing in violation of the Mississippi law?

A. He was carrying away unculled oysters from the State of Mississippi.

Q. What position did you hold then?

A. I was then oyster inspector for Harrison county.

Q. Was that north or south of this deep water sailing line?

A. That is south of Pass Christian about 16 miles from Pass Christian. About 16 miles. Up to the place they call Door point is considered 18 miles or six leagues.

Q. What was it that Mr. Eleterius——

By Col. ZACHARIE: The counsel for the State of Louisiana here make the same objection to the introduction of secondary evidence as is noted above.

A. He was fined ten dollars and the costs.

Q. Before what officer?

A. I am not certain but I think that it was before Judge Espy. Judge James H. Espy.

Q. Will you do us the kindness to see if you can find us the original record of this case?

A. I have tried to find those records but in some way or other they have gotten misplaced and they can not be found.

Q. I have had Judge Espy summoned. You can not say whether he will be here?

A. Yes sir, he was to be here on the second train from New Orleans. He was on the first train and stopped at Gulfport. I spoke to him and he said he would be here.

The commission here adjourned for the noon recess until two o'clock p. m.

The commission met at 2 o'clock p. m. with the same presences as this morning, and the following testimony was taken, towit:—

Judge J. H. NEVILLE, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURE:

Q. Judge, this is a controversy, you know, wherein The State of Louisiana is complainant, and The State of Mississippi is defendant and cross complainant, and we are taking now the testimony on the part of Mississippi, defending the case of Louisiana and in making her case on cross complaint. I will be very much obliged if you will state to the commission your present place of residence?

A. I live at Gulfport, Harrison county, Mississippi.

Q. And your present position please?

A. I am one of the general counsel of the Gulf & Ship Island Railroad Co.

Q. You have held other positions in the State of Mississippi Judge. I will thank you to state to the commission what positions you have held under the laws of your State?

A. I was district attorney of the seventh and second judicial districts of Mississippi for 12 or 13 years. I can not remember just the exact time, but 12 or 13 years. I resigned that office I think it was in 1896, and was judge of the second judicial district of the State of Mississippi for a period of some thing less than two years, when I resigned that place in September last, and I believe those are the only public offices that I have held in the State, excepting that I was alderman once of my town.

Q. Of what town?

A. Scooba. That is the most honorable position I ever held.

Q. Scooba is in Kemper county I believe Judge?

A. Yes sir.

Q. And where you lived before you moved to Gulfport?

A. Yes sir, I lived at Scooba when I was elected district attorney and for some years thereafter. I then moved to Meridian because it was convenience to my district and then afterwards to the sea coast.

Q. I wish you would please tell us whether Hancock county was in your district while you were acting as district attorney?

A. I will be glad to explain to you so that it will better explain my answer, that I was district attorney of the second and the seventh judicial districts. When I was first elected district attorney I was elected for the seventh judicial district, and it was called the seventh judicial district of Mississippi, composed at that time of the counties of Kemper, Lauderdale, Clarke, Wynn, Green, Perry, Marion, Hancock, Harrison and Jackson. After perhaps two terms in that district of four years, and perhaps during the last of the second term, I don't remember the time, the legislature re-districted the judicial districts of the State, and then created out of the seventh, and I think possibly the first district what was called the second judicial district composed of the counties of Noxubee, Kemper, Lauderdale, Clarke, Wynn, Green, Hancock, Harrison, Jackson, Marion, and the new county of Pearl river, which had been created by the legislature, omitting the county of Perry that was in the old seventh district. So it is that Hancock county has been in the second and seventh judicial districts in which I was district attorney at all times.

Q. And you resigned the office when?

A. I think that I resigned in April 1896 to take effect on the first day of July 1896 is my recollection.

Q. That is the judgeship, is it?

A. No sir, that is the district attorney. I was first elected in 1883 I think and went into office in 1884, and held the office until 1896 is my recollection.

Q. Judge, I will be glad if you will tell us when you were appointed circuit judge?

A. I think that it was the first day of May 1902. I was appointed in May 1902.

Q. Now Judge, I desire to ask you this question. From the time that you resigned the office of district attorney in 1896 to the time you were appointed circuit judge in May 1902 where were you located?

A. In Biloxi Mississippi in the practice of law.

Q. Were you then in the private practice of your profession?

A. I was, from 1896 until I was appointed judge in 1902, I was engaged in the practice of my profession at Biloxi.

Q. And you resigned the office of circuit judge in 1903 to return to your private practice at Biloxi?

A. Yes sir, at Gulfport. I resigned the office of circuit
1677 judge in September 1903, and was appointed one of the general counsel of the Gulf and Ship Island Railroad Co., and I took up my abode then at Gulfport, the headquarters of this railroad.

By Col. ZACHARIE:

Q. Then you have been practicing law privately since 1903?

A. Yes sir, and also from 1896 up to 1902 when I was appointed circuit judge.

By Gen. McCLURG: It has been testified in this case Judge by Lieutenant Governor Estopinal of Louisiana, and his son Albert Estopinal, Jr., who is one of the counsel for Louisiana in this case, and also by Mr. Nunez, the sheriff of St. Bernard parish, Louisiana, and perhaps by some other witnesses, and I ask you to look at the original record in this case, that is of the testimony taken on the part of Louisiana, pages 47, 48, 49, 50, 71, 72, 73, 74, 75, 76, 77, 78, and 80, 81, 88, 89, 90 and 95, 96, and 97 especially, and if you have the time to examine the record there is some other testimony with reference to the same subject matter. The pages to which I have especially referred you from 47 to 50 inclusive have reference to the testimony of Mr. Nunez, the sheriff of St. Bernard, and from 71 to 81, inclusive, has reference to the testimony of Mr. Albert Estopinal, Jr., who was for several years the district attorney in the district that included the parish of St. Bernard until a few days ago he was appointed judge, and pages 88 to 97 inclusive have reference to the testimony of Lieutenant Governor Estopinal, and there is I believe some other of that testimony in the case, all to the effect that while you were district attorney in the district of Mississippi in which Hancock county was included had certain conferences mentioned in the testimony to which I have referred you, and as an officer of the State of Mississippi it is claimed by the witnesses whose names I have mentioned that you undertook to settle a controversy over the boundary line between the States of Louisiana and the State of Mississippi, and that during this time, and especially up to the filing of the bill in October 1902 there was danger of an armed conflict between the sheriffs and officers of the parish of St. Bernard, and of the sheriffs and officers of the county of Harrison in the State of Mississippi. That one or more conferences were had with you as a law officer of the State of Mississippi at the slaughter house, and possibly some other points that I do not now recollect; perhaps in the city of New Orleans, with you by the above named witnesses looking to settlement of this controversy there was some agreement or understanding as to the taking of fish and oysters and as to the line between the States. I will thank you to please state to the commission what you may know with reference to this conference and whom it represented in such conference, and then tell us what you may know with reference to any armed or threatened conflict between the sheriffs and officers of the parish of St. Bernard in Louisiana and the county of Harrison, Mississippi, or any other parishes and counties in these two States. We will ask you Judge to in your own way cover the whole ground indicated by this question.

A. Answering your question I will say that I have examined the testimony referred to and indicated in your question at my leisure and carefully one day last week. I have a very distinct recollection of the occurrences detailed by Judge Estopinal, and Lieutenant Governor Estopinal and Mr. Nunez, the sheriff. I had only one interview or conference with them in my life about this matter, possibly two with Mr. Albert Estopinal, the district attorney, and

only one with these parties in the city of New Orleans. I was engaged in the practice of my profession and while so en-
1678 gaged represented some of the oyster packers and shippers in Biloxi. I was employed by these parties to go to the city of New Orleans, as I supposed when I left here to represent some of their oystermen who had been arrested by the authorities of the State of Louisiana for violating the law with reference to taking oysters in the State of Louisiana. My information was that the prosecutions had been begun in the parish of St. Bernard, and some of the oyster people who brought the information to Biloxi also informed me, and I had that information for the first time, that Mr. Nunez was the sheriff of St. Bernard parish. I left Biloxi accompanied by Mr. Lopez, and together we went to the city of New Orleans, and the next day went down to the slaughter house, where through the good offices of some people whom I knew there we had an interview with Mr. Nunez, the sheriff, and I then learned that none of the Mississippi fishermen had been arrested. It seemed that the understanding was that a fleet of some sort had been sent out to admonish them and to warn them that they must not fish in certain territory on which they were fishing, and they became alarmed at that. I found at any rate that none of the fishermen had been arrested. I talked with Mr. Nunez about the matter and he suggested that I should have an interview with Mr. Albert Estopinal the district attorney. We took the street cars as I remember it now, I may be mistaken about that however, to Mr. Estopinal's office in the city, and if not to his office, to some place where he would be found.

Q. Can you now state as to whether that was the office of Mr. John Dymond Jr.?

A. I can not.

By Col. ZACHARIE:

Q. Do you remember what street it was on?

A. I do not. I think that it was the office of Mr. Estopinal. I think that he was practicing law with some party there.

Q. Was it near Lafayette square?

A. I could not remember as to the number. I think that it was on Natchez alley. We went up there to his office and had some conference about the matter. Altogether as to the policy that was to be pursued by the State of Louisiana. I gathered from him that the board of police, I don't know what they call it over there.

Q. The police jury?

A. The police jury. I judge that it is a board similar to our board of supervisors here, had made some order in reference to this matter and it became his duty as district attorney to see to the enforcement of that ordinance by the board. We discussed the question. I insisted that my clients, the Mississippians whom I represented, protested against an order driving them, or requiring them to leave the grounds where they were fishing and that we insisted

Mississippi that it was Mississippi's territory. That our people been fishing there all along, and that we would assert in the rts our right to continue to fish there. Some thing was said at how it would be done and what would be the result. If they ld arrest Mississippians for fishing on that ground, and I replied "Well, we did not want to engage in any thing of that sort, re had been no such thing before, that Mississippi would insist n punishing the people of Louisiana in the courts for depreda- upon her property. And I think some thing was said about not having laws similar to Louisiana prohibiting the fishing in territory and I suggested that could be easily remedied by hav- the boards of supervisors that had jurisdiction of these matters, by an act of the legislature. In other words as I now remember was purely a question between us all as to the line between the te of Mississippi and the State of Louisiana, where it was. I in- ed for my clients that we were on Mississippi soil and they as stoutly insisted that we were not. At that period of the discussion when it became manifest that we could not agree to any thing. It looked that way, it was suggested that we have eeting with Mr. Estopinal, the elder Estopinal who as I remem- it now was president of the board, or had been *it* he was not at t time president, but I think he was the president and the father of district attorney, and together we would discuss this matter and ver it, and we did.

We had a meeting at the Grunewald hotel. Adjourned to meet re and did have a meeting at the Grunewald hotel, at which the er Estopinal was present, and I think possibly Mr. Dunbar, one the shippers who had a factory at Bay St. Louis had come into discussion.

By Mr. McCLURG:

Q. Can you say whether Mr. John Dymond was present at either of these conferences?

A. I don't think he was present at either one of these conferences. ink he was not because I have no recollection of ever having met John Dymond in my life. We continued this discussion at the erview at the Grunewald hotel I think. Possibly we reached no clusion that night. My recollection is that it went over until the t morning when we met again in the office of Mr. Estopinal, and some further conversation about it, and we both reached the clusion that it was a question of the boundary between the two tes. I insisted that our people were on Mississippi soil and they sted that they were not, and it was then suggested that we settle s matter by having a friendly suit between the two States to de- mine the controversy. We discussed that for some time and the stion was suggested as to who was to bring the suit, and there se trouble again. I had no authority to say any body should ng a suit because I was there representing private parties, but we lly agreed that possibly there would not be any trouble about

that. That the State authorities could do that. We discussed that for a little while and finally agreed that that was impractical, and that Mr. Estopinal and his father as I remember it, should see the Senators from the State of Louisiana and I should on my part would interest our people here and we would see the Senators from the State of Mississippi, and see if we could not—if Congress could not in some way establish a line about which there could be no mistake between Mississippi and Louisiana, and that pending this the whole controversy was dropped right there. I was not authorized to drop it for any body, except I was there as the attorney for these fishermen, and that no steps were to be taken against them. I came home fully intending to see the Senators but in the mean time I suppose that Mr. Estopinal had reached the same conclusion that I had about it, after more mature deliberation, that it was not a political question and a political body was not the proper body to deal with it. Some time afterwards Mr. Estopinal called to see me in my office in Biloxi, and we then had a very pleasant interview about the matter and reached the conclusion, both of us, that the thing was impractical to be reached by Congress, and that the whole matter would have to be determined by a suit in the United States Supreme Court, and that ended the latter interview. I never heard of it any more and had no further conversations about it with any body from the State of Louisiana I think from that day to this that I have any recollection about. That is my recollection of the whole transaction and that is very fresh in my mind. The gentlemen are evidently *are* mistaken as to my pretending to represent the State of Mississippi as district attorney. I am sure they are mistaken about that, because I had resigned my office as district attorney in 1896 as before stated and was succeeded by Mr. W. A. White of Biloxi. We formed a co-partnership. Mr. White was at that time the attorney of
1680 Mr. Lopez, and the other factories here except perhaps the Barrataria, and I of course as his partner and engaged in the practice of law was there representing these clients of ours in the matter.

Q. Then we are to understand that in this controversy you did not undertake to represent the State of Mississippi or any political subdivision of it officially?

A. I did not. I had no authority or power to do so.

Q. The second part of my question Judge I think you have not given your attention. That was with reference to any threat of actual conflict between the sheriff and officers of St. Bernard parish and the sheriff and officers of Harrison county, Mississippi. Had you any information of any threatened conflict between the officers of that parish and this county?

A. None in the world, or of any other county in Mississippi. I might have laughed and possibly did remark when Mr. Estopinal said they would arrest the Mississippians for trespassing on this land. I possibly said "We can arrest as many of you as you can of us," and possibly in the conversation this thing occurred "Well sup-

osing we would attempt it." I then said there of course would be conflict between the States, or officers of that State and the State Mississippi in resisting process. That is about all. Nothing more an that was said though.

Q. As a matter of fact do you know of any actual or threatened nflict between the officers of these two States?

A. None in the world. Absolutely none.

Q. Can you say whether or not there was any probability of any med conflict between the officers of these two States?

A. Absolutely none that I know about.

Q. You can not be mistaken about the fact that you were repre-nting private parties and had no official office or position at that ne?

A. Not at all. I know that I was there representing Lopez, Dun-r & Co., and had no official position at all, but was occupying the onorable position of a private citizen.

Q. You had resigned your office of district attorney?

A. Yes sir.

Q. And had not committed the crime of being a circuit judge?

A. No sir, nor holding any other office up to that time. I had rned all of that part of it over to my partner White. That is the ice holding.

Q. It is alleged in this bill of complaint Judge Neville that the ne line dividing the State of Louisiana from the State of Mississippi, the sailing channel recently marked by the Federal Government om the mouth of Pearl river and Lake Borgne, out just north of assy island and Grand island which we are told has lately been lled Half Moon island, and it passes around to the south west of t island, and north east of Isle à Pitre. If you have any actual owledge or information, whether that information be legal, his-rical, or traditional, as to that line being the true boundary be-een these two States, I would be glad to have you tell this com-ssion and the court what you may know and what your informa-n is on the subject?

A. General McClurg, I have no information about it, historical, ditional, or otherwise. In this investigation that I made in Lou-ana, when I went to Louisiana I accepted the tradition of the hermen with whom I talked that the territory from which they d been—I will not use the word prevented—but admonished to p off of it, had always been regarded as Mississippi territory, d I accepted their statements and representations as true about t. I know nothing of my own knowledge whether that is the e as indicated by them or not. I could not say

Q. How far from the Mississippi shore did these fishermen and se directly interested in the disputed territory say it extended. w far south?

A. The dispute there on that occasion?

Q. Yes sir, generally. Your general information I am asking you about including that occasion. I want to ask you what your knowledge and information has been as to the southern limits of the State of Mississippi south of these three counties?

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A. The only knowledge that I have about it is what I would read. The constitution as to the line marked out there.

Q. What did you gather from the constitution?

A. You will have to give it to me and let me read it again.

Q. Here it is. I will be glad to furnish it to you. I will hand you Judge the bill of complaint in this case which undertakes to set forth Mississippi's boundary as well as that of the State of Louisiana, and ask you whether that coincides with the general information you have from the fishermen to whom you have spoken and others, given to you as a private citizen, or while you were district attorney and circuit judge?

A. This has always been my understanding of the southern boundary of Mississippi. The particular locality has always of course been a question of fact, as to where it was.

Q. What has been your understanding?

A. Beginning at the River Mississippi at a point where the southern boundary line of the State of Tennessee strikes the same, and thence east along the said boundary line of the State of Tennessee to the Tennessee river, and thence up the same to the mouth of Bear creek, and thence to the county of Washington, Alabama, thence to a point ten miles east of the Pascagoula river on the gulf of Mexico; thence westwardly including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said Pearl river to the 31st degree of north latitude; thence west along said degree of latitude to the middle or thread of the stream of the Mississippi river; thence up the middle of the Mississippi river, or thread of the stream to the place of beginning including all islands lying east of the thread of the stream of said river, and also including all lands which were at any time heretofore a part of this State.

Q. Well as a private citizen, and district attorney, and as a circuit judge, and from your general information state whether or not you considered this State included 18 miles from the shore with its meanderings at all points from the Alabama line to the mouth of Pearl river?

A. That has always been my construction of it.

Q. I believe Judge that you have not been a member of any of these superfluous and illegal commissions that have undertaken to cut off the rights of the sovereign people of these two States in settling these lines, or in forming neutral territory?

A. No sir, I have not belonged to them.

Q. And of which especially the oyster commissions of Louisiana and Mississippi have undertaken to keep Mississippians from fishing

the Grand marsh, and as I once heard you say in a State convention, being turned out of the house of their fathers?

A. No sir, I have not belonged to them.

Q. You have not been a party to that crime?

A. No sir.

Cross-examination.

By Col. ZACHARIE:

Q. Judge Neville, can you remember how this interview with these gentlemen whom you have mentioned came about? Is it not a fact that you addressed them a letter asking to meet them?

A. I might have addressed a note to Mr. Nunez, asking him to meet me at the slaughter house Colonel, though that is not my recollection of it. I would not say I did not, but my impression is to give you my recollection about it, I had a brother in law who was engaged in the stock business, Mr. S. D. Jackson, at the stock landing. I think it was through his kind offices that Mr. 682 Lopez and myself met Mr. Nunez. I think we went down and he introduced us. My recollection is distinct about it, he introduced us to the deputy sheriff, some officer at the stock anding, and I might possibly have written him a note and gotten him to bear it to Mr. Nunez, I am not certain whether I did that or ast asked Mr. Nunez to come to see me.

Q. Will you give me about the time as near as you can when his interview took place?

A. That has been a long time. It was in the fall.

Q. When was it you resumed the practice of law?

A. In 1896 I think, the first day of June. I resigned to take effect on the 1st day of June 1896.

Q. You then think it was the fall of the same year?

A. Well I cannot be certain as to whether it was the fall of 1896 of the fall of 1897 or 1898. I am not positive about the year. I am pretty certain though that it was in the fall. Early in the fall when I had this interview with them.

Q. Are you not mistaken about saying that this interview took place at Albert Estopinal's office?

A. No sir.

Q. Did you not go together to the Cosmopolitan restaurant and there take lunch together and talk this over?

A. No sir. That is a mistake. The first interview was with Mr. Nunez at the stock landing, and he asked that we go to see Mr. Albert Estopinal at his office. We went to his office and my recollection is—I am sure they are mistaken about the place. We went to the café of the Grunewald hotel and there met his father, when the interview occurred between Mr. Albert Estopinal and the elder Estopinal and myself.

Q. It was not at Royal street at the Cosmopolitan?

A. No sir.

Q. They state that?

A. No sir, I remember distinctly that I was not in the Cosmopolitan restaurant for two or three years after that. I always up to that time had stopped there at Farbacher's, or at the Grunewald hotel.

Q. Now in the note that you addressed to Mr. Nunez—you say that you were in partnership with Mr. White, the district attorney?

A. Yes sir, Mr. White and myself were partners.

Q. Might not that note have been addressed on the letter head of the district attorney's office?

A. No sir, it was not, for the reason for that I remember distinctly, that that information came to me—I remember it as well as if it was yesterday, Mr. Lopez telephoned me to come to his factory. He was down at his factory. I got in a buggy and drove down to his factory and he informed me of what the boatmen had just come in and told him about it, and it required prompt and immediate action. We got off as soon as we could and went to New Orleans that evening. I think it was possibly one or two o'clock he called me down, and my impression is that we took the first train that leaves here at three o'clock in the evening and went to the city. I remember distinctly that we went to Farbacher's restaurant and took rooms and spent the night, and went down the next morning, and if I wrote to Mr. Nunez, and I have no recollection of writing to him, but if I did I wrote him on paper that I got from Mr. Derryberry who was a friend of mine in the stock business, at the stock landing, or my brother in law, Mr. Jackson.

Q. Did not Mr. Nunez, or Mr. Albert Estopinal Jr., or both parties inform you that the sheriff was then fitting out an expedition of armed men to go down there and arrest these Mississippians in that territory?

A. My understanding from them as I now remember it was, such was my understanding—that they had informed these Mississippians that they must not fish in that territory, and I got it, but I don't know that I got it from them, my judgment is that they denied that—I got it from the fishermen I think—that they thought there was an armed boat, and they made it a terrible weapon of destruction, was coming out there to kill them and run them off one
1683 way or the other. But I think Mr. Estopinal and Mr. Nunez denied any such purpose. They were simply going there to arrest them and try them in the courts.

Q. Did they not inform you. Mr. Nunez or Mr. Estopinal Jr. or perhaps both, that in order to carry out the order or ordinance of the police jury of the parish of St. Bernard that the sheriff was then organizing an armed expedition to go down and arrest all Mississippians found fishing in that territory?

A. I did not understand it was to be any armed expedition any more than what the sheriff or officer would have in going out to make an arrest under a criminal warrant. My understanding was that they were going down purely as officers of the law to execute

t they regarded as warrants that were to be placed in their
ds.
. Then I understand that you took the position that if that was
ied out that Mississippi would retort by arresting Louisiana
ermen?
. Who were found on what she was claiming as her territory.
. That would have brought about, would it not, a clash between
authorities of the two States?
. Not necessarily Colonel.
. Why suppose Mississippi authorities attempted to arrest
isiana officers, or that the officers of Louisiana would go and
t the arrest of these Louisiana fishermen who were fishing there.
uld not that have brought it about?
. I could not hardly contemplate a thing of that sort, and as I
rehended the thing would work this way, was my idea about it.
issippi was insisting that that was her territory and would
st Louisiana people and they would be carried in Mississippi
ts and tried, and tried according to the fact as we determined it,
as Mississippians fished in the same territory would possibly be
sted by Louisiana, which brought about the remark that I re-
ber distinctly making to these gentlemen, that we could arrest
any of them as they could of us.

By Mr. McCLURG:

I will ask you so that Louisiana's counsel may cross examine
on it. In that conference of which you now speak, or in one of
onferences you had with the district attorney, and the lieutenant
rnor, and the sheriff of St. Bernard parish, was it not under-
l that they would test these laws by having some of our fellows
sted and you would represent them. Was there not some sort
greement made by which this question should be decided by the
courts, and when you left there you never heard any thing
about it?
That was discussed, but my judgment is that we abandoned
as I told you on the idea that we were to see the Senators from
arious States and see if Congress could do it. And that hung
or some time, and Mr. Estopinal came to see me in my office at
i, after Mr. White and myself had dissolved partnership, Mr.
inal came to see me with reference to it and we agreed that
was impractical and a suit in the United States Supreme Court
l be the only remedy. But I will say this, that was my pur-
in Louisiana, was to represent Mississippians who had been
ted at that time, and I only found out on reaching Louisiana
it had been a general warning to them that they must get off
at territory and that nobody had been arrested.

By Col. ZACHARIE:

Was there not a great deal of apprehension expressed on one
nd the other that if the officers of either State would attempt

to arrest the fishermen of the other State that there would result resistance to the officers?

A. I don't think any of us thought seriously about that. That might have been discussed and I think possibly was dis-
1684 cussed Colonel, but my judgment is that we both reached the conclusion that the officers sent out to execute the process from Mississippi, and the officers sent out to execute the process from Louisiana would not engage in any conflict about it amongst themselves. There would be no resistance of legal process on the part of either side, and that is what brought about the determination on our part that the trial would amount to nothing. I think maybe Mr. Estopinal remarked and both of us agreed that the people arrested in the State of Mississippi would perhaps be convicted and the people in Louisiana would be convicted and nothing would be determined.

Q. Were you aware, or did they make you aware of the fact that some of the Mississippi fishermen had been previously warned off and admonished not to fish there and they had retorted they would not obey any such orders?

A. No sir, I don't think——

Q. The record does show that such had been done. Whether that had been discussed between you I don't know?

A. If that was discussed it was just discussed generally.

Q. According to your statement as I understand it there was a good deal of excitement among the Mississippi fishermen, as well as by their employers, the canneries here, and you were employed to go there to see what could be done in the premises?

A. I don't know Colonel as excitement would perhaps be the proper word. I had a very little talk with the fishermen. The most of my conversation was with Mr. Lopez and Mr. Ducate and Mr. Dunbar, and they had the boatmen employed who talked with them as they came in, and it was rather more of astonishment at the position taken by Louisiana than excitement. I don't know that there was any excitement about it. They telephoned me immediately as soon as these boatmen came in to report and we immediately went to New Orleans to see about it, and our information was that some of these men had been arrested.

Q. Now Judge you were interrogated more in the nature of an opinion by Gen. McClurg in regard to this clause in the constitution of the State of Mississippi. You have never examined the question as a lawyer have you?

A. I have examined it some but not as critically—I have examined it but not possibly as critically as a lawyer would and ought to give a matter of this sort, though I had examined it with a considerable degree of care at that time.

Q. Did you ever examine the act of Congress admitting the State of Louisiana to the Union?

A. Yes sir, I think I had at that time, I won't say very critically.

think I had examined the act at the same time, and they had veral maps at that ti... over there.

Q. Did you note particularly that portion of the act admitting e State of Louisiana which gives its southeastern boundary as fol-ws: after saying it shall go down to the mouth of East Pearl river says "Thence to the gulf of Mexico, and thence by the said Gulf the Sabine river," that is about the equivalent of it. Embracing l islands within three leagues. Nine miles?

A. Yes sir.

Q. Now is it not apparent to you that there is a clash in these o descriptions?

A. Well I declare I would rather not express an opinion about at unless I had investigated it more fully. It would be abso-tely worthless.

Q. Then Judge, in so far as the testimony of these gentlemen, ex-ieutenant Governor Estopinal, and Judge Albert Estopinal Jr., and r. Nunez is concerned. In so far as your recollection is concerned agrees pretty well with them, except on the following points as to me and place. That the interview was held, but as to the fact you ere holding any official capacity and representing Mississippi there in any way?

A. Yes sir, I think that is true. I started to say, but I thought possibly I had no right to put it in their mouths. I had en for more than twelve years the district attorney for these counties, d of course during that time was known to a good many people of uisiana, and they possibly confused that with the fact that I was that time district attorney. I do not pretend to say that they did t. Possibly there was an assumption of this sort on their part. ur interviews each and every one were of the most pleasant na-re, and I have very pleasant recollections of all of those gentlemen.

By Mr. McCLURG:

Q. By the permission of Judge Zacharie, I will interpose this estion so that he may cross-examine you Judge not only respect-g the matter about which I am about to ask. Suppose Judge, that a matter of fact you had been district attorney or even the circuit dge, under the laws of the State of Mississippi, or under her con-tution or even under the Constitution of the United States, pro-ding for the settlement of controversies between two States respect-g their boundary lines. Would you have had any authority under her the laws or constitution of the State or United States to have alt with them in respect to the settlement of that boundary?

A. Absolutely none, and I desire Gen. McClurg further more in at connection to state it in my examination in chief, that my derstanding of the law of the State of Mississippi was that if I had gaged at that time I was district attorney in the defense of any e while district attorney charged with crime I would have been ble to prosecution and conviction for a felony and removable

from office. Our laws prohibit the district attorney from engaging in the defense of any one charged with crime.

By Col. ZACHARIE:

Q. You say Judge that you have read the testimony of these gentlemen. Did they in any place or in any manner intimate that you acquiesced in the claim of Louisiana in regard to this boundary. Did they not say that you insisted that this was Mississippi territory as far as your knowledge goes?

A. I don't recollect the complete extent of their testimony. I read the testimony with reference to getting out the main facts, but I think they spoke to me two or three times possibly as the district attorney of Hancock county. I think that is the way they spoke of me. I read it the other day, but to say what all their testimony embraced, I would not undertake to say. It speaks there for itself.

Q. As I understand the testimony of these gentlemen they make no claim that you made any concession whatever on the part of the State of Mississippi, but you maintained that it was Mississippi's territory and the officers of Mississippi had a right to arrest over there?

A. Well that certainly was my opinion as I understood it.

By Mr. MCCLURG: By your permission Colonel, I will state that it occurred to me at the time Lieutenant Governor Estopinal, and the district attorney Albert Estopinal Jr. and Mr. Nunez were testifying that they laid especial stress upon the fact that Judge Neville was a law officer of the State of Mississippi and attempting, or undertaking to bind the State by his action.

By Judge NEVILLE: I think that Gen. McClurg made an objection there in the record that I had no right to bind the State of Mississippi and therefore any statements or declarations made by me were inadmissible is my recollection.

Redirect examination:

1686 By Gen. MCCLURG: By permisson of the counsel for Louisiana I would like to extend the original examination of Judge Neville.

Q. I will ask you Judge to please look at map No. 7 filed by Louisiana as testimony in this case, and I call your attention to some red lines and some blue lines. You will notice the measure double. One marked statute miles and the other nautical miles. You will notice first that there is nine statute miles, and nine nautical miles painted in blue that runs from about Point Clear southward through what we call the Grand marsh extending out to about Grand pas in its nautical mileage.

And I especially call your attention to the fact that these lines hit the main shore of Mississippi north east of Point Clear, and north of Grand island. I next call your attention to the line that branches

off from the main line which I have just mentioned from near Point Clear, marking as I have just stated the nine nautical mile line and the nine statute mile line, and then next I call your attention to the line that strikes the main shore of Mississippi east of St. Louis bay on the nine nautical mile line, and then under it the nine statute mile line. You will observe that these lines, especially the last one to which I have called your attention hits the Mississippi main land between Gulfport and Bay St. Louis, and in its reach strikes or nearly strikes the channel from Gulfport to Ship island. As I understand the claim of Louisiana from her bill and the testimony which she has already introduced in this case, that these outer lines reach the channel from Gulfport to Ship island are nine statute miles, and nine nautical miles from the north east point of Isle à Pitre, it being claimed by Louisiana under the testimony presented by this map that Isle à Pitre is the main land or coast of Louisiana, and that under the act of Congress admitting her into the Union she is entitled to three leagues of nine miles from her shore. In calling your attention to these lines I wish you to state what effect the establishment of this outer line, which reaches the channel from Gulfport to Ship island and strikes the Mississippi main land between Gulfport and Bay St. Louis, or of their inner line, being the first one to which I called your attention. What effect these lines or either of them would have upon the commerce of the State of Mississippi with reference to Ship island and Gulfport, or to any of that territory between Gulfport and the mouth of Pearl river as shown on this map?

By Col. ZACHARIE: To which question counsel for Louisiana excepts and objects as being irrelevant and as having no relevancy as to the actual situs of the boundary line between Louisiana and Mississippi as to what the consequence would be in regard to any port or any part of the coast of Mississippi.

By Gen. McCLURG: In answer to the objection of counsel, counsel for Mississippi states that there is contention on the part of Mississippi, set up in her answer and cross bill that in admitting the States of Louisiana Mississippi and Alabama, Congress had in view the southern or seaward frontage, when she gave six leagues including lands within them, and that this map being introduced by Louisiana would cut off all of Mississippi's sea front from the north end of Chandeleur islands to some where in the neighborhood of Gulfport, and would leave Louisiana jurisdiction between the north east point of Isle à Pitre, and if she should in the future from laws that made it a penitentiary offense to invade her territory, it would materially interfere with the navigation and general commercial interests of the State of Mississippi.

1687 Q. I will ask the witness to look at the map introduced by Louisiana marked as above indicated and to state according to his best knowlege and information and belief the effect that the establishment of either of these lines would have upon the

military or commercial or industrial interests of the State of Mississippi specifically and generally. The witness will please take the map and examine it and answer this question in his own way?

A. Well if the outside lines were established it would serve to cut us altogether west of Gulfport, and up the channel at places, or nearly up to it from Gulfport to Ship island. The effect if the second line should be established would be to cut us out of a large share of the frontage. Of course not quite so much as the first, and the third.

Q. Would not either of these lines absolutely cut Mississippi off the jurisdiction from the eastern mouth of Pearl river?

A. Undoubtedly.

Q. I next call your attention to the red line on map No. 7, which is supposed to be the 18 mile limit from the shore of Mississippi. The first one being statute miles and the second one being nautical miles, and they run as you see from the map with the meanderings of the Mississippi shore and hit at about the Alabama line, a finely dotted line on this map which I do not understand, and which may be a sailing line, under the act of Congress admitting Louisiana and Mississippi into the Union which of these lines would you say is the correct boundary of the State of Mississippi. The one marked in blue undertaking to mark the boundaries of the State of Louisiana or the one in red undertaking to mark the boundaries of the State of Mississippi?

A. General, I would prefer not to express any opinion about it because it would be merely an idea of my own and I don't know that I could back it up with any reason for it.

Q. I think you are quite correct Judge, but nevertheless I think it entirely proper under the pleadings in this case for you to state the effect that the establishment of the line claimed by Mississippi marked in red, as compared with that marked in blue claimed by Louisiana would have upon the material interests of the two States?

A. That I have already done as I understand it.

Q. You did say with reference to the blue lines?

A. Of course we would be in a much better condition then if the line should be adopted as the line marked in red and claimed by Mississippi. Our commercial and other affairs would not be so materially affected.

Q. I will ask you this further question Judge. Whether or not while you were presiding as circuit judge of the counties of the coast constituting a part of your judicial district there were any controversies civil or criminal—civil or criminal prosecutions where the venue was laid to the south of the shore line of Harrison or Hancock counties?

A. I have no recollection about that General. I could not say. There were some prosecutions at one time for violating the oyster laws of the State of Mississippi conducted before me while I was circuit judge of Harrison and Hancock counties. One of them The State vs. Conrad I believe I remember, and another perhaps The

State vs. Eaton and maybe another. I don't now remember, but I know that there was no controversy as to its having been done in the State of Mississippi. I could not say at what particular place the boat was lying out there at the time the alleged violation of the law occurred. I don't remember that.

Q. Could you say whether or not they were acquitted or convicted in your court?

By Col. ZACHARIE: Counsel for Louisiana objects to any testimony in regard to any judicial proceedings unless the judicial
1688 record is produced, or the foundation is laid by counsel for Mississippi by showing that such records as primary evidence have been destroyed, lost or mislaid.

A. My recollection now is General, that Mr. Conrad was convicted and fined to the limit of the law as I recollect it. His case was appealed to the supreme court of the State of Mississippi and by that court affirmed.

Mr. Eaton was tried in the circuit court of Hancock county, and convicted and his case appealed to the supreme court of the State of Mississippi, and his case was by the supreme court of the State of Mississippi reversed and remanded on the ground that we took a different view of the powers of the board of supervisors. They holding that the board of supervisors had no power to pass a law under which he was convicted. That is my recollection of the two cases.

Q. They were charged with violating ordinances passed by the board of supervisors of Harrison and Hancock counties?

A. Conrad was indicted for violating a law passed by the State of Mississippi as I remember it. For violating a law with reference to the taking of oysters. And Eaton was tried and convicted for violating an ordinance passed by the board of supervisors of Hancock county.

By Mr. MCCLURG: Counsel for Mississippi here states that these two cases to which Judge Neville here refers, reported in the official supreme court reports of the State, will be cited and made a part of the record in this case.

A. I know of no other prosecutions right now. A number of things came before me as judge. There were none that I remember that I participated except one. I remember spending about one week once while I was district attorney prosecuting some one out here for taking oysters off the natural reefs out here. Taking oysters off of a private reef and he defended on the ground that it was a natural reef. I think it was just in front of Biloxi here. Mr. Heidenham I think had the parties prosecuted for trespass on his oyster reefs. The only cases I remember now occurring out on the water during my time as district attorney or judge. There were other prosecutions. Verdicts of not guilty for a failure of proof in stating they were fishing in less than 14 feet of water.

Q. Judge I will ask you this question. You have stated that you have been district attorney for the State of Mississippi and also one of her circuit judges, whether as such, in either of these coast counties the State took civil or criminal jurisdiction of matters occurring in the sound, on the waters of the sound, and if so how far to the southward of the shore?

A. I have no recollection General except the cases I cited of any cases in my court at all. I do remember though at one time there was an attachment sued out in the circuit court of Harrison county Mississippi.

By Col. ZACHARIE: The counsel for Louisiana here interposes the same objection as was made above.

A. In the circuit court of Harrison county, Mississippi and levied on Cat island. I believe Mr. Duggan of New Orleans claiming for some debt, or some thing due to him, and I think it was levied on Cat island and possibly settled without any trial. It might have been pursued to a judgment. I don't remember that now.

Q. There is no dispute in this controversy as I understand it as to Cat island being in the jurisdiction of Mississippi?

A. Well now as to any particular instances I have no recollection of them at all.

Q. The formation of Harrison county first in 1841 amended
1689 subsequently perhaps in 1843, fixes the limit of her southern boundary co-extensive with the limits of the State according to that description given by the statutes of the State, and which have been, or will be introduced in this case—how far from the shore line would you say the southern boundary of the State of Mississippi and Harrison county was under her constitution and laws?

A. To the lines as laid down in the constitution.

Q. Which means as I understand it 18 miles from the shore?

A. 18 miles from the shore.

Recross-examination.

By Col. ZACHARIE:

Q. Judge, have you ever paid any particular attention to international law in these questions of boundaries?

A. I have not Judge.

Q. You have been interrogated in regard to certain lines on map No. 7, offered by the State of Louisiana, as to the effects upon Gulfport and other places. Have you ever studied or looked up the distinction between political jurisdiction and civil jurisdiction as affected by them?

A. I have not.

Q. Have you ever examined international law and the decisions under it in regard to fixing boundaries whether it be from the shore or coast? The distinction between shore and coast?

A. Not specially. I might have generally but not specially.
Q. Well now I understand that the opinion that you have ex-essed in looking at this map is simply an off hand opinion with-t any research upon the subject?
A. Upon the hypothetical question stated to me by Gen. McClurg, s sir.

Mr. WALTER A. WHITE, a witness introduced on behalf of the State Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Mr. White, where do you reside?
A. Biloxi.
Q. I notice in the original bill of complaint filed by the State of ouisiana against the State of Mississippi in this case the minutes certain proceedings with reference to the line dividing these two ates to the waters of the gulf of Mexico, had by certain citizens of ouisiana and alleged commissioners appointed by that State, and e alleged commissioners appointed by the State of Mississippi; id appointments being by the governors of these two States re-ectively, including certain resolutions passed by these commissions. ie first by the commission of Louisiana and then the joint motion the commissioners appointed by the respective States, that W. A. hite was appointed by the governor of the State of Mississippi to rticipate in one or more of these joint meetings. I wish you ould state whether you are the W. A. White quoted in this pro-eding mentioned in the bill of complaint in this case?
A. Yes sir, I am.
Q. I get from the bill of complaint Mr. White that about January 19th, 1901, some citizens of Louisiana held a meeting at the 00 office of Mr. John Dymond Jr., in the city of New Orleans, at which the governor of the State presided and Mr. John mond Jr., acted as secretary, and that Lieutenant Governor Albert topinal offered a resolution, which was adopted requesting the vernor of Louisiana to appoint a commission to consider the termi-tion of the boundary line between the two States, and arrange for easy location and identification by a proper system of buoys. at among those appointed by the governor of Louisiana was Mr. bert Estopinal, Jr., John Dymond, Jr., H. C. Cage, Clement Story d Sidney F. Laws. That on the 26th day of January 1901 the vernor of Louisiana addressed the governor of the State of Missis-pi a letter enclosing a copy of the proceedings of the meeting ove mentioned and requesting the governor of Mississippi to ap-int a like commission on the part of that State, to join the com-ssion appointed on the part of the State of Louisiana. "To con-er the determination of the water boundary line, and arrange for easy identification by a proper system of buoys." That after-rds the governor of the State of Mississippi on the 9th day of Feb-

ruary, 1901, appointed E. J. Bowers, A. Kellar, W. A. White, Harry T. Howard and J. I. Ford.

This bill further alleges Mr. White that these two commissions met at the office of Mr. John Dymond Jr., in the city of New Orleans on Tuesday March 26th 1901 "To confer as to the boundary line between the two States to the waters thereof," and that at said meeting Mr. Harry Howard of Mississippi was made chairman, and Mr. John Dymond Jr., secretary and at that meeting "Commissioner W. A. White stated to the assembly that the Mississippi commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story that a recess of the joint committee be taken until 11.30 a. m."

This motion was put and adopted and the meeting then took a recess until 11.30 a. m. The bill further recites in its joint copies of the proceedings here mentioned that these joint commissions met again and were called to order at 11.30 by Chairman Harry T. Howard, and that Mr. John Dymond Jr., at the request of the Louisiana commission presented to the Mississippi commission the views of the Louisiana commissioners on the subject of the boundary line in the waters between the two States. The minutes of the meeting which I have mentioned go on to state that after Mr. Dymond had presented Louisiana's claim, which is set forth in the bill with which you are familiar, states that on motion of Mr. Bowers seconded by Hon. H. C. Cage "The Louisiana Boundary Commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi commission subsequently, and they in turn should endorse their views thereon." This motion was put and carried.

The minutes copied in the bill further recite that the Louisiana commission invited the Mississippi commission to take lunch at the Cosmopolitan hotel, etc.

The bill further recites that the commission appointed on the part of the State of Mississippi met after some five months' delay on July 20th, 1901, and stated that as to the claim submitted by Louisiana the Mississippi commission were unable to concede, and that the difference between the two commissions was so great that there was no hope of reconciling them, and that the Mississippi commission thought it useless to submit a counter line proposition. That "the Mississippi commission considers as islands considerable territory which the Louisiana commission claims as main land, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for them to consider.

It is apparent that the only hope of settlement is a friendly
1691 suit in the Supreme Court of the United States, and we respectfully suggest this course."

I have stated the question at length Mr. White in order to refresh your memory as to dates and circumstances, and will ask you to state to the commissioner, and through the commissioner in your own way the history of these commissions and of these meetings, and if you can what authority in law there was for either the appointment of the commission or the power of the commission in undertaking to act for their sovereign State, in determining and fixing the boundary line between the two States, or in arranging the easy identification of the lines by a proper systems of buoys, and to make any other or further statement pertaining to the issue that you desire to make in this matter?

A. With your permission I will answer the latter portion of this question first. I don't understand that the commissioners on the part of Mississippi had any authority to bind Mississippi, nor that the commissioners on the part of Louisiana had any authority to bind that State, nor that the action of the joint commission was binding on either State. I understand that if the two legislatures could have agreed upon a line and adopted it, and that line had been ratified by an act of Congress, that in that way the boundary line between the two States could have been established. And this, I understood to be the purpose of the appointment of the commission. I understood that if the commissioners from the two States had been able to agree, as to what the true line between the two States was, that the governors of the two States would recommend that the legislatures adopt that as the boundary line, and *for* the members of Congress from the two States could get an act passed fixing it as the boundary line of the two States. That was understood to be the extent of the duties of the commissioners appointed by the two governors, simply to recommend a line to be adopted by the two legislatures and afterwards ratified by an act of Congress. At the time appointed for a meeting in New Orleans of the commissioners from the two States I went there to the meeting and arrived in New Orleans on the morning train that got into the city about nine o'clock. The meeting was set for ten o'clock at the office of Mr. Dymond. I went there at the appointed time and met for the first time the members who were appointed on the board for the State of Mississippi. No conference had ever been had between Messrs. Bowers, Howard, Kellar and Ford and myself, and we had no meeting up to the time the joint commission met at Mr. Dymond's office. That being the case I requested a recess until 11.30 for the purpose of having a conference with my associates before we went into a joint meeting. When the commission convened again Mr. John Dymond on the part of Louisiana stated their position, and stated what they claimed to be the boundary line between Mississippi and Louisiana, claiming that all the water front of Hancock county and a part of the water front of Harrison county was Louisiana territory. I notice that the minutes of the meeting state "This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Com-

mission admitted that the view was a novel one to them, they being unable to pass upon it at the moment requested further time." That statement is also true. It was a novel proposition to us, and so far as I was concerned it was the first time that I ever heard that Louisiana claimed to own all of the water south of the line marked out afterwards by the Louisiana Boundary Commission: south of the line that they claim to be the boundary line, to-wit, the deep water channel leading from the mouth of Pearl river out through the pass between Cat island and Isle à Pitre. I know that it was claimed by some parties in Louisiana that the marsh islands, such as the islands in and around Bayou Boudreaux belonged to Louisiana, but I had
1692 never heard the claim made that the water north of these islands was in Louisiana, and that Grand island, Round island and Grassy island belong to Louisiana. Their position being so entirely different from what we supposed that it would be, and their claim being so much greater than we anticipated, we requested that a recess be taken and that the Louisiana commissioners would furnish us with a map marking out the boundary as they conceived the true boundary to be, and that we would in turn furnish them with a map showing the boundary line of Mississippi as we understood it, and that afterwards we would get together and have another conference and endeavor to agree on a compromise line if possible. Some months afterwards I learned that they had furnished to Mr. Howard a map with the line marked out according to their contention.

Q. What line if you remember now was it that they had marked out. The deep water channel?

A. It was the deep water channel line as appears on this map No. 7. About on that line somewhere near that line. Mr. Howard, who lived in New Orleans and had a summer home at Biloxi where he stayed a month of two in the summer, but at that time of the year was generally in New Orleans. Messrs. Bowers, and Kellar lived at Bay St. Louis thirty miles west of Biloxi. Mr. Ford lived at Scranton, twenty miles east, and there was never any meeting of the commissioners appointed by the State of Mississippi except the meeting held in the office of Mr. Dymond and the meeting called by Mr. Howard after the receipt of the map, furnished him by the Louisiana Boundary Commission to meet at Bay St. Louis, when for the first time Mr. Ford and myself did see the map furnished and which had been in the possession of Mr. Howard. I don't know whether Mr. Kellar and Mr. Bowers had ever seen the map before or not. When we examined the map it was manifest from the claims made by the Louisiana people that there was no possibility of our ever coming to an agreement either by compromise or otherwise, and we therefore agreed that we would submit no counter proposition, but would simply recommend that a suit be brought in the Supreme Court of the United States for the purpose of settling the boundary line, and this we did, we sent in a report to Governor Longino of our action in this matter, and in addition to the report

sent in Mr. Ford and I prepared a statement of what we conceived to be the true boundary line between Louisiana and Mississippi and set out the reasons. In that report we set out the reasons for the position we took. This report was only signed by Mr. Ford and myself for the reason that we had no meeting with the other members of the commission and it was not submitted to them.

Q. If you can remember what that separate report stated I would be glad if you would let it go in the record.

By Col. ZACHARIE:

Q. Have you got a copy of it?

A. No sir, I have not got a copy of that report. I had a copy of the report but I have searched for it once or twice and failed to find it. It has been mislaid or loaned to some one.

By Mr. MCCLURG:

Q. It is true that you called on the governor's private secretary for it did not you?

A. Yes sir.

Q. When you asked me if I had seen it I told you I had not and we went to look for it and could not find it?

A. Yes sir, what Governor Longino did with that report I don't know. He never acknowledged receipt of it and his private secretary could not find it, or failed to find it when the attorney general and I went in his office to look for it.

1693 Q. Now please state that report as near as you can remember it.

A. It would be impossible for me to state any thing like the language of the report, and even the entire substance of the report, but the report was to the effect that after a thorough investigation and examination of the questions involved with all the lights before us that we were of the opinion that the boundaries of Mississippi included all of the islands within 18 miles of six leagues of the shore. That the territory in dispute belonged to the State of Mississippi for the reason that it consisted of water and marsh islands that were within 18 miles of the Mississippi shore and were not within nine miles of the Louisiana shore or land. This report was in the form of a brief and cited the acts of Congress fixing the boundaries of Louisiana and Mississippi and also cited authorities to sustain some of the positions that we took. This report was signed by myself and J. I. Ford and sent to Governer Longino. Governor Longino never acknowledged receipt of the report and did not send it to the legislature with the other papers with reference to the boundary dispute. Afterwards I called the attention of attorney general to this fact and he and I went into the governor's office and had the governor's private secretary to look for the report and he failed to find it. I will say further in reference to the reason that this brief or report was not signed only by Mr. Ford and myself. There was only one other lawyer appointed from Mississippi besides Mr. Ford and myself, and

that was Mr. Bowers, who at that time was wholly occupied with other matters, and Mr. Bowers was unable to make an examination of the questions involved, and so stated at the last meeting that we had. That during all the time of the existence of the commission that he had been wholly unable because of the press of other business to give the matter any attention whatever. Mr. Kellar was a merchant, and Mr. Howard was a capitalist and not engaged in any regular business.

Q. I wish you would state Mr. White whether Mr. Bowers or Mr. Kellar had any business connections or associations in the city of New Orleans or the State of Louisiana at that time?

A. Mr. Bowers had a law office in New Orleans. I don't know whether Mr. Kellar had any business in New Orleans at that time or not. He had none so far as I know.

Q. It has bobbed up in this case Mr. White that there has been some kind of an agreement between the Oyster Commission of Louisiana and the Oyster Commission of the State of Mississippi fixing what they term neutral ground. A neutral line, which I understand to be drawn through the western edge of Grand pass southward by Sun Down island to the 18 mile limit, westward from the northern entrance of Grand pass along the coast of the string of islands to Malheureux point, and the mouth of Pearl river. That south of this line to what we term the marsh and where the testimony shows the best oysters for raw shipping are found is reserved exclusively for Louisiana fishermen, and that north and eastward of that line which I have mentioned is called neutral ground where Louisiana and Mississippi fishermen, oyster takers may go without molestation from either side. I wish to know if you know of any law or authority that these commissions had for fixing this line so as to bind the citizens of the two States?

A. They had no such authority. The State of Louisiana had an oyster commission composed of men who were familiar with the matters in dispute, and who had as their counsel Mr. John Dymond, a lawyer who thoroughly understands every question involved in this trial. Mississippi had never an oyster commission before. By the acts of 1902 the oyster commission was created. The law made it the duty of the governor to appoint men on that commission who were not engaged in the business of fishing or canning or shipping oysters, but who were familiar with the business.

Q. You mean the laws of Mississippi?

1694 A. The laws of Mississippi. The governor of Mississippi however appointed on this commission one man who was engaged in the business of selling and buying saw logs. Another man whose business had always been that of a saw mill man as I am informed, and another whose business was that of operating a flour mill. The other two had engaged to some *t*xtent in catching and planting oysters. Outside of the last two commissioners named no man on this commission knew any thing about the territory in dispute or of the matters involved in this controversy.

. Was there either of them lawyers?
. Neither of them was a lawyer, and I think I could safely say neither of them had ever seen at the time they made that agree- t any part of the disputed territory. I know that neither of n knew any thing about the contention of Mississippi with refer- to where the true boundary line was. They had no authority ind the State, but simply permitted the Louisiana commission, succeeded in getting an agreement from them fixing as far as could the boundary lines without any authority of law and in lute ignorance of the matter about which they were dealing and e effect of their action on this suit.
Mr. White, I will ask you to look at map No. 7 filed in this by the State of Louisiana and examine those lines marked 9 te and 9 nautical miles which indicate the claim of Louisiana different points, and also the red lines marked 18 statute miles 18 nautical miles indicating the claim of Mississippi, and I will you to state what you conceive would be the effect upon mili- and naval and commercial and general interests of the State of issippi if either of these lines would be established as being the mile limit of the State of Louisiana?

Col. ZACHARIE: The counsel for Louisiana objects and excepts is question as being irrelevant to the question of boundary, ng entirely with what might be the effect of establishing that dary and also on the further ground that this is mere opinion is asked from the witness.

The effect would be to take from Mississippi the control of the r front of nearly one half of the State, as the city of Gulfport is t the center of the shore line of the State of Mississippi.
Louisiana has stated in the bill of complaint, and as you know ou not as a lawyer has made it a penitentiary offense to dredge rs under certain conditions within her jurisdiction, and if her diction should be fixed at one of these lines what effect do you it would have upon the industries of Mississippi, especially if ould be fixed at the outer line near the channel extending from port to Ship island?
The oyster industry of Mississippi would be wholly destroyed. result would be that there would not be an oyster factory oper- in the State of Mississippi. It would be impossible for an oys- ctory to operate if it was dependent upon Louisiana territory s oysters for the reason that the State of Louisiana prohibits rs from being carried out of the State for canning purposes. all of the oyster territory from which the canning factories of ssippi draw their supply of oysters lies west and south of the rn line indicated on map No. 7.
I will ask you whether you have held any office under the of the State of Mississippi and if so what it was?
I have never held any State office. I have been district attor- f the sea coast district of Mississippi.

Q. For how long?

A. From June 1st 1896 until January 1st 1904.

Q. Were Jackson, Harrison and Hancock counties in your district?

A. Yes sir.

Q. The duties of the district attorney under the laws of the State of Mississippi is to advise the grand jury and to draw indict-
1695 ments, and to prosecute persons presented by the grand jury as I understand it. I will ask you to state whether you remember as a distinct fact without going into the details of the prosecution, whether or not while filling the office of district attorney in any of these coast counties you have prosecuted any persons for violating the laws of the State or any ordinance passed by the board of supervisors of either of these counties, of the oyster laws or ordinances?

By Col. ZACHARIE: The counsel for Louisiana objects and excepts to any testimony in regard to judicial proceedings until and unless the counsel for Mississippi shall pave the way for the introduction of secondary evidence and show that such judicial records have been lost, or destroyed or mislaid.

By Gen. MCCLURG: Counsel for Mississippi states that the witness will not be asked to state the contents of any record, but as indicated by the question to state as a matter of fact whether he as district attorney in the discharge of the duties of his office was ever called upon to prosecute any persons for violating the laws and ordinances mentioned.

A. Yes sir, I prosecuted a number of men both in Harrison and Hancock counties for violating the laws with reference to fishing oysters in waters in what we term the disputed territory.

Q. When?

A. I could not give you the dates.

Q. During your term of office?

A. During my term of office between 1896 and the beginning of this year.

Q. Between June 1st, 1896, until the 1st Monday in January 1904?

A. Yes sir, the only question in those prosecutions that we ever investigated with reference to fixing the place was the question as to whether it was within six leagues of the shore.

Q. In any of these prosecutions was the jurisdiction of the State 18 miles south of the shore ever disputed?

A. Not within 18 miles of the shore.

Q. And the jurisdiction of the State within 18 miles of the shore was not disputed?

A. It was never disputed so far as I know at any time in any court of this State.

Q. Go ahead and state any thing else you may think of that has any bearing on this case?

A. I will state this fact also. That in 1892 or 1893 the first dredge

at that ever dredged oysters in the waters of Mississippi was built Messrs. Lopez and Ducate. Pretty soon after it began to work ing oysters in the territory now in dispute the board of super- ors of Harrison county passed an ordinance to prohibit the dredg- of oysters in the waters of Harrison county, and the board of ervisors of Hancock county did the same, and thereupon they to cease operating the boat, and I was employed by Lopez & cate to represent them before the board of supervisors in an effort get the board to modify their ordinance, so as to permit them to in deep water. And after several meetings of the board and siderable controversy over the matter the order was made per- ting the dredging of oysters in water of a certain depth. I think vas fourteen feet.

. You say that they ceased to dredge oysters in either of these nties until the ordinance was modified?

. The board of supervisors of Harrison county modified their inance. The legislature of the State afterwards passed a law mitting the use of dredges, and the board of supervisors of Han- k county, I don't remember exactly how their order was, passed order prohibiting the use of dredges in that county. My recol- lection is that there were several indictments for violating 6 that ordinance, F. W. Eaton, amongst others. Eaton was tried and convicted and the supreme court held that the inance of the board of supervisors was void, and reversed the , but the question of jurisdiction of the courts of Hancock county never questioned.

Cross-examination.

By Col. ZACHARIE:

. Mr. White I understand the functions of these boundary men ither side, it was simply advisory, and if the commissions had ed they were simply to recommend to the legislature of either e for the ratification and establishment of a certain boundary if could agree. The two commissions?

. Yes sir, that is my understanding.

. Mr. Bowers you say was a member of this commission. Was t that time a Congressman?

. No sir, he was not.

. Was it just prior to his election?

. Mr. Bowers afterwards was elected to Congress in 1902. In ember 1902. This was in 1901.

. In the investigation that Mr. Ford and yourself made did you then in the act admitting the State of Louisiana into the Union the State of Mississippi into the Union in limiting the bounda- that the word coast is used in the Louisiana act and the word e is used in the Mississippi act?

. Yes sir, we noted that then. That is used the word coast with rence to Louisiana and the word shore in reference to Mississippi

but we understood these provisions to have reference to the water front extending seaward, and we did not consider the marsh islands situated in the disputed territory as coming within the meaning of the word coast as used in describing the boundary of the State of Louisiana.

Q. Did you or did you not examine the authorities on the subject of boundaries in which coast is defined as embracing all the islands off the main land of the State. For instance the celebrated decision of Mansfield?

A. Yes sir, we examined the case of Mansfield against Moss.

Q. I am speaking of the English case. A Spanish vessel was captured and taken into the prize court, in which the prize court decided that these islands were a part of the coast?

A. What case was this?

Q. The case of the Anna?

A. I don't remember to have examined that case.

Q. That is the leading case on the subject?

A. You state where they decided that these islands were a part of the coast of Louisiana in that case.

Q. Yes sir. Where the word coast is used it means the islands, and included the islands adjacent to the main land?

A. That had no reference to these particular islands?

Q. No sir?

A. I think I remember the case. It has been a long time and I have had no occasion to charge my memory with it since, and I don't remember to have read that particular case, but I examined the authorities where the distinction is made between the use of the words coast and the words shore.

Q. Now did you examine the authorities of international law in regard to the distinction between the political and civil jurisdiction in fixing boundaries?

A. I don't remember sir to what extent we examined that question.

Q. Now in the opinion which you give in your testimony in regard to the effect upon Gulfport and other places along the Mississippi coast in case that the nine mile theory of Louisiana was supported.

1697 I believe you stated it would have a great effect upon the commerce and industry and so on of these ports. Would that interfere in any way in the world with the coming to and going from these ports, or would it do any thing more than to decide in this controversy that the oysters lying within these boundaries belonged to Louisiana?

A. It would have the effect of giving to Louisiana the criminal jurisdiction of Mississippi's shore.

Q. Of the Mississippi shore or the waters near the shore?

A. It would deprive the State of Mississippi of any jurisdiction either civil or criminal of any of the waters touching the western half of her shore line. Say from Gulfport to the westerly line of Mississippi.

Q. These cases which you have mentioned. The Eaton case I believe was one and another one. Are they reported in your supreme court reports?

A. Yes sir.

Q. How long ago. Could you name the year and the volume in which they are reported?

A. I think in the year 1900 or 1901 these cases were tried. I will also say Colonel that I prosecuted a man for violating the laws of the State at Ship island. That is 12 miles of the Mississippi shore. Robert Seamore, that case was also in the supreme court. I think his honor, Judge Bullard, the commissioner presiding defended him if I am not mistaken, and in that case the supreme court, without questioning the jurisdiction of the State otherwise held that the State of Mississippi had no jurisdiction of this place where this offense occurred for the reason that Mississippi in 1858 had ceded her criminal jurisdiction of that part of Ship island to the United States for military purposes.

Q. It was not a military reservation was it on the part of the United States?

A. No sir, it was not. It was a subsequent taking on the part of the United States for the purposes of a fort.

Q. Well now what you have said in regard to the effect on these places on the Mississippi coast is simply an opinion of yours?

A. If the fact that Mississippi's jurisdiction is coextensive only with its borders is a matter of opinion then my answer to that question is a matter of opinion.

Q. That is a conclusion that you draw from the facts?

A. I did not suppose that that was a matter about which an opinion could exist.

Redirect examination.

By Gen. McCLURG:

Q. When I asked you what office you had held in the State of Mississippi I understood you to say that you had not held any under the State?

A. State office.

Q. If my recollection serves me right we both fought and died together in the legislature of 1896?

A. Yes sir, I was sentenced to the legislature in 1896, and served out a part of my term and was pardoned by the governor appointing me district attorney in June.

SATURDAY MORNING, June 25th, 1904.

The commission met this morning at 9 o'clock, and there were present, Hon. William D. Bullard, commissioner, Gen. Monroe McClurg, counsel on behalf of the State of Mississippi, and Col. F. C.

Zacharie, counsel on behalf of Louisana, and the following
1698 testimony was taken, to-wit:

It is hereby agreed between the counsel for Mississippi and Louisiana here present, and in the presence of the commissioner and approved by him, that the original agreement and all agreements heretofore made in regard to the time and places of taking testimony are modified and amended, so that upon adjournment today, this June 25th 1904, no further testimony will be taken on either side until the 8th, day of August 1904, when the commission will meet at Bay St. Louis, Mississippi, and Mississippi will resume taking testimony in chief at that place or at Jackson, Mississippi as she may then determine, or at both until and including the 20th day of August 1904, when she will conclude her testimony in chief, and that thereafter the State of Louisiana shall have the period embraced between the 21st day of August and the 15th day of September for the purpose of taking evidence in rebuttal, and that Mississippi shall have after the 15th day of September up to the 1st day of October 1904 for the taking of testimony in sur-rebuttal, and it is agreed that the taking of testimony in its entirety shall be concluded on both sides on or before the 1st, day of October, 1904 as specified in the original agreement between the counsel on both sides.

Counsel for Mississippi offer and introduce in evidence the following documents, a copy of each one of which is now handed to the counsel for the State of Louisiana.

Mississippi Document No. 25 A. Being an ordinance of the board of supervisors of Harrison county adopted at the August term, 1882.

Mississippi Document No. 26, being an ordinance of the board of supervisors of Harrison county adopted at the August term, 1884.

Mississippi Document No. 27 Being an ordinance of the board of supervisors of Harrison county adopted at the March term A. S. 1885.

Mississippi Document No. 28. Being an ordinance of the board of supervisors of Harrison county adopted at the March term 1888.

Mississippi Document No. 29, being an ordinance of the board of supervisors of Harrison county, adopted at the November term 1892.

Mississippi Document No. 30, being an ordinance of the board of supervisors of Harrison county, adopted at the December term, 1892.

Mississippi Document No. 31, being an ordinance of the board of supervisors of Harrison county, adopted at the January term 1893.

Mississippi Document No. 32, being an ordinance of the
1699 board of supervisors of Harrison county adopted at the January term 1893.

Mississippi Document No. 33, being an ordinance of the board of supervisors passed at the August term 1893 of Harrison county.

Mississippi Document No. 34, being an ordinance of the board of supervisors of Harrison county, passed at the October term 1893.

Mississippi Document No. 35, being an ordinance of the board of supervisors of Harrison county passed at the November term 1893.
Mississippi Document No. 36 being an ordinance of the board of supervisors passed at the December term, of Harrison county, 1893.
Mississippi Document No. 37, being an ordinance of the board of supervisors of Harrison county passed at the February term 1894.
Mississippi Document No. 38, being an ordinance of the board of supervisors of Harrison county, passed at the September term 1892.
Mississippi Document No. 39 being the pilots' laws, and rules and regulations of Ship Island harbor, Mississippi. Annotated Code 1892, being chapter LIX, An act authorizing the board of supervisors of each county having a sea port or harbor therein to appoint a board of pilot commissioners, and amended by chapter 128 of the Laws of the State of Mississippi, passed at a regular session of the Mississippi legislature, held in Jackson, commencing on January 7th, 1896, and ending March 24th, 1896.

Capt. JOHN WALKER being recalled on the part of the State of Mississippi, testified as follows:—

By Gen. McCLURG:

Q. Captain Walker, you have testified in this case once before?
A. Yes sir.
Q. We have introduced as evidence in this case as Mississippi Document No. 39, the laws of the State authorizing the board of supervisors of each county to appoint a board of pilot commissioners and in connection with that and as a part of it "Rules and regulations adopted by the pilot commissioners of Ship Island harbor on the 15th of April 1898. Rules and regulations for harbor masters of Ship Island harbor adopted October 6th, 1894. I wish you would please state whether or not you have had any connection with that board?
A. Yes sir, In 1887 I was appointed a member of the board.
Q. Of what?
A. Of pilot commissioners, and served one term of four years, and in 1891 I was again appointed and am at present the secretary of the board of pilot commissioners.
Q. For Harrison county?
A. For Harrison county and the State of Mississippi.
Q. During your service upon that board over what territory has the board exercised jurisdiction?
1700 A. On the waters within the boundary of Harrison county.
Q. To what limit from the main shore line of the county southward?
A. Well I would consider that the board of pilot commissioners had jurisdiction over the waters inside of Ship island, Cat island, and down to the Grand marsh. The shores of the Grand marsh to the line a little west of Malheureux point, running north and south from Pearl river.

Q. How far due to the southward does that board—has that board exercised jurisdiction?

A. Well we have never had occasion during my time to administer on anything south of Cat island, or south of Ship island, nor over there to the Grand marsh even.

Q. Captain, I will ask you to look at Document No. 39 to which I called your attention awhile ago, and ask you whether those are the laws, rules and regulations under which your board has been acting?

A. Yes sir.

Q. And you were kind enough to furnish to the commission three copies of these rules?

A. Yes sir.

Q. When you were on the stand the other day you made some statement about having been carried through Three Mile bayou, and that perhaps a reference to some memorandum you had would refresh your memory about it. Have you anything further to say about that now?

A. Only as to the exact date and the name of the steamer. It was the steamboat Florence and the date was the 14th, of April 1867.

Q. What was the route that you travelled with that steamer that day?

A. Do you mean through the marsh?

Q. Yes sir.

A. Well as I stated then I could not tell exactly what the route was. This old Greek fisherman did the piloting and I did the sounding, and when I came out in Mississippi sound I did not ask him whether we came out through Three Mile or Nine Mile bayou, but before we entered from Chandeleur sound he told me that he could go through and take the boat through Three Mile bayou.

Q. What draft was your boat?

A. About four and a half feet I would judge.

Cross-examination.

By Col. ZACHARIE:

Q. Captain I understood you to say in your examination in chief, that while you considered that your jurisdiction extended to the south of Ship and Cat islands, and even down to Grand marsh as far as Malheureux point, yet you never had occasion to assert your jurisdiction in the Grand marsh as you call it down to Malheureux point?

A. That is what I said.

Q. Do you think you could recollect the name of the old Greek that piloted you through there if I should name it?

A. No sir, I could not call the name. He was a deck hand on the boat.

Q. Was it Apostalo?

A. I would not be able to say even if I heard it.
Q. I understood you to say Captain that you were first appointed on the board of pilot commissioners in 1887?
A. Yes sir.
Q. In 1887?
A. Yes sir, I was appointed some time in April 1887.
Q. Could you refer us to the act of the State of Mississippi under which you were appointed in 1887?
A. No sir, I don't believe I could.
Q. You don't know the act under which you were originally appointed?
A. Originally in 1887 I served one term.
Q. You don't know the date of the act or the number?
A. No sir.
Q. This steam Florence. She was a low pressure river steamer?
A. A high pressure side wheel steamboat.
Q. You think that she drew about four and a half feet of water?
1701 A. Between four and four and a half. I could not tell you exactly, because we had burned out some of the fuel.
Q. Did you notice the stage of the tide as you went through there?
A. No sir, I did not notice that particularly.
Q. Whether it was low tide or high tide?
A. I did not notice that particularly. I was giving my attention to the lead line.

Capt. GEORGE MCCAUGHAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Where do you live?
A. Mississippi City.
Q. How old are you?
A. 63.
Q. How long have you lived in Harrison county?
A. I was born at Mississippi City and have been there nearly all of my life.
Q. Have you ever been engaged in boating of any kind of the sound or Lake Borgne?
A. Yes sir, from here to New Orleans.
Q. Since when?
A. Since about 1867 or 1866.
Q. In what capacity? As captain or master?
A. Captain.
Q. Do you know where there is a sailing line. Deep water sailing line of channel out of the Rigolets and the eastern mouth of Pearl river going eastward, north of Grassy island and Half Moon island or Grand island?

A. Yes sir, I do.

Q. How far to the southward of the Mississippi shore have you been since 1867 or 1868?

A. About as far down as the lower end of Brush island.

Q. When you were at the lower end of Brush island in what State were you?

A. I imagined that I was in the State of Mississippi.

Q. Why did you think you were in the State of Mississippi Captain?

A. Because the boundary called for 18 miles south of the main land, which I have always understood that was the boundary line.

Q. Has that been the general acceptation and understanding of the southern limits of the State during your knowledge of it?

A. It has been with me.

Q. How has it been in the community in which you lived?

A. I have never heard it discussed at all.

Q. Louisiana claims in this suit that this sailing line to which I called your attention awhile ago is the true dividing line between the two States. Have you any knowledge or information as to that claim?

A. No sir, I have not. There are two channels there. One on the south of Cat island and the other on the north side. You go in here and pass south of St. Joseph's island.

Q. The one passing south of Cat island is the one that Louisiana is seeking to establish as the boundary?

A. Yes sir, that would not give them 18 miles by a long ways.

Q. It would give very little at some places?

A. Yes sir. You see I was on Chandeleur island with a ranch four or five years, in passing backwards and forwards, I generally came through Grand pass and Cat Island pass, south of it.

Q. What was your business on Chandeleur?

A. I had a cattle rance over there.

Q. A cattle ranch?

A. Yes sir.

Q. When was this?

A. I don't remember exactly the year, but it was about 25 years ago.

Q. Is that the ranch that Roderic Seal was interested in?

1702 A. Yes sir, I had a good many of his cattle there.

Q. I believe it was destroyed by a storm?

A. The island was going to pieces when I left there. Going to pieces and the myrtle bushes were all dying, and every blow was blowing them away.

Q. Where were you?

A. I was on a place called Schooner harbor about ten miles south of the north end. That is where I built the house.

Q. Your home was in Mississippi at that time?

A. Well I was single then. Of course I had not deserted my home. I went out to the Chandeleur islands.

Q. Mr. Seal lived in Mississippi?
A. Yes sir.
Q. He lived at Mississippi City?
A. Yes sir.
Q. And he had his cattle on Chandeleur island?
A. Yes sir.
Q. And you had cattle there?
A. Only my interest in the cattle.
Q. Was Roderic Seal who had the cattle there the old lawyer that lived down there?
A. Yes sir.
Q. Represented Mississippi in the house and senate?
A. Yes sir, I think he was up there several times.
Q. And the father of the present sheriff of this county?
A. Yes sir.

Cross-examination.

By Col. ZACHARIE:

Q. Captain, you said that when you were as low down as Brush island you imagined that you were in the State of Mississippi. When you were as low down as the lower end of Brush island?
A. Yes sir.
Q. What did you base this opinion on?
A. On the 18 miles.
Q. What did you base your opinion on?
A. On the 18 miles.
Q. Where did you derive your information from?
A. I am not positive whether I got it from the old revised code or not of Mississippi.
Q. You have never examined the act admitting Louisiana into the Union have you?
A. No sir.
Q. Giving her all of the islands with in three leagues?
A. No sir, I have not. When I was in the oyster business here there was no contention.
Q. You say that you never heard this question discussed?
A. No sir.
Q. Who owns Chandeleur islands?
A. I always thought that it belonged to the Government.
Q. Belonged to the United States Government?
A. The United States.
Q. Do you know whether it was a military reservation or not?
A. No sir, I do not.
Q. How did you regard Chandeleur islands, as being in the State of Mississippi or Louisiana?
A. I regarded them as being in Louisiana.
Q. That portion of the disputed territory lying between Malheureux point and Isle à Pitre. You know that territory do you?

A. I am acquainted around Isle à Pitre as far as Grand pass.

Q. What is that territory generally called by the fishermen and other people along this coast. Is it not called the Louisiana marsh?

A. Not there, no sir. To the south of there I think it was generally termed the Louisiana marsh.

Q. You have never heard it called Louisiana marsh?

A. No sir, not Isle à Pitre.

1703 Q. Going westward from Isle à Pitre. That portion of the disputed territory. Have you ever heard that called Louisiana marshes?

A. I don't think I have ever heard it spoken of.

Q. You have never heard it spoken of?

A. No sir.

Q. You say that you were in the oyster business for some time?

A. Yes sir.

Q. When was this. About?

A. I don't remember the date. Up to about 10 of 11 years ago.

Q. In what portion of the oyster territory were you engaged in fishing?

A. Shipping raw oysters from Mississippi City. I had them brought in there and planted there in the summer and shipped them in the winter.

Q. Did you engage in shipping oysters or in transporting them from one portion of this territory to the other?

A. I bought them from the boats. I don't know where they got them from. They fished on what is called Telegraph reefs and sometimes Creole gap, and sometimes west of that.

Q. You know that only by hearsay?

A. Yes sir that is all.

Q. You had no personal knowledge of it?

A. No sir. I paid so much a barrel for planting.

Q. You are still living at Mississippi City?

A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. You state that you had never heard the marshes spoken of. You did not mean to state that you had never heard of them?

A. I never had heard Isle à Pitre spoken of as the marsh.

Q. You know where the marsh is?

A. Well I have sailed along on what is called the Louisiana marsh. That portion of the marsh south of the mouth of Turkey bayou. I would hear some talk occasionally since this matter has come up between Louisiana and Mississippi and I always had had a chart at my house and I gave them an idea of the boundary line, across south of Brush island. I think a little below the mouth of Turkey bayou. That is my opinion.

Q. I believe you stated awhile ago that you had been as far down as Brush island?
A. Yes sir, and Martin island.
Q. Were you taking oysters?
A. No sir, I was on my way to Chandeleur island.
Q. That is at the time you were looking after the cattle?
A. Yes sir. I passed backwards and forwards in a light draft schooner.
Q. You would come up this way and through Grand pass?
A. Yes, sir, it is not such a heavy sea that way.
Q. How far is it from Mississippi City to the Chandeleur islands?
A. I always called it 32 miles on a direct line.
Q. Were you ever a member of the board of supervisors of your county?
A. No sir.
Q. Did you ever hold any office in your county at any time?
A. I was county surveyor.

Cross-examination.

By Col. ZACHARIE:

Q. I point out to you on this *pro-forma* map, not yet offered in evidence Turkey Bayou, Johnson bayou and Grand pass. I understood you to say in reply to the questions of the counsel for Mississippi that you regarded this territory south of these mouths as being the Louisiana marshes?
1704 A. Yes sir, that is my opinion. I can not — that is based on any thing.
Q. Is it not a fact that the territory to which I have just alluded is generally called amongst the fishermen and amongst the people along the coast as the Louisiana marshes?
A. I think so sir.

Redirect examination.

By Mr. MCCLURG:

Q. You have heard of the Florida parishes in Louisiana too have not you?
A. No sir.
Q. You never heard about that?
A. No sir.

By Mr. MCCLURG: The counsel for the State of Mississippi offers and introduces in evidence on the part of the State map B. to which is attached the following certificate.

"Department of Commerce and Labor.

Coast and Geodetic Survey.

WASHINGTON, June 8th, 1904.

Certificate.

A portion of the composite chart published by the Coast and Geodetic Survey in March 1904, composed in parts of charts Nos. 190, 191, 192; was enlarged by photography on bromide prints. Tracings were then made of the shore lines, by title, scale and miles and lettering from which paper negatives were made. The prints composing this map were then made from these negatives and assembled. This made is therefore a true copy of these four photographs from the above described chart. The small area not shown on said chart in the vicinity of the lettering of the — was added to the copy of said chart from surveys by the United States Land Office before the enlargement was made.

I certify that the above is a true statement.

A. L. BALDWIN,
Computer, Coast and Geodetic Survey.

Said map is further identified by the following.

"The southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by section 2, chapter 23 of the acts of the Congress of the United States creating said State and approved March 1st, 1817, found in vol. 3, p. 348 of the Statutes at Large as follows— Be it further enacted, that the said State shall consist of all the territories included within the following boundaries to wit: Beginning on the River Mississippi at a point where the southern boundary line of the State of Tennessee strikes the same; thence east along said boundary line to the Tennessee river; thence up the same to the mouth of Bear creek; thence by a direct line to the northwest corner of the county of Washington; thence due south to the gulf of Mexico; thence westwardly including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said river to the 31st degree of north latitude; thence west along the said degree of latitude to the Mississippi river; thence up the same to the beginning."

A copy of said map is now furnished to the counsel for the State of Louisiana.

To which offer counsel for Louisiana excepts and objects in
1705 so far as the matters contained in the certificates relate to the fixing of the boundary, on the ground that the endorsements or certificates thereunto attached, that is to said map, are inadmissible as shown because declarations on the part of a subordinate officer

e Coast and Geodetic Survey Department, contained in the cer-
ates thereunto attached. That said map could only be admis-
e if at all on the person preparing said map being introduced as
tness and being subjected to cross examination as to the reasons
grounds upon which the declarations are based " That the south-
boundary lines of the State of Mississippi was certainly and in-
utable fixed etc.," that being a question of law and not a ques-
which can be certified to *ex-parte* by the cartographer. Counsel
he State of Louisiana do not object to the admission of the map
ed to prove *rem ipsam*, that such map was prepared by a sub-
nate officer of the Const and Geodetic Survey at the request of
Mississippi counsel showing the territory in dispute, and also
ing the claims of the State of Mississippi as evidenced by the
ines delineated thereon, but counsel for Louisiana excepts and
cts to the offer in evidence of this map for any other purpose,
t or effect other than as proof of *rem ipsam*.
unsel for Louisiana do not object or except to the admission of
map in evidence on account of non-authentication, but to the
ntary statements of the cartographer contained in the certifi-
annexed thereto, and except as to this voluntary statement the
is admitted to be admissable.
is agreed by counsel for the State of Mississippi and Louisiana
the counsel of Mississippi shall have delineated in a blue line
oundary line as claimed by the State of Louisiana, this being
only *pro forma*, involving no admission on either side.

1706 United States Supreme Court.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

Vol. 4, p. 924 to p. 1144, incl.

1707 (Original.)

In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

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1709 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI. } Original Cause, No. —.

Pursuant to adjournment at the club house of the Biloxi Yacht Club at Biloxi Mississippi, on the 25th, day of June 1904. the commission on the part of the State of Mississippi met on this 8th, day of August 1904, at the court room in the city of Bay St. Louis Mississippi, and proceeded to take testimony on the part of the State of Mississippi in this case.

Present: Hon. William Bullard, commissioner on the part of the State of Mississippi. Frank M. Peyton, official stenographer on the part of said State. Hon. John Dymond Jr., and Col. F. C. Zacharie on the part of the State of Louisiana, associate counsel, and, Hon. Monroe McClurg, of counsel for the State of Mississippi.

GEORGE P. HEWES, a witness introduced on the part of the State of Mississippi, being duly sworn, testified as follows :—

By Gen. MCCLURG :

Q. Mr. Hewes, where do you reside?
A. Gulfport, Mississippi.
Q. How old are you?
A. 36 years old.
Q. Gulfport is in Harrison county?
A. Yes sir.
Q. I understand that you were born and raised in that county?
A. I was sir.
Q. Have you ever held any office in that county?
A. Yes sir.
Q. What?
A. Sheriff of the county from 1896 to 1900.
Q. Do you mean to say from the first Monday of January 1896 to the first Monday of January 1900?
A. Yes sir, and I was representative in the legislature from 1900 to 1904.
Q. Of course you mean Harrison county, Mississippi?
A. Harrison county, Mississippi.

Q. In this suit Mr. Hewes by the State of Louisiana against
1710 the State of Mississippi respecting the water boundary between the two States it is charged substantially that owing to the difference in the laws between the two States regulating the oyster industry and in providing penalties in the different States for a violation of these laws much confusion has resulted. That citizens of the State of Mississippi in violation of the laws of the State of Louisiana have been fishing oysters with dredges in the natural reefs of the waters of Louisiana under claim that they were in the waters of the State of Mississippi and that at the time of filing this bill in October 1902 affairs had reached such a crisis that to avoid an armed conflict between the sheriff and officers of the parish of St. Bernard in the State of Louisiana and the sheriff and officers of the county of Harrison in the State of Mississippi a meeting of the citizens of Louisiana was called by the governor of that State, and certain proceedings were had by that public meeting, which resulted in resolutions calling upon the governor of the State of Mississippi to appoint a commission to act with a like commission appointed by the governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys. I will thank you to state to the commission if during the time that you were sheriff of Harrison county Mississippi from the 1st, Monday of January 1896, to the 1st Monday of January 1900 you had any knowledge or information of any serious contention, or of any crisis, or of any threatened armed con-

flict as mentioned in the bill of complaint from which I have taken my question, and if you have to state it?

A. Well during my incumbency of the office of sheriff I never heard of the slightest contentions existing between the people of Harrison county and those of Louisiana in reference to the fishing of oysters in Louisiana or in Mississippi.

Q. Were you ever called upon in any manner as one of the civil officers of Mississippi to quell any riot or other disorder between the citizens of Harrison county Mississippi, and the citizens of St. Bernard parish Louisiana?

A. I was not. I never heard of any difference at all between the two States with reference to the oyster question.

Q. Can you say whether there was ever any appeal to the law of this State to settle any controversy over the State line at all?

A. None that came to my knowledge sir.

Q. I understand you to say Mr. Howes that you were raised in Harrison county?

A. Yes sir.

Q. If at any other time than the time that you filled the sheriff's office you had any information as to any controversy between the citizens of Louisiana and the citizens of Mississippi over any part of either State respecting the boundary line between the two State in the waters of the Gulf or the Mississippi sound state what it was?

A. I never heard anything, save what I have read in the news papers sir.

Q. Except what?

A. What I have read in the newspapers.

Q. Was that all since the institution of this suit?

A. Well the most of it has been since the institution of this suit.

Q. During the time that you were sheriff or prior to that time, as far back as you may know or recollect state if you can what the southern boundary line of Harrison county is and has been?

A. Well generally I have always understood it to be 18 miles out in the Gulf, from say the southern boundary line.

Q. You mean to say 18 miles from the shore?

A. From the shore yes sir.

Q. Please state whether or not according to your knowledge and information on the subject the authorities of the State of Mississippi, I mean by that of course to say the civil authorities of Harrison county, State of Mississippi, have claimed sovereignty

1711 and jurisdiction on the part of the State of Mississippi exercised through the officials of Harrison county as extended to the 18 mile limit of which you have just spoken?

A. I cannot say sir that I have any definite information as far as that is concerned except that I have stated. It has always been generally understood as far as I knew that Mississippi claimed 18 miles out there as the jurisdiction that the State of Mississippi had.

Q. During the time of your term as sheriff were there made any

rests in the enforcement of the rules and regulations of the oyster dustry by the board of supervisors of your county or by the laws the State of Mississippi?

A. I cannot recollect now a single arrest with reference to the elation of the oyster law during that period.

Q. Can you say how far out to the south of Harrison county the izens of Mississippi have been taking fish and oysters?

A. I can not sir.

Q. During your whole life have you had any information or owledge of any claim on the part of the State of Louisiana up to e beginning of this suit that the deep water channel running from e eastern junction of Pearl river with Lake Borgne, out north of alf Moon island through Mississippi sound, north of Isle à Pitre, uthwest of Cat island, through Cat Island pass and through handeleur sound, north east of Chandeleur island to the gulf of exico was the true water boundary between these States?

A. No sir, I never heard what Louisiana claimed as the boundary tween Louisiana and Mississippi out there.

Q. State please whether you ever heard any discussion prior to e filing of the bill in this case as to where the boundary line be- een the two States was?

A. I have not. That is the first time I ever heard any discussion the question.

Q. Your statement that it extended out 18 miles, you have said I lieve was the general understanding?

A. Yes sir.

Q. In your county?

A. Yes sir.

Q. Were you ever a member of the board of health or of the arantine board of your county?

A. No sir.

Cross-examination.

By Mr. DYMOND:

Q. Mr. Howes, what relation are you to Mr. F. S. Howes, the sec- ary of the Oyster Commission of Mississippi?

A. He is my brother sir.

Q. I understand you were the sheriff of Harrison county from nuary 1896 to January 1900?

A. Yes sir.

Q. Well if a meeting was held in New Orleans on the 19th of nuary 1901, at which the governor of Louisiana was requested to point a commission to confer with a similar commission on the rt of the State of Mississippi, to be appointed by the governor of t State to try to determine the boundaries, was not that after you d ceased to be the sheriff of Harrison county?

A. It was.

Q. Now after you had ceased to be the sheriff of Harrison county

were you as closely identified with the political and public affairs of the county as you had previously been?

A. No sir, not necessarily.

Q. Harrison county includes what cities or coast towns as the principal towns?

A. Biloxi, Mississippi City, Gulfport, Long Beach and Pass Christian.

Q. As I understand it from an oyster point of view Biloxi
1712 is the principal of these coast towns, is not it?

A. Yes sir, by far in that business.

Q. Did you ever in your incumbency as sheriff have occasion to hear any of the oyster fishermen of the State of Mississippi complain in regard to their being excluded from what is called the Louisiana marshes?

A. No sir, not during my incumbency.

Q. Did you have occasion to talk with them at all?

A. I suppose in holding a public office that I did occasionly meet some of them.

Q. If witnesses on the part of the State of Louisiana had testified that by direction of the police jury of the parish of St. Bernard of Louisiana, an expedition had been sent out and the Mississippians had been warned to keep out of what is called the Louisiana marshes you would not be prepared to deny that as a substantial fact would you?

A. I would not of course. I have no knowledge of it at all. I could not deny it of course.

Q. Those things might have happened without your knowing it and without those people reporting that fact to you?

A. Undoubtedly it could have happened.

Q. You know Judge Neville do you not?

A. Yes sir, I do.

Q. About 1898 what position did he occupy? Can you recollect from memory?

A. I think about 1898 Judge Neville was our circuit judge of this district.

Q. Was he at any time prior to that the district attorney of either Hancock or Harrison counties?

A. He was district attorney for a number of years for this district yes sir.

Q. Did that include Harrison and Hancock counties?

A. Yes sir.

Q. Did you have any talk with Judge Neville in regard to his visiting the State of Louisiana and conferring with the district attorney of the parish of St. Bernard in regard to this conflict as to the rights of the oyster fishermen of the respective States?

A. I have no recollection of having had any conversation with him about it.

Q. He never told you any thing about that so far as you know?

A. No sir.

Q. Now in regard to this question of boundary limits Mr. Howes as I understand it you say you have always understood that Mississippi's limits extended 18 miles south of her coast line. Was not that due to the fact that the constitution of Mississippi so described her limits as including all islands within 18 miles and that the act of Congress creating Mississippi also so described it?

A. I presume so. It was simply as far as I know the general accepted idea that Mississippi had jurisdiction 18 miles out there.

Q. You were not personally acquainted with what the act of Congress creating the State of Louisiana contained were you?

A. No sir, I was not.

Q. Now in your capacity as sheriff of the county of Harrison were you aware of the fact that there were lands south of the coast line and within 18 miles of the coast line of Mississippi?

A. That there were lands south?

Q. Yes sir.

A. Yes sir, I considered Ship island—as I understood it Mississippi had the right even there to follow criminals over there and return them. That certain jurisdiction was ceded to the United States in Ship island.

Q. Was Cat island within the limits of Harrison county?

A. Well I could not say. Yes sir, it was considered within the limits of Harrison county. It was assessed in Harrison county and the taxes were collected on it in Harrison county.

Q. How far westward did the Harrison County line extend?

1713 A. Well I can only tell you as far as I know that the dividing line is to Bay St. Louis. The bay of St. Louis divides Harrison and Hancock counties, as I understand it.

Q. If that line was projected south would it not go westward of the eastern end of Isle à Pitre?

A. I could not tell you Mr. Dymond. I don't know.

Q. As a matter of fact was not Isle à Pitre ever assessed on the assessment rolls of the county of Harrison and taxes collected by you while you were the tax collector?

A. I think not sir.

Q. As I understand it no occasion prior to this oyster dispute has arisen so far as your knowledge goes which would call into question the jurisdiction or the rights and powers of the respective States?

A. None at all sir.

Q. Are you aware of the channel that runs from the mouth of Pearl river southeasterly through Mississippi sound, through between Cat island and Isle à Pitre, and northeast of the northern end of Chandeleur islands. Do you know of such a deep water channel?

A. I don't know anything about that.

Q. You are not well acquainted with the waters of the Mississippi sound?

A. No sir, not that part of it.

Q. Now you have been living on the coast for a considerable length of time have you not?

A. Yes sir.

Q. You know this territory that is just south of this shore line here don't you? The marshes?

A. Why I have sailed around it there to some extent. I can not say that I am familiar with it sir.

Q. What were they commonly called Mr. Hewes. Common ordinary parlance. When the mosquitoes came from that section what did you generally call that section of the country?

A. Why I have heard them speak of the mosquitoes from the Louisiana marshes. From the marshes.

By Col. ZACHARIE:

Q. Mr. Hewes this suit was filed in October; the bill in this suit was filed in October 1902. Did you or did you not hear prior to the filing of this bill threats of arrest made by the officers of Louisiana, against Mississippi fishermen fishing in this disputed territory?

A. I can not say Colonel that I did, unless I had read something in the Times-Democrat or Picayune about it. Nothing outside of that.

Q. You never heard it from the fishermen or by common report?

A. No sir, nothing outside of these papers at all.

Q. Over the territory going westward were any of these lands assessed for taxes in the State of Mississippi or any taxes collected from it as a part of Harrison county?

A. I think not sir.

Q. I think you stated in cross examination to Mr. Dymond that you had never read the clause relating to the southern boundary of the Mississippi shore?

A. Of Louisiana?

Q. No of Mississippi. Either under the constitution or act admitting the State of Mississippi into the Union?

A. No sir, I think I have read it. It was in reference to Louisiana that he asked me. It was in reference to the southern boundary of Louisiana. In Mississippi I think that the southern boundary is fixed at 18 miles.

Q. Now that article in your constitution of your State and also in the act admitting the State of Mississippi into the Union says starting at a point near Pascagoula and then going westwardly including all islands within six leagues. You did not understand, and was it the general understanding or not, that all along this
1714 shore that the jurisdiction of Mississippi extends 18 miles out into the Gulf or sound except where there are islands?

A. I think sir the general acceptation of that is by the people that the jurisdiction of the State of Mississippi extends out 18 miles into the sound from the sea shore.

Q. That after a consultation of the constitution of the State of

ssissippi and the act admitting the State of Mississippi into the ion?
A. Yes sir.
Q. Then according to your testimony you simply say that you ard of no threats of arrest on the part of the Louisiana authorities ere during your term of office before the institution of this suit cept what you saw in the New Orleans papers?
A. Yes sir, exactly so.
Q. But you did see that in the New Orleans papers?
A. I won't say that I saw that prior to the institution of this suit, t I remember reading considerable about it about the time of the titution of the suit, or either prior or subsequent to it I won't say ich.

Redirect examination.

By Gen. McCLURG:

Q. Mr. Dymond asked you Mr. Hewes about land taxes in the sputed territory. You states that you never collected any. Do u know whether or not the marine tax or taxes on the crafts or its of different kinds has been collected by your county and by e State for fishing out there?
A. I could not tell you anything about that.
Q. You never had anything to do with that?
A. No sir.
Q. Nothing to do with the collection of these taxes?
A. Nothing at all.
Q. He also asked you about any knowledge you might have as to y armed conflict after you went — of the office. Did I under- nd you to say that you went out of the office on the 1st Monday January 1900?
A. Yes sir.
Q. The meeting to which I call your attention called by the citi- ns of Louisiana and presided over by the governor was on the th day of January 1901, about a year after you went out of office. there had been such a conflict between the citizens of Louisiana d those of Mississippi, as to threaten an armed conflict would you kely have known it?
A. I think I would sir.
Q. Where did you live from 1900 to 1901?
A. Well after the 1st of May 1900 until 1901 I was living in Gulf- rt.
Q. Who was your successor in the office of sheriff?
A. Mr. A. J. Ramsey.
Q. You said some thing about the mosquitoes from the Louisiana arshes. Did you ever hear of the Grand marsh?
A. Yes sir, I have heard of that too.
Q. Where is the Grand marsh?
A. I don't know sir. I could not tell you where that is.

Q. What direction is it from the Mississippi shore?
A. Southwest I think. I see it on the map over there.
Q. In the neighborhood of what you heard called the Louisiana marshes?
A. Yes sir, in the same neighborhood. The map shows it is southwest out here.

A. J. RAMSEY, a witness introduced on behalf of the State of Mississippi, being duly sworn testified as follows to-wit:

By Gen. McCLURG:

Q. What is your name?
1715 A. A. J. Ramsey.
Q. Where do you reside Mr. Ramsey?
A. Mississippi City.
Q. That is in Harrison county I believe?
A. It is in Harrison county, yes sir.
Q. How long have you lived in Harrison county?
A. Well I was born and raised in that county.
Q. How old are you?
A. I am 64 years old.
Q. Have you ever held any offices or official positions in Harrison county and if so I wish you would tell us what they were?
A. Yes sir, I held the office of sheriff. I was elected in 1871 and went out in 1878, and then I was elected to the legislature and served one term in 1878, and within the last four years, 1899 I ran again for the office or sheriff and was elected again. Of course I went out the 1st of this last Jnauary.
Q. What office were you elected to then?
A. I was elected circuit clerk then and I am holding that office now.
Q. You were the sheriff of Harrison county from the 1st Monday in January 1900 until the 1st Monday in January 1904?
A. 1904, yes sir.
Q. In this suit of The State of Louisiana *vs.* The State of Mississippi respecting the water boundary line between these two States, the bill of complaint on the part of the State of Louisiana states substantially, that because of a difference in the laws of the two States regulating the oyster industry and providing penalties for a violation of these laws, much confusion had resulted up to the time of filing this bill in October 1902, October 27th 1902, and that there was a demand in the State of Louisiana to have the boundary line dividing the States marked. That this difference between the citizens of the State of Louisiana and the citizens of the State of Mississippi had reached such a condition or crisis, that to avoid an armed conflict between the sheriff and officers of the parish of St. Bernard, Louisiana, and the sheriff and officers of Harrison county, Mississippi, a public meeting was called by certain citizens of

Louisiana and presided over by her governor, and a commission was appointed to consider the determination of the water boundary line between the two States and to arrange for its easy location and identification, and the governor of Mississippi was requested to appoint a similar commission. Now what I want to direct your attention to is whether during your incumbency from the 1st Monday of January 1900 to the 1st Monday of January, 1904, you knew of any threatened armed conflict, or any crisis impending between the officers of St. Bernard parish Louisiana and the sheriff and officers of Harrison county, Mississippi?

A. No sir, I never. I don't remember to have ever heard of it.

Q. Had you any information of any trouble over the State line before the filing of this bill?

A. None in the world.

Q. Had you arrested anybody for violating the Louisiana laws or the Mississippi laws?

A. No sir.

Q. Did you ever know of any warrants being issued in this State for a violation of those laws?

A. I don't think there were ever any placed in my hands.

Q. Have you any sort of information of any kind whatever of the condition which I have stated to you, and I state it from the bill of complaint filed by Louisiana in this matter?

A. No sir.

Q. It is further stated in this bill of complaint, Mr. Ramsey, that the true boundary line between these two States is what is marked on the map as the sailing line, and what is termed in this bill of complaint the deep water channel, that comes out of the eastern mouth of Pearl river, north of Half Moon island, through the Mississippi sound to Cat Island pass northeast of Isle à Pitre into the gulf of Mexico, northeast of Chandeleur islands. Have you any knowledge or information whatever as to the sailing channel or deep water channel being the true dividing line between these two States?

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A. I never heard of it.

Q. Tell us what you may know of the south boundary of Harrison county and the State of Mississippi?

A. Well it reads that it is 18 miles from the shore. The southern boundary of Mississippi.

Q. You mean both of the county and State?

A. Yes sir.

Q. How long would you say that has been recognized as the southern boundary line of Harrison county and the State of Mississippi?

A. Well I don't remember. I have read it you know.

Q. Sir?

A. I don't remember how long, but I have always heard that you know. I think that the law says so. That is my impression at least.

Q. How long have the people of Harrison county so far as you are able to speak regarded that as the southern boundary line?

A. I suppose ever since it has been a State. I don't know any thing to the contrary.

Q. Were you ever a member of the board of supervisors of Harrison county?

A. No sir.

Q. Of the board of health?

A. No sir.

Q. Can you say whether or not there have been any revenues collected for crafts of different kinds, for taking oysters and fishing in the waters in front of Harrison county?

A. You mean whether the license was issued?

Q. Yes sir?

A. Yes sir, I have a record of that in my office. I think it was about three years. I disremember now. 1901, 1902 and 1903 I think.

Q. How far from the shore did these boats take oysters under that license?

A. Well I could not tell you that. I don't know.

Q. You could not state of your own knowledge?

A. No sir.

Q. Ship island is to the front of Harrison county is it not?

A. Yes sir, to the south.

Q. How far?

A. I think that it is about 12 miles from the shore. I believe it is about that.

Q. Do the officers of Harrison county exercise jurisdiction over Ship island?

A. Well they do I think. When the crime is committed on the shore and the parties go to Ship island, he has a right to follow them up and take them out there.

Q. How is that?

A. When a crime is committed on the shore—it belongs to the Government I think.

Q. Well there is a military reservation on the western end of the island?

A. Yes sir, I know I started out there to make an arrest once, but the fellow had left is the reason I did not get him.

Q. You felt that you had the right to serve the process of the State on this island?

A. Yes sir, the crime was committed on the shore here.

Q. Do you know where Cat island is?

A. Well I see it every day.

Q. Is it to the front of Hancock or Harrison county?

A. No sir, it is in Harrison county.

Q. How far is it from the shore?

A. I don't know the distance. I think it is six or eight miles from Pass Christian. I believe that is the nearest point.

Cross-examination.

By Col. ZACHARIE:

Q. You stated Mr. Ramsey that you never heard any ap-
17 prehension of an armed conflict between the officers of the parish of St. Bernard in Louisiana and the officers of the unty of Harrison. Did you not from time to time hear reports om the fishermen that they were threatened with arrest by the of-ers of St. Bernard parish for fishing in these waters?
A. I never. I don't remember to have heard of it sir.
Q. Do you know that territory that lies west of Isle à Pitre? Do u know where Isle à Pitre is?
A. Isle à Pitre is *sorter* south of Cat island I think.
Q. It is to the south and westward. That territory that lies to e westward there. What is that territory generally known nongst the people along this Mississippi coast as. Would you call at the Louisiana marshes?
A. No sir, I don't know that it is.
Q. Have you not frequently heard it called that?
A. I have always heard it called Isle à Pitre.
Q. I mean the territory that is west of Isle à Pitre?
A. I have heard talk of the Louisiana marshes but my impres-on was that it was out west of there.
Q. I mean west of Isle à Pitre?
A. Maybe so. I don't know.
Q. Whenever you have a wind from the southwest don't you have squitoes with it from the marshes?
A. We have plenty of mosquitoes whenever we have a southwest nd. Not a south wind though.
Q. Do you know as sheriff, whether any of this land to the west Isle à Pitre has ever been assessed on your assessment rolls for xes?
A. I don't think it has. Cat island has.
Q. That is as far westward as lands have been assessed as belong-g to Mississippi and the taxes collected?
A. I think so. That is belonging to Harrison county.
Q. Have you ever read the constitution of Mississippi in regard its boundaries or the act admitting the State?
A. Yes sir, I have read it.
Q. Do not you remember that the southern boundary is described proceeding from a point near Pascagoula westwardly to the mouth East Pearl river including all the islands within six leagues of e shore. Now do you understand that and is it generally under-od all along the Mississippi coast that the boundary extends six gues out, or is that only the case when the islands are within six gues?
A. The waters go with the islands I believe.
Q. Suppose there are no islands at the particular point on the st. Do you contend then that it extends six leagues?

A. The location of the islands you say within six leagues?
Q. I am speaking of the open water where there are no islands?
A. I don't remember about that. I have read that I know.
Q. You have never heard during your incumbency in the sheriff's office of any trouble being threatened between the Louisiana officers and the Mississippi fishermen fishing in this disputed territory?
A. I don't remember any. Well here since they have gotton up this law I might have heard something once.
Q. How long ago did you hear this?
A. It has been within the last year I think. Some trouble.
Q. Well was it not more than a year ago, because in so far as the matter exists now there is an agreement between the two States. But prior to this agreement did you not hear of trouble brewing between them?
A. I don't remember anything. I know I never had any papers.

By Gen. McCLURG:

Q. What agreement have you reference to?

By Col. ZACHARIE:

A. I said the agreement between the oyster commissions of the two States.

By Mr. McCLURG: It is denied by Mississippi's counsel
1718 that that State is bound by that agreement. It never authorized it and never ratified it.

Redirect examination.

By Gen. McCLURG:

Q. Mr. Ramsey, I have here a certified copy made by A. J. Ramsey, clerk of the circuit court of Harrison county, dated at Gulfport on the 23rd day of June, 1904, which purports to be a copy of the record of oyster boat license, account of amounts received, F. S. Hewes, clerk of the circuit court in account with the oyster fund Harrison county Mississippi, running out sums from April 12th, 1892, to April 6th 1894. Are you the A. J. Ramsey that made this certificate?
A. Yes sir.
Q. Who was F. S. Hewes?
A. He was the circuit clerk.
Q. Before you. You succeeded him?
A. Yes sir. I succeeded him.
Q. This was taken from the official records of the office of the circuit clerks?
A. Yes sir, kept by him.
Q. And under the law at that time he was *ex-officio* collector of these taxes?
A. Yes sir.

Counsel for the State of Mississippi here offers in evidence and introduces as Mississippi Document No. 41, on the part of the State of Mississippi a certified copy of the record of oyster boat licenses for Harrison county from September 12th, 1892 to April 6th, 1894, and now hands the counsel for the State of Louisiana a true copy of said document.

The commission here adjourned until 10 o'clock tomorrow morning.

BAY ST. LOUIS, MISSISSIPPI, August 9th, 1904.

The commission met this morning at ten o'clock pursuant to adjournment on yesterday evening.

There were present Hon. William D. Bullard, commissioner on the part of the State of Mississippi. Hon. Monroe McClurg, counsel on the part of the State of Mississippi, and Col. F. C. Zacharie, and Mr. John Dymond, associate counsel on the part of the State of Louisiana. F. M. Peyton, stenographer.

F. S. HEWES, a witness introduced on the part of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. Mr. Howes, on yesterday Mr. A. J. Ramsey, clerk of the circuit court of Harrison county filed as Document No. 41 with this commission a certified copy of the official record of oyster boat licenses issued by you as circuit clerk and *ex-officio* collector of these licenses covering from 1892 to 1894. I wish you would please look
1719 at this document which I have mentioned and say whether it is a correct transcript from the official record made by you?

A. Well sir, I keep such a transcript as this.

Q. That is a correct transcript is it?

A. I turned over the books to Mr. Ramsey who was my successor. I suppose that is a correct copy of it. I can not testify to that.

Q. Where do you live, Mr. Hewes?

A. I live in Gulfport, Harrison county.

Q. How old are you?

A. Well sir I am in my 75th year.

Q. How long have you lived in Harrison county?

A. Off and on I suppose since I was ten years old. My father had a place over there when I was ten years old. I have been absent of course at times.

Q. Do you hold any official position in the county now?

A. Yes sir, I am the chancery clerk.

Q. Have you held any other office in the county?

A. I have held the office of circuit clerk also.

Q. How long have you been the chancery clerk?

A. Well sir I am in my 29th year. I was circuit and chancery clerk for 28 years.

Q. You are now on the new term of the chancery clerk?

—. ——.

Q. The offices have been separated at the last election?

A. Yes sir, they were separated at the last election.

Q. Are you the official custodian of the records of the chancery court of Harrison county?

A. Yes sir.

Q. And I believe as such you are the *ex-officio* clerk of the board of supervisors of that county?

A. Yes sir.

Q. The chancery clerk is *ex-officio* clerk of the board of supervisors?

A. Yes sir.

Counsel for Mississippi here introduced and offers in evidence on the part of the State of Mississippi a certified copy of the ordinances enacted by the board of supervisors of Jackson county at the August term, 1893, against the dredging of oysters in the waters of said county, a true copy being now handed to counsel for Louisiana, and the one filed being Mississippi Document No. 42.

And also a certified copy of the ordinances passed by the board of supervisors of Jackson county with reference to taking fish and oysters in public oyster reefs of the county, enacted by the board of supervisors of that county on the 7th day of November, 1892, a true copy of which is also handed to the counsel for the State of Louisiana, said document being marked Mississippi Document No. 43, and which is introduced and filed as evidence on the part of the State of Mississippi in this case.

And also a certified copy of the ordinance passed by the board of supervisors of Jackson county on the 2nd day of June, 1885, marked Document No. 44, and which is now offered and introduced in evidence on the part of the State of Mississippi, a true copy being handed to the counsel for the State of Louisiana.

And also as Mississippi Document No. 45, being a certified copy from the minutes of the board of supervisors of Jackson county, dated September special term 1884, an ordinance respecting a petition by the citizens of said county, asking for the protection and preservation of oysters, fish, shrimp, game, etc., which is now here offered and introduced in evidence, a true copy of same being now handed to counsel for the State of Louisiana.

1720 And also Mississippi Document No. 46 being the Rules and regulations of the board of health of Harrison county, Mississippi for the year 1877, a certified copy being now offered and filed in evidence, a true copy of which is now handed to the counsel for the State of Louisiana.

And also Mississippi Document No. 47, being a certified copy of the quarantine physicians' report of Harrison county Mississippi, dated July 22nd, 1878, and which is now offered and introduced in evidence and filed as a part of the testimony on behalf of the State

of Mississippi, a true copy of the same being now handed to the counsel for the State of Louisiana.

To which said offer by the State of Mississippi of Documents No. 40, 41, 42, 43, 44, 45, 46 and 47, counsel for the State of Louisiana excepts and for cause of exception state that the said documents are *res-inter-alios-acta*, and have no reference whatever to the area in dispute in this case, and are therefore irrelevant and inadmissible in evidence.

Q. Mr. Hewes you have stated that you are the chancery clerk and *ex-officio* clerk of the board of supervisors?

A. Yes sir.

Q. Of Harrison county?

A. Yes sir.

Q. I will ask you to examine these certificates made by you or purporting to be made by you, and see if you are the F. S. Hewes that certified to these copies?

A. Yes sir.

Q. Documents 46 and 47?

A. Yes sir, those are mine I know.

Q. I believe you have testified about the record of the licenses?

A. Yes sir.

Q. Now state, Mr. Hewes if you can where the boats which you licenses from 1892 to 1894, as shown by Mississippi Document No. 41, exercised the privilege that you granted them?

A. That is impossible for me to say where they went to. I issued it for Harrison county. It is impossible for me to say where these boats went. I issued the license for Harrison county, but where they went I could not tell you.

Q. How far does Harrison county extend from the shore line?

Q. As I understand it by the constitution and laws it extends out 18 miles from the land.

Q. Did you so understand it at the time that you issued those licenses?

A. I did not understand anything else of course. Of course I followed the laws of the State. I had no personal knowledge.

Q. When was the first time if you can recollect that you ever heard any dispute of the State line between Louisiana and Mississippi?

A. Well I could not call the years. It is not many years back though.

Q. Before or since the filing of the bill in this case?

A. Oh, I expect I heard of it before the filing of this bill.

Q. That bill was filed on the 27th of October 1902?

A. Well sir I suppose that I heard that there was such a contest before the filing of the bill. I suppose that I heard that the contest would be made before the filing of the bill.

Q. Would you undertake to say how long before?

A. No sir, I can not recollect that General.

Q. Can you say whether it was shortly before, or some time before this suit was brought?

A. Well it was some time before. I have no idea of the time. I merely heard the talk of it of course.

Q. Well just as near as you can approximate it about how long ago would you say you first heard about this controversy?

1721 A. It is impossible for me to fix any date, because I don't recollect any thing about it. It is impossible for me to fix the date. I heard it rumored and talked about, but when I don't recollect. Not many years ago though.

Q. Well I understand you to say that you have lived in Harrison county ever since you were about ten years old?

A. Off and on, I went away at times, during the war and to Texas and California and so on. This was my home here and my father and family lived here.

Q. You have stated what has been considered the boundary line of the county. Now do you understand that that has been the boundary line of the State also?

A. I understand so from the constitution of the State and laws of the State.

Cross-examination.

By Mr. DYMOND:

Q. Mr. Hewes, when you spoke of rumors in regard to this contest concerning the boundary, could you recollect from what source those rumors first came to you. Was it not from the oyster fishermen?

A. No sir, I think it was merely from publications that I saw in the papers.

Q. In the papers?

A. Yes sir.

Q. Were you brought in close contact with the fishermen in 1898?

A. No sir, except in officially issuing these licenses, I was not in contact with them at all.

Q. Did you hear any thing about the police jury of the parish of St. Bernard, which corresponds with your board of supervisors, had sent out an expedition to prevent the Mississipians from fishing in the parish of St. Bernard?

A. I read it in the papers of such an expedition.

Q. At what time?

A. I don't recollect the date sir. I am a poor hand on dates.

Q. If you can recollect some such expedition, would not some comment be made in the local papers when these people returned from that section?

A. Well *there* was probably so, but I don't recollect any thing about it.

Q. Your memory is not clear on these things?

A. No sir, I never paid much attention to these things. I would read them and that is all. I had no interest in it personally.

By Col. ZACHARIE:

Q. Mr. Howes, you say that you always understood under the laws
l constitution of the State of Mississippi that the boundary line
ended 18 miles south of the shore, the southern shore of Missis-
pi?

A. I understood it begun at the east end of the State and run
tward, including all of the islands within 18 miles of the shore,
ix leagues.

Q. This is the language on that point taken from the cross bill
hence due south to the gulf of Mexico, thence westwardly in-
ding all of the islands within six leagues from the shore," and
you interpret it as the whole line extended out six leagues from
shore, or did you interpret it only as including such islands as
within six leagues?

A. I always interpreted it as extending due south six leagues all
ng the shore.

Q. Did you understand it to include the portion of the shore
rked upon the maps as the parish of St. Bernard in the State of
isiana?

A. I really don't know any thing about that map at all. I never
examined it.

2 Q. You know the peninsula or archipelago that juts out
some nine or ten miles south of Mississippi there don't you?

A. You mean including Isle à Pitre?

Q. Yes sir?

A. Yes sir, I have been out there.

Q. What has that territory been commonly known as?

A. Well sir, it has been known as the Louisiana marsh, and I
e heard it called the Grand marsh.

Q. Did you ever hear any contention previous to this suit that
portion of this particular territory was embraced within the
te of Mississippi?

A. I never heard any discussion about it previous to this suit at
The lines were not known definitely you know.

Q. Now in regard to the islands. Were you aware of the fact
t under the act admitting the State of Louisiana into the Union,
State was given all islands within three leagues of her coast?

A. Colonel, I don't recollect that law at all. I don't think that I
r examined it.

Q. Now of these licenses about which you have testified. Those
nses were only issued from the home port of the vessel were not
y? Where they hailed from?

A. No sir, there were some vessels I think that hailed from Mo-
that have license to fish there.

Q. Then it was to take fish out of the waters of Harrison county
ou understood it?

A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. Mr. Dymond, asked you about this expedition sent out from St. Bernard parish. You said that you had some recollection of hearing of it?

A. I read about it.

Q. Well can you say whether that was an expedition that was sent out after the institution of this suit or before it?

A. I could not tell you General. I don't recollect any thing about it.

JOSEPH F. CAZENEUVE, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. McCLURG:

Q. Where do you live?

A. Bay St. Louis.

Q. How long have you lived here?

A. 48 years.

Q. How old are you?

A. 48.

Q. Have you ever held any office in the State of Mississippi in this county?

A. Yes sir.

Q. Hancock county. What place?

A. I was deputy sheriff, and sheriff and tax collector.

Q. When were you deputy sheriff first?

A. I began on January 22nd, 1880.

Q. How long did you serve as deputy?

A. I served nearly four years.

Q. When were you elected sheriff?

A. In the fall of 1883 at the election.

Q. And you went into office?

1723 A. In 1884.

Q. The first of January 1884?

A. Yes sir.

Q. And you served how long?

A. I held continuously until the late change.—I went out in 1896, January 1st, and then I was out four years, and went in four years, and come out last January again.

Q. You went out January 1st?

A. January 1st, 1896, and went back on the 1st Monday of January 1900.

Q. And you served until the first Monday of January 1904?

A. Yes sir.

Q. So then you were deputy sheriff when?

A. From January 22nd, 1880. I was in the sheriff's office then until the 1st of January 1904, with the exception of four years.

Q. And in the interim you lived here in Bay St. Louis?

A. Yes sir, here in Bay St. Louis.

Q. It is alleged in this bill of complaint filed by Louisiana against the State of Mississippi—filed on October 27th, 1902, by the State of Louisiana against the State of Mississippi, that because of differences in the laws of Louisiana and Mississippi that there had been contentions between the citizens of the two States and that at the time of the filing of this bill, as stated in the 17th paragraph of the bill, that affairs had reached such a crisis that in order to avoid an armed conflict between the sheriff and officers of the parish of St. Bernard in the State of Louisiana, and the sheriff and officers of the county of Harrison in the State of Mississippi, a meeting of the citizens of the State of Louisiana was called by the governor of that State, when certain resolutions were passed at that meeting by the Louisiana citizens, to consider and determine of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys, and they also appointed five commissioners and requested Governor Longino of Mississippi to appoint a like number to carry out the objects of that resolution they had passed. I call your attention to that with a view of asking you if at any time before the 27th of October 1901 you know of any threatened armed conflict between the sheriff and officers of the parish of St. Bernard and the sheriff and officers of Harrison county, Mississippi?

A. I never heard of it sir.

Q. Was there any trouble duing the time you were sheriff of Hancock county?

A. Never sir.

Q. You never heard of any thing to that effect?

A. No sir, I never heard it, and I never was requested to see about any thing.

Q. Can you say whether there has ever been any disturbance by the officers of Hancock county or any of the officers of St. Bernard parish while you were in there, or any other parish?

A. None during my term of office. From 1880 to 1904, with the exception of four years. That four years I can not answer for, but the rest I can.

Q. Do you know whether there was any dispute before the bringing of this suit as to the boundary line or not?

A. No sir, I saw the bringing of the suit is all. I never heard of any before.

Q. During your incumbency of the office of sheriff and as deputy sheriff how far from the shore here to the southward did the officers of this county and the State exercise jurisdiction or State sovereignty?

A. Well I never had to go very far. I had gone out on the sound here, but I don't think I ever went more than a half a mile or a mile probably. I have gone out there and taken men off of vessels but never any further than that.

Q. Have you any information or knowledge as to what w
garded as the limit of the county and State in the water?

1724 Counsel for the State of Louisiana objects as the w
has already disqualified himself to answer the question
he therefore excepts to the question.

A. Well I did not know where the line was only I heard w
it was. Of my own knowledge I did not know. I never had
occasion to go to the limit.

Q. You never heard the State line discussed before the brin
of this suit?

A. No sir.

Cross-examination.

By Mr. DYMOND:

Q. Were you sheriff in 1898?

A. No sir.

Q. Were you deputy at that time?

A. No sir, I was out altogether. I left on the 1st Monday of J
uary 1896, and did not come back until the 1st Monday in Janu
1900.

Q. Therefore in 1897, 1898, and 1899 you were not in the office
sheriff either as sheriff or deputy?

A. No sir, Mr. Ladnier was the sheriff then.

Q. Were you acquainted with Judge Neville over here?

A. Judge James H. Neville, yes sir.

Q. You knew him to be the district attorney of this district?

A. He was district attorney while I was sheriff.

Q. Was he district attorney in 1898?

A. I don't remember sir whether he was or not. I don't know
I think he was when I came out of office. I am not sure. I think
he served as long as I was in office the first time and then he re
signed. I don't think I served in my first term under Neville.
am not sure. Yes sir, I served under him in my first term.

Q. In 1896?

A. Neville was then district attorney. I went out on the 1st
Monday in January 1896. I don't remember whether he was then
or not, but my recollection is I think as long as I was in the office
there the first term he was there. That is including the year 1895.

Q. He had been district attorney previously had not he?

A. Yes sir.

Q. For how long a time?

A. I don't remember that, but it must have been; I don't know,
he might have been district attorney two terms. Eight years I
think.

Q. You think that he was district attorney eight years?

A. That is my impression sir.

Q. He was known among the people as the district attorney?

A. Oh yes sir.

Q. He had that reputation?

A. Yes sir.

Q. Did you know or ever hear that he had made a visit to the parish of St. Bernard to see the district attorney of the parish of St. Bernard of the State of Louisiana in regard to the stopping by the officers of St. Bernard parish of the fishermen, Mississippi fishermen, from fishing in the parish of St. Bernard?

A. No sir, I never heard of that.

Q. He never reported that fact to you?

A. No sir.

Q. You would not be prepared to dispute the fact that he had gone there?

A. I don't know any thing about that.

Q. And had conferred with the district attorney?

A. No sir, I could not say any thing about that. I know that he never told me any thing about it.

Q. If any thing of that sort occurred in 1898 you were not 1725 then the sheriff of this county?

A. No sir.

By Col. ZACHARIE:

Q. You have stated that you never heard of any dispute about this boundary line until after the institution of this suit. Had you not heard of the appointment of the two boundary commissions. One on the part of the State of Louisiana and one on the part of the State of Mississippi to try and adjust this dispute?

A. I heard of that. What I mean is this was all about the same thing. I heard about that yes sir.

Q. Well according to the record the meeting of these two boundary commissions took place on January 19th 1901. Now this bill in equity was filed in this suit in October 1902?

A. Yes sir.

Q. Now these two boundary commissions met about twenty months before the institution of this suit?

A. Yes sir.

Q. Then you are mistaken in saying that you never heard of this dispute?

A. What I mean is I did not hear anything of it until this commission was on; until it was appointed. I heard that of course like every other citizen did, and then when I answered Mr. McClurg I mean that. Of course I heard that like everybody else did. That is the first I heard.

Q. You never knew of any threats on the part of the officers of St. Bernard parish of the State of Louisiana to arrest Mississippi fishermen fishing in these waters?

A. No sir, I did not. If they did I never heard of it. Of course I don't say that was not done you know, but if it was I did not hear of it.

Q. What is the territory extending westwardly from Isle à Pitre commonly called by the people along this Mississippi shore. Extending westwardly from Isle à Pitre. Was not that called the Louisiana marshes generally?

A. Well I don't know where the line is. I don't know that I have ever been to Isle à Pitre.

Q. I am now speaking of the peninsular or archipelago that extends from Isle à Pitre, that is the island just west of Cat island, and then extending westwardly—is that territory not known as the Louisiana marshes?

A. I don't know sir. I could not say that. I have heard a good deal said about Louisiana marshes, but where it starts I don't know. I don't know whether it is from Isle à Pitre or where. I have heard a good deal said about Louisiana marshes but where it starts I could not tell you.

Q. Was it not commonly said by the fishermen on this coast that they would get their oysters from the Louisiana marshes?

A. Well not all, no sir. Because they get lots of them out there.

Q. Did you not hear them say that?

A. I have heard some of them say they have gone to the Louisiana marshes yes sir. I think I have heard that.

By Mr. DYMOND:

Q. Captain, is it not, as a matter of fact, since the creation of the Oyster Commission of Mississippi in January 1902; that that was the first time that the State of Mississippi gave any official recognition or control of the oyster industry to a body specially designed and intended to look after the oyster industry?

A. Well I never heard of any. I don't remember the year now, but I don't think I remember of any provision before certain acts were passed.

Q. In other words in Mississippi it was very much like it was in Louisiana. Prior to the creation of the oyster commission your counties used to look after that like our parishes looked after it, and in the multitude of other duties the counties had the oyster
1726 industry did not get that supervision it needed, and that it now gets.

A. Oh no sir, it was different than; some times there was a measure. That is they adopted measures by which the oysters were to be sold and things of that kind prior to that.

Q. And there was no supervision of the industry. There were no steps taken to protect the industry or body authorized to enforce it. patrol boats, etc.,?

A. No sir, nothing that I know of.

Q. As a matter of fact there has been more consideration given to the oyster industry by the State of Mississippi since your oyster commission was created than there has been all of the years before, has there not?

A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. And more consideration given it since Louisiana has been after it than there was before. More consideration given it since Louisiana has been trying to get it than there has been before. Is that not true?

A. I think so.

Q. Don't you know it is a fact that we have had oyster laws to protect the oysters and fish and so on in this State for at least fifty years?

A. I don't know how long. I know that there was a law here that required a stamp measure from the sheriff and so on.

Q. Those matters of law will show on the books?

A. Yes sir, the books show it. I know that we had one factory here and I had to go down there to see about it several times.

Recross-examination.

By Mr. DYMOND:

Q. Was the oyster law ever enforced before as it is now?

A. No, but it should have been I think. I think we would be better off if it had been. There was a time when every body fished just where they pleased you know.

T. J. LADNER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. McCLURG:

Q. Where do you reside?

A. Bay St. Louis.

Q. For how long?

A. Well I have been here all of my life.

Q. How old are you Captain?

A. 48.

Q. Did you ever hold any official position in Hancock county, Mississippi?

A. Yes sir, I was sheriff of this county.

Q. Any other position?

A. Well I was an alderman of the city.

Q. When were you sheriff?

A. I was sheriff from 1896 to 1900.

Q. You mean from the 1st Monday of January 1896 to the 1st Monday of January 1900?

1727 A. Yes sir.

Q. During the time of your incumbency of the office of sheriff have you had any information of a threatened armed conflict between the officers of St. Bernard parish Louisiana, and those of

Harrison county Mississippi, or Hancock county or any other officers of Mississippi and Louisiana, and if so, I wish you would please tell us about it?

A. No sir, I have had none.

Q. You have had no such information?

A. No sir.

Q. Well have you had any information to that effect at any other time during your whole life prior to January 1901?

A. No sir.

Q. Or prior to October 27th, 1902, and if so I wish you would please state it?

A. No sir, I have not.

Q. Before the action of the people of Louisiana about January 1901 did you ever hear any dispute about the line between these two States in the waters of the Gulf?

A. Not before that time, no sir.

Cross-examination.

By Mr. DYMOND:

Q. Mr. Ladner you knew Judge Neville did you not?

A. Yes sir.

Q. Was he district attorney when you were sheriff from 1896 to 1900?

A. I think he was when I first came in if I am not mistaken. He resigned afterwards.

Q. He had been district attorney for a number of years previous to that?

A. Yes sir.

Q. What position did he hold if any after that?

A. He was circuit judge.

Q. Circuit judge of what circuit. Of what counties?

A. Harrison, Hancock and Jackson, and the other counties in that district.

Q. That is he was circuit judge of the counties that compose this district. Of the coast counties?

A. Yes sir, and some in the interior too, such as Pearl River county was included in it.

Q. Now did you ever have any occasion to talk to any of the oyster fishermen in 1898 in regard to where they were fishing?

A. No sir, I did not.

Q. Therefore you never heard any of them talk about the fact that they had been excluded or threatened to be excluded from the Louisiana marshes?

A. No sir, not at that time. Not while I was sheriff.

Q. Did you know that Mr. Neville had gone to the State of Louisiana to confer with the district attorney of the parish of St. Bernard with regard to this subject matter?

A. I did not no sir.

Q. As a matter of fact you did not know anything of these facts as they were transpiring at that time did you?

A. No sir, I did not.

Q. Did you know that the State of Louisiana had through the police jury of the parish of St. Bernard created an expedition to go out and expel these unlicensed fishermen from the Louisiana marshes in 1898?

A. No sir, I did not.

Redirect examination.

By Gen. McCLURG:

Q. Captain, it is true, is it not that Judge Neville resigned the office of the district attorney in the spring of 1896, soon after you went into the office of sheriff?

1728 A. Somewhere about that yes sir.

Q. And that Mr. Walter A. White succeeded his as district attorney?

A. He did when he resigned. I don't remember exactly when he resigned.

Q. And then Mr. Neville was a private citizen practicing law at Biloxi until he was appointed circuit judge?

A. Yes sir.

Q. And he was appointed circuit judge in 1902 was not he?

A. I don't remember exactly when it was that he was appointed.

Q. It was about 1902?

A. Yes sir, about that time.

Q. About the latter part of 1901 or 1902?

A. Yes sir, about.

Q. And he had no authority if those dates that we speak of are true, to act as district attorney in 1898?

A. No sir, not if he was not district attorney.

Q. He was not district attorney as a matter of fact in 1898?

A. No sir, I don't think he was.

Q. Nor circuit judge either?

A. Well I don't remember when he was appointed circuit judge.

Q. You don't remember that?

A. No sir.

Q. It was some time about the latter part of 1901 or 1902 that he was appointed?

A. About that time but I could not say positively.

Q. You know nothing about any conversation between him and Mr. Estopinal?

A. Who is he?

Q. He was the district attorney in St. Bernard parish in 1898?

A. No sir, I do not.

Q. And you know nothing of the mass meetings held by the citizens of Louisiana in January 1901? and in Mr. John Dymond, Jr.'s

office in New Orleans where they passed a law and regulations about this matter?

A. Well it strikes me that I did read some thing about it, but I did not take any interest in it.

Q. You have no personal knowledge of it?

A. No personal knowledge, no sir.

Q. And the causes leading after that occasion to the effect that there was a threatened armed conflict between the civil officers of Louisiana and Mississippi. You know nothing of that?

A. No sir.

Q. Judge Neville that you spoke of is now the counsel for the G. & S. I. R. R. Co., and lived at Biloxi?

A. He is counsel for the Gulf and Ship Island Railroad Company and now lives at Gulfport.

Q. He has testified in this case and I wanted to identify him as the same man?

A. Yes sir, he lives at Gulfport.

J. A. BREATH, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Mr. McCLURG:

Q. What is your age?

A. 58.

Q. Where do you reside?

A. Bay St. Louis.

Q. How long have you lived here?

A. Since November 1870.

Q. Have you ever held any official positions in this county?

A. I have been a magistrate since June 1894. Justice of the peace.

Q. Of what district?

A. The fifth district.

Q. Does that include Bay St. Louis?

A. Yes sir, it includes Bay St. Louis.

Q. And Hancock county of course?

A. Yes sir, Hancock county Mississippi.

1729 Q. This is a controversy Mr. Breath between the State of Louisiana and the State of Mississippi, and as a jurisdictional fact it is alleged by Louisiana in her complaint filed on the 27th of October, 1902, that there was a contention between the citizens of the State of Louisiana and the citizens of the State of Mississippi, as to the water boundary line between these two States in the Gulf and Mississippi sound, and that matters had reached such a crisis that there was a threatened armed conflict between the officers of St. Bernard parish Louisiana and the officers of Harrison county Mississippi. You come from near the line of Harrison county?

A. Yes sir.

Q. And nearer to Louisiana than Harrison county. If you have any knowledge or information of any disturbance of any kind between the officers of the two States respecting the boundary between them in the waters of the Gulf I would be glad to have you tell the commission what you know about it.

A. Why, Mr. McClurg, I never heard of any rupture between the officers whatever. I never heard the matter disputed and never knew any thing about it until this discussion came up in the newspapers.

Q. About when did you first notice it in the newspaper?

A. Well I don't recollect now exactly when I first read of the meeting but it is not a great many months ago. It was shortly before they began taking the testimony.

Q. Well during your residence here whether as an officer or as a citizen, have you ever heard of any dispute of any kind. Any controversy of any kind?

A. None whatever sir.

Q. None between the citizens of this State and the State of Louisiana?

A. Never sir, until I saw it published in the newspaper.

Q. Well during your residence here as an official and as a citizen what have you to say as to the jurisdiction and sovereignty of Mississippi south of your shore?

A. Well as I have always understood it it is six leagues. It is about 18 miles from the shore and the south line begins at Pearl river.

Q. The west line you mean?

A. Yes sir, it runs southwardly.

Q. You mean 18 miles out of the mouth of Pearl river southwardly?

A. 18 miles from the shore. Now I would have to refresh my memory by looking at the statute. It is laid down in the statute and I have always considered that is the south boundary line between the two States.

Q. I don't mean the place where it is exactly?

A. Well 18 miles from the shore is what I have always understood it to be.

Q. Well did you ever at any time understand that a certain sailing line out of the mouth of Pearl river to the north of Half Moon island, which I believe is some times called Grand island, and to the south west of Cat island, and to the north east of Chandeleur. Have you at any time heard or know of that being regarded as the true dividing line between Louisiana and Mississippi?

A. Well Mr. McClurg, I don't recollect having given the matter any attention. As I told you, I in fact knew nothing about it until I read it in the newspaper.

Q. You never heard it discussed?

A. I never heard it discussed.

Cross-examination.

By Mr. DYMOND:

Q. Are you still a magistrate?

A. Yes sir, I am.

Q. Well now you stated a moment ago that the first time that you heard of this matter was since the testimony was taken in this case?

A. Since shortly before. I think the stenographer's notes will show that.

1730 Q. What do you call shortly before?

A. Well that is very indefinite. It may have been several weeks or several months. I could not tell you exactly Mr. Dymond.

Q. Well now Judge we started to take testimony in this case in April 1904. The record shows that as early as January 1901, three years and several months ago the governor of the State of Mississippi was called on by the governor of the State of Louisiana to appoint commissioners to see if it was possible to adjust this dispute in regard to the boundary between the two States. Now is it not true that you knew of that dispute and of the appointment of the commissioners at the time they were appointed?

A. I don't recollect any thing about it. I might have glanced over it in the newspapers, just the head lines and not being interested did not read it carefully perhaps.

Q. As I understand it although the governor of the State of Mississippi appointed commissioners on the part of the State of Mississippi on the 9th, of February 1901, you then did not give the matter your special attention at that time?

A. Not at all.

Q. Now Mr. Magistrate, does your office correspond to that of our justices of the peace?

A. It is a justice of the peace yes sir.

Q. As the magistrate in this section you necessarily were more or less acquainted with the laws of the State. On that subject as I understand it you gathered your information as to the territory of the State of Mississippi more from the constitution of the State of Mississippi and perhaps any statutes thereon than from any other source. Is that correct?

A. Yes sir.

Q. Now the act creating the State of Mississippi uses these words in describing the boundary westwardly from the eastern division between Alabama and Mississippi; "Thence westwardly including all islands within six leagues of the shore to the most southerly junction of Pearl river with Lake Borgne." The law doing that. That is what you refer to in your idea that the extent of the territory south was 18 miles. Is that correct?

A. I presume so sir. If the code was here I could refer to that particular section.

Q. Suppose you refer to the constitution. That is in the first part of your code?

A. Yes sir, the constitution is in the first part of the code. I now that the code gives the presumable boundary lines. The Code f 1892.

Q. Now it reads this way. Did I understand you to refer to the oundary division of the county or of the State?

A. Well I was looking more particularly at that time as to the oundary line of the county, because at that time before the Bowers w was passed there was a law against dredging, and I wanted to et the lines as near as possible because I did not wish to have an ffidavit made before me for a person violating the law where perps it was out of my jurisdiction.

Q. Did you refer to the east or west lines or to your south lines?

A. Well the line between Harrison and Hancock and also the ne between Hancock county and the State of Louisiana.

Q. Well is it not a fact Judge, that in that investigation you did ot take up the southern boundary line?

A. Well the north and south line. That would be between Harson and Hancock and the east and west boundary line would —let me see——

Q. The line running east and west would be between Louisiana nd Mississippi?

A. We run the line between Harrison and Hancock counties. I now I have been in the custom house several times and tried to ace it as near as I could from the statute, because I did not wish entertain any affidavits for dredging that were out of my jurisdiction.

31 Q. I understood you to say a moment ago that you consulted the statutes and when you say the statutes you mean e Mississippi statutes?

A. Yes sir, the Mississippi statutes.

Q. You consulted the statutes for the purpose of determining the rth and south line dividing Louisiana on the westward from Missippi?

A. Yes sir.

Q. Which starts at Pearl river?

A. Yes sir.

Q. Then you also consulted the statute to determine the line that vided Harrison from Hancock county?

A. Yes sir.

Q. Is it not a fact that you never looked into what was the east d west line dividing Louisiana from Mississippi on the southrd?

A. You mean out here. (The witness shows as indicated on the ap.)

Q. Yes sir. In order to change the question a little. Are you fond sailing Judge?

A. I have not been over these waters for a good many years.

Q. Then you have not had occasion to sail very much in Mississpi sound have you?

A. No sir, it is over thirty years since I sailed over these waters.

Q. Then you really have not had occasion to measure the distance from the Mississippi coast running south of the shore line. To the north shore line of the Louisiana marshes?

A. No sir, of course I never entertained the idea of measuring it.

Q. Therefore you don't know definitely whether they were out of the 18 miles or not?

A. I could not tell you definitely of course.

Q. Well that being the case you simply presume from the statute do you that you had 18 miles jurisdiction south from the shore did you?

A. Yes sir.

Q. Without knowing where the 18 miles was there?

A. I thought it went south 18 miles.

Q. Well now in looking at the statute you will notice that the statute says, and the constitution and the act of Congress say that Mississippi shall have all the islands within 18 miles. Were you aware of the fact that under the international law that the jurisdiction of a State only extends three miles from her most outlying islands?

A. I have always heard that; that the jurisdiction was within one league.

Q. Then if that is the case how did you conclude that your jurisdiction extended 18 miles south where there were no islands, when the only reference to the jurisdiction in the act of Congress, in your code, and the constitution refers to islands?

A. I don't recollect having said that my jurisdiction extended 18 miles. I think the lines extend 18 miles.

Q. How could the lines extend 18 miles when the international law gives the State but three miles out unless there were islands beyond that. How could it extend 18 miles out when there were no islands?

Q. You are asking me a question that is too deep for me to answer.

Q. Well did you ever make any arrests Judge for violating the law with reference to dredging?

A. I never have.

Q. Well now it is not true that the Mississippi law at present permits the dredging of oysters with sail dredges?

A. Yes sir.

By Mr. McCLURG: Counsel for Mississippi does not see that that is relevant to the question.

By Mr. DYMOND:

Q. Is it not true that just prior to the present law that steam dredges were permitted in Mississippi in water over 14 feet deep?

A. Yes sir over 14 feet.

Redirect examination.

By Gen. McCLURG:

Q. Counsel for Louisiana has just asked you if you did not know that international law only gave the State jurisdiction over
1732 three miles? I do not remember exactly your answer to this deep and learned question, but do you know whether a special act of Congress particularly defining the State line as a statute: that governs independently of international law?

A. I am not conversant with the law Mr. McClurg. You are going too deep for me.

Q. Do you understand that if Congress should say that Mississippi shall have a line marking her southern boundary in the waters of the Gulf 18 miles from her shore, that that declaration by Congress overcomes the general principles of international law and fixes a positive line on that subject?

A. I presume that my opinions would go down in the record and I don't think I can give any on that.

Q. Mr. Dymond has asked you some thing about a meeting of Louisiana citizens in his office in New Orleans January 19th, 1901. You were not present when Mr. Dymond and the St. Bernard oyster men wove a little spider web there and watched for the Mississippi governor were you?

A. No sir, I was not there. I was not invited.

Q. It seems that some body walked into that parlor of that spider. You were not in that crowd were you?

A. No sir, I was not.

Q. And you were not of the oyster commission that assumed to bind the State of Mississippi to what they called a neutral zone. You are not guilty of that crime either are you Squire.

A. No sir, I plead not guilty.

Q. And he has asked you about what you read in the statutes. I believe you stated that you regarded the State line as it is laid down by the code.

A. Yes sir.

Q. We answer Louisiana in our answer and cross bill by saying along the middle of Bay St. Louis southwardly to its entrance; thence due south to the southern boundary of the State of Mississippi in the gulf of Mexico; thence westwardly with said boundary including all islands within six leagues of the shore of the gulf of Mexico and Lake Borgne, to the most eastern junction of Pearl river and Lake Borgne, and to the east mouth of Pearl river; thence up said river by the middle thereof to the point of beginning. As I understand you you consider that statute to mean that we have 18 miles south and including every island within that limit?

A. That is my construction of it, yes sir.

The commission here adjourned for the noon recess. Upon its reassembling at 2 o'clock with the same presences as this morning, the following testimony was taken to-wit:—

PASCAL LUZZI, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows to-wit:—

By Gen. McCLURG:

Q. How old are you sir?
A. I was born in 1855 on the 29th, of April. I believe I will be 49 years old pretty soon.
Q. Where were you born?
A. I was born in Rome Italy. I can not speak the best English language.
Q. How long have you lived in this country?
A. Well I came here in 1872.
Q. That is 32 years ago?
A. Yes sir.
Q. How long have you lived in Hancock county Mississippi?
A. About 30 years.
1733 Q. How long have you lived in Bay St. Louis?
A. In Bay St. Louis 30 years.
Q. What has been your occupation during this 30 years?
A. Oyster man and fishing oysters also. Still today I keep on my little business. Oyster business.
Q. Where have you been fishing oysters during this time?
A. Well over this lake and a part of it in the marsh.
Q. Do you know where Nine Mile bayou is?
A. Yes sir.
Q. Did you ever go through there?
A. Yes sir.
Q. Three Mile bayou?
A. Yes sir.
Q. Turkey bayou?
A. Yes sir.
Q. Johnson bayou?
A. Yes sir.
Q. Creole gap?
A. Yes sir.
Q. Grand pass?
A. Yes sir.
Q. Isle à Pitre?
A. Yes sir.
Q. Sundown island?
A. Yes sir.
Q. Door point?
A. Yes sir.
Q. Karako bay?
A. Yes sir, and Cat Fish pass.
Q. Indian Mound bay?
A. Yes sir.
Q. Are you familiar with all of this country?
A. As far as the Mississippi river. Plumb to the jetties.

Q. These places that I have been asking you about there. Cat Fish pass and Nine Mile bayou and Three Mile bayou and Turkey bayou and Grand pass and Creole gap—how long have you been fishing in this country down there?

A. Well for the last thirty years.

Q. If there has been any change in this country, by which I mean to say any difference in the general appearance and make up of this country now and thirty years ago I would be glad if you would state it?

A. Well there is a little difference, but very little. You could not hardly tell the difference.

Q. Where did you notice the difference?

A. Well the biggest difference and the most of it that I noticed was Three Mile bayou.

Q. What difference did you find there?

A. We find the difference to go in there in Karako bay, the mouth of the bayou is a little larger. There used to be an island in the middle there when I used to go there 25 or 27 years ago, or not quite that long, and that island has disappeared. The mouth of Three Mile bayou has become a little larger. Now Grand pass is about the same.

Q. What about Creole gap?

A. It has increased from the time that they dug it. I helped to dig Creole gap open.

Q. You helped to dig Creole gap?

A. Yes sir.

Q. When?

A. Well that is about 25 or 27 years ago. Creole gap used to be a lagoon. A kind of a bay and we used to go in there and get a harbor sometimes. We used to fish oysters on the outside, and that was an open place and we used to look for a harbor, and the best place that we could find down there was Creole gap. We used to go inside of there. They have called it Creole gap since it was opened. We used to go inside there and drop anchor, and there used to be a little space here going to Bayou Greecue.

Q. Going to the southward?

A. Yes sir, to get to Door point and Jack Williams bay. There was a small space of about 20 or 25 feet that was open to go right through to make a short cut through this place to get to Jack Williams bay, and go to Sundown island. Sundown island is right opposite, and to get into Door point. And we cut it there one day. Me and some of the creole boys from Biloxi. We dug it out with shovels. We dug it to the water line and the next day we could pass through there with a skiff, the current washed it. In about a month afterwards we could go through there with a schooner, when the tide was out. That is what they call Creole gap. Creole gap was not on the chart at that time. I think it is on the chart today.

Q. Well now when you were fishing from Bay St. Louis in these places that we have been talking about what State were you in?

A. We believed that we were in the State of Mississippi.
Q. Why did you believe you were in the State of Mississippi?
A. The old time people told us that we were in the State of Mississippi.
Q. How long have you been understanding it that way?
A. Well that is two years after I was here in Mississippi. We knew that when we were getting down about Bayou Mussel and California bay and American bay that we were in Louisiana at that time of course.
Q. Did you have any idea how many leagues you could go from the Mississippi shore that way?
A. Not really myself, but they said that it was six leagues. I understood that. I don't know how many miles those leagues are. I suppose 16 or 18 miles.

Cross-examination.

By Mr. DYMOND:

Q. What is your business Captain?
A. Oyster fisherman sir.
Q. Where do you have your place of business?
A. Right here sir.
Q. What do you do in the oyster business?
A. In the winter time I am fishing oysters for the cannery.
Q. What factory were you fishing for?
A. I fished for Mr. Dunbar a good many years, and some times I fished for Mr. Lopez. According to where we can get the best prices for the oysters.
Q. What do you do in the summer?
A. I am fishing oysters.
Q. Don't you do any business for yourself. Don't you do a restaurant business?
A. I keep an oyster saloon sir.
Q. Those are the oysters that you sell for raw eating? You sell them for raw eating or what?
A. Raw and cooked.
Q. The character of the oyster that you use for this purpose is not the same character that you use to sell to the factories is it?
A. Well we clean them a little better.
Q. Are they not bigger?
A. We try to get them as large as possible yes sir.
Q. Don't you try to get better oysters and select oysters for your business for that place, than for the cove oysters for the factory?
A. Yes sir, to be sure.
Q. Where did you get these oysters. Where have you been in the habit of getting them?
A. This summer we got the oysters just on the outside of the Telegraph reefs.
Q. That is north of the deep water channel?

. No sir, it is south of the deep water channel. You see we start here and go across by the Telegraph reefs, before we get into the deep water there. We fish oysters with 16 foot tongs. We don't fish with dredges at all.

Q. Well now you say that you visited the Louisiana shes say 25 or 30 years ago?

Yes sir.

Did you have at that time any occasion to put down any stakes y thing of that sort to designate any definite point?

Well no sir.

Well is it or is it not your experience that if you put a down on the shore at a certain point and go back there the year that you will find that it is washed away eight or ten

You could do that, and if the pole was still there you could

Have you had any occasion to do this?

No sir, I have not.

Have you had any occasion to talk to any body about it who one any thing of that sort?

Not in my recollection.

Well now is it not a fact Captain that it is common talk f you were to put a pole down on any particular place it is exposed to the waves and wind, and you were to go ix or eight months afterwards or a year afterwards, you find that the shore line had backed away from the pole by g?

Well not inside of the Louisiana marsh. Not in the marsh. ight find that on the side of the coast.

n the shore line?

n the shore, because the sea there would eat it up. We ly work down there about Mussel or American bay and here you are enclosed on the inside and there is no water ashing to eat the bank. Unless it was an open place like gap or Turkey bayou, and all of these places that are open

ell now in these thirty years of experience of yours did you ve occasion to be out in the marsh during a storm?

es sir, twice.

hat were these years?

was not really a storm, but it was pretty good stiff

hen was this. The first time and the second time?

e first time was in 1887.

hen was the second time?

was not very long afterwards. It was in 1888 or 1891.

ell now on these occasions did the water rise very high?

rose about as high as the prairie.

did not go over the pra-rie then?

A. No sir, just even with the pra-rie.

Q. You have not been there on any occasion when the tide r so high that you could not see the pra-rie grass?

A. No sir.

Q. Well now suppose there was a storm that occurred down th where the water rose as high as the pra-rie grass by the effect of t waves. And the waves would be correspondingly strong. Wou you expect the same results there then as you would on the sho line in the matter of washing away?

A. Why that would have made a little difference I suppos Certainly it would have made a little difference.

Q. Did you ever know of an island called Nigger island just sout of Three Mile bayou?

A. Nigger point.

Q. This is an island that used to be there. Did you ever know of such an island that used to be there?

A. I don't know that name. I might have known the island.

Q. Did you ever know of any island disappearing just southeast as you entered Three Mile bayou?

A. Going to Karako bay. Yes sir, a small island.

Q. No, you don't go into Karako bay there. You go into the southern end of Bayou Boudreaux.

A. Before you get to Three Mile bayou you get to Bayou Boudreaux.

Q. Do you claim that Three Mile bayou enters into Karako bay?

A. Yes sir, enters Karako bay.

1736 Q. What is that body of water that Pirates point is in?

A. What is the depth of the water?

Q. No what is the water called? What is the body of water that Pirates point is in?

A. We call it South bay.

Q. Is it not a fact that Karako bay is out more to the eastward. Suppose you were to draw a line north and south right down through Three Mile bayou. Would not Karako bay be to the eastward of this line?

A. To be sure it is to the east of this line.

Q. What is the body of water that is immediately south of the Three Mile bayou. Three Mile bayou is only a little short thing you know?

A. Three Mile bayou is the entrance to Karako bay.

Q. You call that Karako bay do you?

A. No sir, Three Mile bayou is supposed to be the entrance. To get to Karako bay you can go the direction through Three Mile bayou.

Q. You know it is no bayou there. Three Mile bayou?

A. No sir, it is an open entrance there.

Q. What does it open into. What is the bay that Three Mile bayou enters into?

A. It leads into a pass. It goes straight to Raccoon island. Raccoon island is right opposite.

Q. You are confident that the bay that Three Mile bayou enters into is Karako bay, and Creole bay is not eastward?

A. Yes sir. I never said that it was east.

Q. Here we have a map of it. Is it not a fact that Three Mile bayou enters into Three Mile bay, and Karako bay is way to the eastward. Here is Karako bay here?

A. Well here is Three Mile bayou. When you go through Three Mile bayou and here is Raccoon island around here. Well then you go to the east of Raccoon island and you go in the Karako bay.

Q. You have to pass between Karako bay and Nigger island to get in there?

A. Yes sir, you have to pass right there through there, and that island has disappeared here. It was a very small island, a little bigger than this table, and some times you will see it out of the water yet when the tide is low.

Q. What was the cause of the island disappearing?

A. I suppose it was small and the waves would wash it up. It was there for many many years.

Q. You have fished in Cat Fish pass have you not?

A. Yes sir.

Q. And Drum bay?

A. Yes sir.

Q. When you fished in Drum bay did you consider that you were fishing in Mississippi?

A. Well I don't know sir. I have no idea about that. Whether I was fishing in Mississippi or Louisiana.

Q. When you were fishing in Southwest pass where were you fishing?

A. In Southwest pass we must have been in Louisiana. What Southwest pass do you speak of.

Q. I am speaking of the Southwest pass which is north of Drum bay. You may call it Jack Williams pass?

A. That is Jack Williams pass yes sir.

Q. Where were you when you were fishing there?

A. We expected to be in Mississippi then.

Q. Did you ever fish around Mitchell keys?

A. Yes sir.

Q. Where were you when you were fishing there?

A. I thought we were in Louisiana.

Q. Did you not fish as much in Louisiana as you did in Mississippi?

A. Well I don't know sir that I could tell you that.

Q. What I mean is that you never hesitated about fishing wherever you wanted to. Did you not fish down in American bay?

A. Yes sir, in this time we did not have a license and we used to bring the oysters in Mississippi.

Q. And you fished wherever you pleased?

1737 A. Yes sir, I used to work for the market in New Orleans. I used to take the oysters where ever I could get the best price for them.

Q. Were you fishing oysters in 1898?

A. Yes sir, I have been fishing oysters for thirty years.

Q. Were you out in the marsh at the time there was an expedition sent out by the police jury of the parish of St. Bernard to see about Mississippians fishing out there?

A. I was not out there at that time, no sir.

Q. Did you hear about it?

A. Yes sir, I heard something about it.

Q. You were in Bay St. Louis at that time?

A. Yes sir.

Q. What did you do. Did you go back there any more?

A. Oh yes sir.

Q. Now did you have any trouble about getting the oysters that you wanted for your business out here. Fishing oysters?

A. In this water out here?

Q. Yes sir.

A. No sir, we could get them out there if we wanted to.

Q. You used to get them easier when you went to Louisiana?

A. Not in the summer.

Q. In the winter?

A. Yes sir, because we worked with tongs. We did not fish with dredges. I wish they would break all of that up.

Q. You believe in tongs?

A. Yes sir, like all of the old time people.

Q. You believe that the other people get the most oysters?

A. No sir, not all of the time.

Q. It would be better for your business if there was no restraint and you could go into Louisiana like you used to. It would be better for your business?

A. If they imposed a license I think that they are entitled to it just like any other State.

Q. You would like it fixed so you could go there and fish your oysters and bring them here?

A. Either bring them here or to the market in New Orleans.

Q. There is nothing to keep you from going there and fishing for the New Orleans market?

A. No sir, not to do that. But I want to take them where I will get the best price.

Q. You can fish there now for the New Orleans trade?

A. Yes sir, I have to stay in New Orleans and deliver the goods to Louisiana. If it could be fixed up I would rather fish in Louisiana, because I have a small boat. I can not afford to get a big boat. I have a very small boat.

Q. Did you ever fish in Elephant Point pass?

A. Yes sir.

Q. Where were you then. In what State?

I don't knew. I have no idea. I thought that we were in
iana. It is a long distance from here to Elephant point.
When did you first hear what the boundaries of Mississippi
How far back?
The first time that I heard it was from these old people. I
stood that Mississippi claimed six leagues from the main land.
Hancock county. From the State of Mississippi. From the
land due south six leagues. Now what those six leagues are.
at point the boundary goes I don't know. I could not tell

What made you think that it was due south. That is what
old you?
That is what they told me. Of course as I tell you, I don't
ny thing about it.

By Col. ZACHARIE:

aptain, is it not a fact that that territory starting from Isle à
nd going westward is commonly called by the Mississippi fish-
the Louisiana marshes?
rom Isle à Pitre?
Q. From Isle à Pitre going westward?
A. Not from Isle à Pitre. I never heard that.
Q. Going westward towards the Mississippi river. Is not
led the Louisiana marshes?
understand the Louisiana marshes.
at is what — is generally known amongst the fishermen as
?
s sir.
ell now what is the character to the soil in this territory. Is
low marsh with reeds and grass.
some locations. In some parts of it.
w what would be the effect of a violent northwest storm,
he storm of 1893 which swept across this whole territory
What would be the effect upon that territory. Would it
away a great deal of the surface of the land?
would be a great destruction on the face of the marsh but
on the inside.
uld there not be large portions of this thin surface washed
h the roots of the grass and that spongy soil. Would it
shed away and the water come in there?
sir, not hardly. It would not last long enough to wash

s it not last three or four days?
ir, it only lasted about four or five hours. It covered the
It was on Sunday morning. Three or four days before
wing, but it never covered the marshes.
e you in that storm?
ir, but my boat was in the storm.
were not in it, but you can testify to that?

A. No sir, I was not in it, and I was glad that I was not in

Q. Has not that territory of which you have just been spe
has not that always been regarded as a part of the parish
Bernard and the State of Louisiana?

A. Well we had a little trouble last winter with St. Be
parish. That claims to be St. Bernard parish. I don't know

Q. I mean from a long time back have not the fisherme
people generally regarded that territory as being a part of the
of St. Bernard in the State of Louisiana?

A. It was only lately that I heard of St. Bernard parish
It was only last winter that I learned that it was St. Bernard p
Of course I am not an educated man.

Q. And your whole idea about the boundary of Mississipp
been derived from talk about its being; running six leagues
the main shore?

A. From the main land of Mississippi.

Q. You never knew or heard it pointed out that under the
admitting the State of Louisiana into the Union that her juris
tion extended three leagues from her coast?

A. No sir, not as to my recollection.

Q. Do you know the Malheureux islands?

A. Yes sir, the Malheureux islands, yes sir.

Q. How far are they distant from the coast of this disputed te
tory?

A. Well I don't know sir. I know the claims. That they show
me last winter that the edge of the marsh was to be the *mutual*
ritory. The edge of the marsh.

Q. That is in regard to the agreement that was made between t
two commissions?

A. Now Malheureux island and Grassy island, there are two islan
there close together. They are down on the other *isle* of Gra
island, what they call Half Moon, or what is called Grand islan
and the distance from the edge of the marsh and Petit pass I su
pose it is two and a half or three miles.

Q. The first island?

A. From Petit pass to the edge of the marsh, which they clai
to be the Louisiana marsh. I don't know what the disputed terri
tory is now. I could not really tell you.

Q. Well all of these islands are south of the main deep wate
channel are they not?

A. Yes sir.

Q. The deep water channel is close—coming from the mouth of
East Pearl river out to Cat island, is close to the Mississippi
1739 shore until it branches off to the eastward and southward.

A. It is close to Petit pass. It is closer to Petit pass than it
is to Grand island.

Q. I am speaking of the deep water channel which runs north of
Half Moon island where the largest vessels come in there to get

lumber and so on. The channel runs north of these islands of which you speak close to the Mississippi shore does it not?

A. Yes sir.

Q. The rest of this sound is pretty shallow water is it not, and is used by small vessels?

A. Yes sir.

Q. The water all through there is salt like the water of the gulf of Mexico?

A. Where is that?

Q. South of Pearl river and north of this disputed territory?

A. Some times it is salt, and some times it is fresh.

Q. It is always more or less salt is it not?

A. No sir, it is more or less fresh.

Q. Do you mean that it is ever fresh enough to drink?

A. Yes sir, and fresh enough to kill oysters too some times.

Q. You mean when there is a great freshet from the river?

A. Yes sir, or a heavy rain. Where it will rain for a day or so, Pearl river drains enough water out to kill the oysters here on my bedding ground.

Q. That is also because you get the same drain out of Wolf river don't you?

A. Wolf river does not drain out of there. Jordan river does We hardly ever get that water. It drains right on out.

Q. The Mississippi sound is an arm or a branch of the gulf of Mexico, is not it?

A. I suppose it is. The Gulf is the deepest water.

Redirect examination.

By Gen. McCLURG:

Q. What is this island this way to the eastward?

A. This is Cat island.

Q. How far is this here from Bay St. Louis?

A. It is supposed to be 16 miles.

Q. What is the light house that way to the westward?

A. That is the Marion Shell Bank light house. We call it Pass Marianne.

Q. What direction is Isle à Pitre from that light house?

A. It is south east from that light house.

Q. Is that light house almost between Bay St. Louis and Isle à Pitre?

A. No sir, Isle à Pitre is a little further out.

Q. Southeast?

A. Yes sir, there is one four or five miles across from Cat island to Isle à Pitre.

Q. How far is it on a direct line from Bay St. Louis to the eastern mouth of Pearl river?

A. That is 25 to 27 miles from here.

Q. Well there is an island out there near the mouth of Pearl river. Between here and the mouth of Pearl river near Half Moon island?

A. That is Grand island. It is not direct on the mouth of Pearl river. It is more to the east of the mouth of Pearl river.

Q. And Half Moon island and Grand island amount to the same thing?

A. Yes sir, the same thing. We call it Half Moon because it comes around in this direction. There is to the front of the east mouth of Pearl river Grassy island. That is right in front of the mouth of Pearl river; it is not right in front, but it is just a little to the east.

Q. Where is St. Joseph?

A. Old St. Joseph is more to the north of Half Moon. It is more north than Half Moon.

Q. You mean that it is north east then?

A. Yes sir, about north east yes sir of Half Moon. That is Old St. Joseph.

1740 Q. You see up here the L. & N. R. R. crosses Bay St. Louis?

A. Yes sir.

Q. How long is that bridge?

A. It is supposed to be two miles as I understand it.

Q. You were asked by Col. Zacharie if that marsh down there was called the Louisiana marsh. Did you ever hear it called Grand marsh?

A. No sir, it was called Louisiana marsh when we got down about Bayou Mussel.

Q. Is that where the mosquitoes come from?

A. They come from almost every where. Some times they are around here too, and down in the Rigolets and at Point Chicot, and La Fortuna, and Bayou Pascal. I can tell you all of these places. Yes sir, I am pretty well acquainted with all of this marsh. I have gone there pretty often.

E. E. O'Brien, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McClurg:

Q. Where do you live Mr. O'Brien?

A. At Bay St. Louis?

Q. How old are you?

A. I am 59 years old sir.

Q. How long have you resided in Bay St. Louis?

A. Permanently for 11 years.

Q. Had you lived in Hancock county before?

A. Well not permanently. My homestead and residence is here. I have been living in that county about 54 years.

Q. Did you ever hold any official position in Bay St. Louis or Hancock county?

A. Yes sir, I have been mayor of Bay St. Louis for the last three terms.

Q. When did you first enter upon the office of mayor?

A. I think that it was in 1900. April 1900. I then filled an unexpired term of Mr. Toulme. I was elected then, and I was re-elected last April I was re-elected again.

Q. And you were filling an unexpired term in 1900?

A. I think it was that year.

Q. Have you had any personal knowledge or information of any serious disturbance or any threatened armed conflict between the sheriff and officers of St. Bernard parish Louisiana and the sheriff and officers of Harrison county or Hancock county, or authorities of Mississippi with reference to this boundary line. If so I wish you would state what it is.

A. I never heard of any.

Q. You were here in 1900?

A. Yes sir.

Q. And 1898?

A. Yes sir.

Q. And back before that?

A. Yes sir; but I never heard of any serious conflict.

Q. You never heard of any trouble?

A. No sir.

Q. No dispute as to where the line was?

A. (No answer.)

Q. Did you ever hear at any time or in any way as to any controversy or dispute over the State line prior to the year 1901, or about that time?

A. I never heard of any dispute. I never heard of any thing at all until the controversy arose between the two States of Mississippi and Louisiana. That is the only thing that I ever heard of. I followed that pretty close, but I never heard of any dispute in that respect.

741 Cross-examination.

By Col. ZACHARIE:

Q. Mr. O'Brien, you know the territory running from Isle à Pitre eastward towards the Mississippi river?

A. Well I have been out there on fishing excursions.

Q. Is that territory not generally called by the fishermen and people along the coast the Louisiana marshes?

A. Yes sir.

Q. Has it not always been considered a part of the parish of St. Bernard in the State of Louisiana?

A. Well as far as that question is concerned I will state Mr. Zachary I don't know whether that would be considered in that way or not, but I know since my boyhood I never have known of the place or ever heard of it as anything else except the Louisiana marsh.

Q. Was it not the common expression among all of the fishermen and the people generally that that territory is the Louisiana marsh?

A. I have always heard it so mentioned.

Q. Did you hear in 1898 of an expedition being fitted out by the sheriff of St. Bernard parish to drive out the Mississippi fishermen and exclude them from fishing in this territory?

A. I don't remember it at all.

Q. When did you first hear of this dispute about this boundary?

A. When the suit was instituted.

Q. Did you not hear some twenty months before the institution of the suit of the appointment of these boundary commissioners on the part of Mississippi and Louisiana?

Q. Did I not hear what Colonel?

Q. Did not you hear of the appointment of this boundary commission?

A. Yes sir.

Q. You are familiar with this territory? You have boated and sailed around there?

A. Yes sir, I have boated around here for the last forty years.

Q. Do you know where the main deep water channel is from the mouth of Pearl river going east? Does that not lay north of Half Moon and close to the Mississippi shore?

A. It does.

Q. That is where the deep water vessels go through there?

A. Yes sir.

Q. In your various visits to this territory have you seen the effects of these storms such as the one of 1893 and others in cutting up this territory?

A. In certain portions of it. I have been down to the westward of there after the last storm. The two previous storms I noticed where the depredations were more out there at Cat island.

Q. I am speaking of the interior of the marshes. The bayous and the passes.

A. I never went through there. I was fishing on the outside there. We never went up through these bayous or anywhere there. We fished on the outside there entirely.

By Mr. DYMOND:

Q. Mr. O'Brien, do you know Judge Neville?

A. Yes sir.

Q. Was he not the district attorney here just prior to 1898?

A. Yes sir.

Q. Well you said that you had never heard of any dispute between the officers of the parish of St. Bernard and the counties of Harrison and Hancock. Were you aware of the fact that Mr. Neville went over to see the district attorney of St. Bernard parish in regard to the exclusion of Mississippians down there?

A. I never knew of it.

Q. You never knew of that fact?

A. I never knew of that fact. I have made it a rule not to come to court so I don't know what is going on.

1742 Redirect examination.

By Gen. McCLURG:

Q. Counsel for Louisiana have asked you about calling the territory west of Isle à Pitre the Louisiana marsh and you said I believe that it was generally so called?

A. Yes sir.

Q. Did you understand by that that it belongs to the State of Louisiana because it is called Louisiana marsh?

A. Well my impression would be that way if it is called Louisiana marsh, there must be some reason for giving it that name. Probably they thought it was a portion of Louisiana and extended it in that way to keep it up.

Q. You know that the Louisiana purchase does not all belong to Louisiana does it?

A. No. Maybe it don't and maybe it does. It is a question to be found out I presume.

Q. Do you know that there are some parishes in Louisiana called the Florida parishes.

A. I have heard of them.

Q. Do you imagine that it belongs to Florida because they call them the Florida parishes?

A. I don't suppose they ought to. If they did not pay for them they ought not to have them.

Q. Well if that marsh don't belong to Louisiana she ought not to claim it ought she?

A. Well that is a question for some one else to decide.

Q. The Mississippi river don't belong to Mississippi does it?

A. Yes sir, every thing that we have got in Mississippi belongs to us.

Here the commissioner appointed —— —— as bailiff of the commission during its session at this place.

The commission here adjourned until to morrow morning at nine o'clock.

BAY ST. LOUIS, MISSISSIPPI, August 10th, 1904.

The commission met this morning at nine o'clock, pursuant to the adjournment of yesterday.

There were present Hon. William D. Ballard, commissioner on the part of the State of Mississippi. Hon. Monroe McClurg, counsel on behalf of the State of Mississippi, and Hon. F. C. Zacharie, and Hon. John Dymond, Jr., associate counsel on the part of the State of Louisiana, and F. M. Peyton, stenographer.

W. T. McDONALD, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURE:

Q. Where do you live?

A. At Bay St. Louis Mississippi.

Q. How long have you resided here?

A. Six years in April 1904.

1743 Q. You are the circuit judge for the second judicial district of Mississippi are you?

A. I am.

Q. Jackson, Harrison and Hancock counties are in your district are they?

A. Yes sir, they are.

Q. In this suit Judge between the State of Louisiana and the State of Mississippi there is an allegation to the effect that a contention over the lines dividing these two States in the waters of the Gulf had reached such a crisis about the time of filing of the bill of complaint on October 27th, 1902, that there was a condition of affairs that threatened an armed conflict between the officers of the parish of St. Bernard in the State of Louisiana and the sheriff and officers of the county of Harrison in the State of Mississippi. If you know any thing about such conditions existing in Mississippi I would be glad for you to state here what you may know about it?

A. Officially I know nothing about it. My term of office began in September 1903. As a practitioner at the bars of these three coast counties in this State, I don't know of any case in the courts of these three counties involving the question of State jurisdiction as between Mississippi and Louisiana.

Q. If there had been such a contention, as a practitioner at the bars of these three counties you would have known some thing about it?

A. I would in Hancock and Harrison counties. That is since April 1898.

Q. There is also in this bill a report of an *ex-parte* mass meeting held at the office of Mr. John Dymond, Jr., in the city of New Orleans on the 19th day of January 1901, in which certain resolutions were adopted looking to the consideration of the boundary lines between the two States. Its location and identification, and that the governor of Mississippi was called upon to appoint a commission of five men to meet the commission appointed by that meeting in New Orleans to amicably determine the boundary lines between the two States, and subsequently a meeting of this joint commission was appointed and they failed to come to any agreement, except to recommend that a suit be brought in the Supreme Court of the United States. I call your attention to that for the purpose of having put in the record that you as one of the judges of the Mississippi courts to say whether there is any authority in the constitution and laws of our State which authorizes the governor of our State to under-

taken by a commission appointed by him to adjust the boundary lines between our State and Louisiana or any other State?

By Mr. DYMOND: Objected to and excepted to on the part of the State of Louisiana on the ground that the witness has not qualified himself to testify and to give an opinion on such a subject as this.

A. The governor of Mississippi has no power under the constitution or laws, in the absence of legislative authority to attempt by commission or otherwise to settle a question of disputed boundary between Mississippi and any other State.

Q. Judge, it is understood in this matter that the oyster commission on the part of Mississippi and a similar commission on the part of Louisiana have undertaken to fix what they call a neutral zone, and have attempted as I understand it to bind these two States, and especially is it insisted that Mississippi is bound by the action of these two commissions in fixing the line over which the fishermen of Mississippi may not go, and I presume over which the fishermen of Mississippi may not come, and that line extends along the northern border of the marsh lands from about Malheureux point to Grand pass, and then turns south east through Grand pass down towards Sun Down island. If I am correctly informed it is 1744 agreed that Mississippi fishermen shall not pass south or westward over that line. That they are not to go into the marshes. I want to ask you if you know of any authority under the law as far as the State of Mississippi is concerned empowering the oyster commission of this State to fix a line that is binding upon the citizens of this State in such a matter?

A. The oyster commission under the law creating it had no authority under the law to bind the State of Mississippi with reference to the boundary between Louisiana and Mississippi. I wish to state further in this connection that I was attorney of the Oyster Commission for the State of Mississippi from the date of its creation until September 1893, and attended the joint meeting of the oyster commissions of the two States in the city of New Orleans on September 1892 when the agreement was entered into between the commissions of the two States anticipating any trouble that might arise between the fishermen of the two States fishing in the same territory claimed by the two States, and over which both sides might attempt to enforce laws differing in the dredging and taking of oysters. It was understood at that time that the commissions of neither State had any power to bind its State, but it was a persuasive agreement entered into, without authority to aid in preventing any outside trouble.

Q. That condition of affairs grew out of the act originally of the Oyster Commission of Louisiana and of the parish of St. Bernard in passing strict ordinances, and the strict patrolling in the marshes of the controverted territory did it not?

A. Well I don't know whether they had been at that time espe-

Cross-examination.

By Mr. DYMOND:

Q. I understand you to say that you were at one time sheriff of Jackson county?

A. Yes sir.

Q. Where is the line that forms the eastern boundary of Jackson county?

1749 A. The line—I don't know how—the line between Alabama and Mississippi is on the east side of the State.

Q. Where is the north and south line that separates Jackson county from Harrison county?

A. Do you want me to describe it?

Q. About where it is yes sir.

A. The line is divided by the middle of the range line. Range 9.

Q. Does it not come down through Biloxi bay?

A. It comes down through the middle of range 9 until it gets to the channel of Biloxi bay, and then follows that channel in an easterly direction until it passes the east end of Deer island, and then goes out into the sound.

Q. Now is it not a fact Mr. Minor, that none of the water territory formed by the east and west boundary lines of the county of Jackson is in this disputed territory between the States of Louisiana and Mississippi?

A. I don't know how much they claim. No it would not touch that territory at all.

Q. Well now would not that also, Dauphine island, and Petit pass, and Horn and a part of Ship island form the exterior front on the Gulf side of Jackson county?

A. Well that don't touch Ship island at all I don't think. Jackson county.

Q. That is on the westward you mean?

A. No sir, there are only two islands. Well there is Horn island and Petit Pass island.

Q. What about Dauphine. Does not that form a part?

A. No sir.

Q. In what State is Dauphine?

A. That is in Alabama I reckon.

Q. There are these islands that you have mentioned, or string of islands on the south of the shore of Mississippi in Jackson county?

A. They are not on the south side of it, because the territory we claim takes in all of the islands.

Q. What I mean is that they form the southern extremity of Jackson county don't they?

A. No sir, the county goes still further south.

Q. How much further south?

A. Well we would go at Horn island some seven or eight miles.

Q. Why so?

A. Because the 18 miles would over reach it.

Are there any islands 18 miles off the shore of Jackson county?
I thought probably you were getting the question as to whether
ognized jurisdiction outside of these islands. That is in re-
o making arrests and things of that sort.
The article of the act of Congress, and the article of your con-
on gives the State all islands within 18 miles where there are
ls, but it does not say anything about jurisdiction where there
o islands. Have you been exercising jurisdiction 18 miles
e there are no islands?
. No sir.
Now I understand you to say that you were fishing oysters
1880 to 1890?
. Yes sir.
. That during that time y. . were not disturbed in the Louisi-
marsh?
. No sir.
. Do you know whether there was any one in Louisiana at that
e to enforce the Louisiana law.
. No sir.
Q. Do you know what the Louisiana law was in 1880 in regard
ion residents fishing oysters in Louisiana?
A. No sir.
Q Now you were not fishing oysters in 1898 when an expedition
s gotten up by the parish of St. Bernard?
A. No sir.
Q. Did you ever hear anything of that. The fishermen had been
cluded or threatened to be excluded?
A. I heard some little rumor at that time but it was only
50 through the newspapers. I was clear out of the oyster busi-
ness then.
Q. As I recollect it the oyster commission was created by the
gislature of Mississippi in May 1902, in January?
A. Yes sir.
Q. The Oyster Commission of Louisiana was created by the legis-
ature of Louisiana that met in May 1902. Now so far as your
knowledge goes have you any recollection of there having been on
the part of either State previous to that any such body specially
delegated by the law to enforce the laws of the two States?
A. No sir.
Q. You were a member of the oyster commission that met in
joint session in New Orleans with the Oyster Commission of Louisi-
ana in September 1902?
A. Yes sir.
Q. You were aware of the fact that prior to that time the State of
Louisiana through its governor had requested the State of Missis-
sippi through its governor to appoint an amicable boundary com-
mission, and that these two commissions met and they could not
agree, and the Mississippi commission had recommended that a suit
be filed in the Supreme Court of the United States to settle the

boundary dispute between the two States. Were not you aware of this fact when you became a member of the Oyster Commission of Mississippi?

A. Yes sir.

Q. Therefore when you met in New Orleans with the Louisiana Oyster Commission you recognized that it was necessary to do something to prevent any conflict between the two States through the instrumentality of their oyster commissions did you not?

A. Yes sir, I thought it was necessary, and when we were notified by the Louisiana commission to meet them there I thought it was a good move.

Q. Now you knew did you not that the Oyster Commission of Louisiana was specially authorized by law to maintain an armed patrol of its territory, and what it considered to be the State of Louisiana?

A. That is what I heard.

Q. You knew also that the oyster law of Mississippi authorized its commission to maintain a patrol of the waters?

A. Yes sir.

Q. Now what would have been the consequence if there had not been such an agreement, with two intelligent official bodies, patriotic, endeavoring to enforce the rights of their respective States?

A. Some body would have gotten hurt.

By Mr. McCLURG: This answer of the witness is objected to and excepted to on the part of the State of Mississippi as being the statement of an opinion.

Q. Do you recollect a talk or argument of mine as counsel for the State of Louisiana in connection with the statement that if there was no agreement that Louisiana would be compelled to enforce what she thought to be her rights, and the corresponding statement from the president of the Oyster Commission of Mississippi that Mississippi would necessarily have to follow suit and meet us with our own weapons?

A. Well we had some pretty jolly talk there. It looked like they were playing some pretty good bluffs on both sides.

Q. But as a man of good hard common sense you recognized that if there had not been such an agreement there would have been trouble between the two bodies?

A. That is the way I looked at it. There had to be some thing done.

By Col. ZACHARIE:

Q. Is it not a fact that the territory running westward from Isle à Pitre to the Mississippi river has been generally known
1751 amongst fishermen and others along this coast as the Louisiana marshes. Was not it generally called that?

A. Well my recollection is—the first trip that I ever went out in the marsh was with an old fisherman. He is living in New Orleans

d his term in using the word then was Grand marsh. Prob-
e is using it today. All of the old time fishermen when they
ing down there and you would ask them where they were
they would say to the Grand marsh. Since this oyster busi-
as been developed, I can say in the last ten years, the word
l marsh has been dropped and they use the word Louisiana
. It is very seldom now that you hear the word Grand marsh,
t you go back to Biloxi to some of those old time fellows that
been fishing down there for forty years, and they might still
at same word, Grand marsh.

Then I understand you to say if this agreement had not been
ed into between the oyster commissions of the two States that
was anticipated on both sides an armed conflict between the
rities of the two States in endeavoring to enforce what they
ed to be their rights?

Well of course it looked that way. Here is the law, and here
r law telling us to go out there and enforce the law. While
n't know that we had that same authority to mount cannons
things like that on a boat, we might have gone there in a peace-
way and tried to enforce the law. I don't think we would have
any body.

But there was danger was not there that there might be an
ed conflict. People on either side resisting the commission of
other side?

Oh yes sir, it is talked now. Some men say that we ought to
n ourselves and go on in it and pass this line, and then cooler
ads keep them down. They don't think that they have been
ated right is the reason why.

Redirect examination.

By Gen. McCLURG:

Q. There has been a great deal asked you about armed expedi-
ons and threatened conflicts. Do I understand that the oyster
ommissions of these two States forgot that there was a civil govern-
ment, and that the courts of the country and their States were able
o handle this question, or did they forget that there were courts,
and the two oyster commissions go down there and imagine they
were going to have war?

A. No sir, they did not forget it.

Q. Now is it not a fact that Mississippi never sent out any armed
expedition or boats, but sent her civil officers with the power to ar-
rest and bring them before the civil courts?

A. Yes sir, that is the way that they did it.

Q. And did not you think that the courts were competent to settle
the question as to whether any law had been violated or not?

A. Yes sir, I think that the courts had power enough.

Q. Did you not think that the courts of Louisiana and the gov-
ernment of Louisiana was big enough, and strong enough and just

enough to arrest violators of the law upon the water the same as upon the land and take them before their courts without any armed conflict, and test the question as to whether they had violated the Louisiana law or not. Did you not think that?

A. I thought that either State had power enough.

Q. Mississippi had sent no savages in there to be encountered by an armed patrol had she?

A. No sir.

Q. Then all of this stuff about armed conflicts and sending out armed expeditions. It was in the absence of any recollection that there was a judiciary established by the Government to settle

1752 these questions was not it?

By Mr. DYMOND: These quesions are excepted to on the part of the State of Louisiana on the ground of their being leading and suggestive.

A. My idea about all of this thing of an armed expedition was more of a bluff on both sides. I did not believe that any body intended to carry out any of it.

Q. Mississippi did not bluff did she. She never sent out any armed fleet?

A. No sir, I never heard of any being out there.

Q. And so when you got to the bottom truth of it it was all bugaboo. Pretense?

A. There was nothing showing on the surface.

Q. It was what they call in war a kind of a feint?

A. I thought it was a bluff.

Recross-examination.

By Col. ZACHARIE:

Q. Mr. Minor, the counsel for Mississippi has asked you was there not ample redress before the civil courts or criminal courts of either State for the assertion of rights of the other State. Suppose the sheriff was to attempt to arrest a citizen of Louisiana, fishing oysters in what was claimed at that time, and is still claimed to be Mississippi waters, and he should have been resisted by the parties sought to be arrested, would he not have resorted to a posse where he had a warrant for the arrest of the man and by force of arms arrest that man. Would it not be his duty?

A. Yes sir.

By Mr. MCCLURG: This is objected to and excepted to on the part of the State of Mississippi as being irrelevant and suppositious, in leaving out the fact in the statement of the hypothetical case that there is resistance on the part of the man sought to be arrested.

Q. You state in your examination in chief that this agreement was entered into on account of apprehended difficulties which were deemed to be impending by both commissions. Was not that diffi-

uch as I have just described of resistance to the courts, to the
of the courts, and to the exercise of authority by the sheriff
her officers. Was not that the difficulty which you sought to

?
Yes sir.
Did you not hear two or three or four years pri[illegible] to the insti-
of this suit that Mississippi fishermen had b[illegible] warned by
uthorities of the parish of St. Bernard in the S[illegible] of Louisiana
ve this ground and not to fish there and that the Mississippi
men had replied in some instances that they would not do so?
I don't know of any thing of that sort of my own knowledge.
Did you not hear of such a thing?
I never heard of it until this. Until after I was appointed on
ommission and this question came up of trouble. I have heard
eat many men say after that that they were warned away, but I
never heard of it before that time.
Now is it not a fact that as far back as you can remember that
territory lying westward from Isle à Pitre towards the Missis-
sippi river has been generally regarded as a part of the par-
ish of St. Bernard in the State of Louisiana?

A. No sir. My first recollection about any thing out there,
in that section of the country was the question where the
uisiana and Mississippi lines had passed through that marsh, and
metime in the '80's there were some beacons out there. I never
l learn who they were put there by, whether by the United States
vernment in making some of their surveys or the Mississippi or
uisiana people. I never did learn why they were put there. I
n't recollect now where they were but I have heard it said that
re were some of the surveyors surveying the two State lines, but
don't know who put them there, but I know that it was the talk
ith the boatmen that this is where they were laying out the lines.
Q. That you say was some time in the '80's?
A. Yes sir.
Q. Prior to that time in the '80's which you have mentioned was
ot that territory generally regarded as a part of the parish of St.
Bernard and of the State of Louisiana?
A. No sir, I never did know it to be a part of it.
Q. Did you ever hear of any claim prior to that time being made
that that territory was a part of the State of Mississippi?
A. I don't understand that question.
Q. I say, prior to that time did you ever hear of any claim being
made on the part of Mississippi that the disputed territory was a
part of the State of Mississippi?
A. No sir.
Q. You never had?
A. It was generally understood with all of the boatmen that the
Mississippi lines went 18 miles from the main line, and in fishing
oysters out there it was just like it was out there for everybody.

cially, but it was their intention to do so, but my recollection is now that the laws of Louisiana prohibited dredging of any description.

Q. In what kind of a penalty. They made it a felony did they not?

A. I don't know sir. I don't remember, but the laws of Mississippi permitted dredging.

Q. And the fishermen of Mississippi dredging in this territory were liable to be picked up and prosecuted and their boats confiscated?

A. Yes sir for using dredges. It was intended more as an armistice pending the determination of the local question as to where the boundary was.

Cross-examination.

By Mr. DYMOND:

Q. I understand it that you were not in Bay St. Louis in January or February 1898?

A. No sir I came to the coast on April 1st, 1898.

Q. Where did you live previous to that?

A. In north Mississippi.

Q. Therefore if in January 1898 the police jury of the parish of St. Bernard made up an armed expedition to go through the Louisiana marshes and expel therefrom non residents in complying with the Louisiana law you were not aware of that fact at that time?

A. I had not any knowledge of it living 300 miles away from this section.

Q. You were aware if I am not mistaken that the governor of Louisiana appointed a boundary commission and that the governor of Mississippi appointed a similar boundary commission in February 1902 to see if it was not possible to amicably adjust this dispute in regard to the boundary?

A. Yes sir, I know that there was a commission appointed by the governor of each State with reference to the disputed boundary between the two States.

Q. If there had been any agreement reached by those two commissions was there any thing in the law of Mississippi or in
1745 the law of Louisiana which would have prevented these two legislatures of these two States subsequently ratifying the actions of these commissions, and Congress from also subsequently ratifying such an agreement?

A. I don't remember any provision of the constitution of Mississippi as to that, but as to the legislative branch of the government, it would be a question within its power, a ratification by the legislature of the State of Mississippi. The act of the commission would have no effect at all in the absence of legislative authority and legislative ratification.

Q. But the legislature had full power to ratify the action if it chose to do so?

A. I think so.

Q. Is it not a fact that the boundary of the State of Mississippi in its relation to the State of Tennessee some time ago was settled by commissioners under authority of legislative action or otherwise?

A. There was a dispute about the northern boundary line of Mississippi, the details of which I can not recollect now, but it is my information, my recollection, it is a historical fact that there was a commission appointed to settle it.

Q. You knew did not you, Mr. J. H. Neville, who was at one time district attorney and subsequently judge in Mississippi?

A. I knew him very well.

Q. Just prior to 1898 did not Mr. Neville; had not he been district attorney here for a number of years?

A. For several years. I think that he resigned either the first of 1896 or the first of 1897, possibly 1897 as district attorney, which office he had filled for several years. He was appointed circuit judge in May 1902 I think it was.

Q. Had not he been district attorney long enough for it to become a well recognized fact through this section of the country that he was district attorney, and had been district attorney for quite a while?

A. I think it was generally known by the people here that he was district attorney.

Q. Did you know in the early part of 1898 or towards the middle of that year that he had called on the district attorney of the parish of St. Bernard in connection with *the some* other Mississippians from that section of the country?

A. I have no knowledge or recollection of any matters of that sort.

Q. As I understand it you were the counsel advising the Oyster Commission of Mississippi at the time it held its conference in the city of New Orleans with the Oyster Commission of Louisiana concerning this disputed territory in September 1902?

A. I was the legal adviser and attorney of the board.

Q. You were aware of the fact were you not that under the oyster law of 1902 of Louisiana, that the Louisiana Oyster Commission was authorized to maintain an armed patrol to enforce the oyster law of Louisiana in the State of Louisiana?

A. It is my recollection that is one of the provisions of the law.

Q. You knew also did you not that the State of Mississippi through its oyster commission was likewise authorized to maintain a patrol?

A. I knew that.

Q. Do you recollect the gentleman's name who was president of the oyster commission at that time?

A. Mr. Haddlestadt.

Q. Do you recollect that during that conference a statement was made by me that in the absence of an amicable agreement that the State of Louisiana would be compelled to use its oyster commission to enforce the law in what it, the Oyster Commission of Louisiana,

considered to be the State of Louisiana, and a counter statement from the president of the Oyster Commission of Mississippi that if Louisiana used force, that Mississippi would be compelled to protect itself in some similar way?

1746 A. I remember some thing in effect but do not remember the language.

Q. Is it not a fact that things got sorter warm there for awhile until they were quieted down by the amicable agreement?

A. I think there was a little temper displayed.

Q. While it may be perfectly true that neither commission had any authority to make this amicable agreement, was not — in your opinion, as the adviser of this commission, for the best interests of both sides that some amicable agreement should be made pending the settlement of this dispute?

A. I think so, and advised the commission to that effect. The commission of Mississippi.

Q. From your knowledge of local conditions in the absence of such an agreement would not there have been a likelihood of trouble, if there was an *affort* by them to enforce the laws of their respective States on the part of the officials?

A. On the idea that two bodies cannot occupy the same space at the same time, there would have been trouble if the commission of either State had attempted to exercise jurisdiction.

Redirect examination.

By Gen. McCLURG:

Q. As I understand it, in spite of the fact that the Constitution of the United States and of the States of Louisiana and Mississippi provided for the settlement of controversies between two States as to the boundary lines between those two States, that the oyster commissions with certain delegated powers from each State, got together down there and undertook to usurp the constitutional powers of the Federal Government, and the two States government-, and tied the hands of the State as to where they should not go. I am talking about the persuasive features and not the legal features?

A. I don't understand that it went to that extent of persuasively fixing the boundaries of the two States, but fixing a certain zone which was conceded to be in dispute between the two States, in which the fishermen might go pending the determination of the case.

Q. Now is it not also true that the legislatures of both States have met since this meeting, and neither State recognized any dispute as to the lines between the States by legislative acts, and did not ratify what had been done by the oyster commissions?

A. I can say this. That Mississippi has not taken any action so far as I know, and I have read over the acts of 1904. What action Louisiana has taken through her legislative body I don't know.

Q. You remember that the governor of Mississippi called the at-

tion of the legislature of 1902 to this matter and no action was
ken by the legislature of Mississippi?
A. I really don't recollect the circumstance. It may be that that
the case.

Recross-examination.

By Mr. DYMOND:

Q. Is it not a fact that in calling the attention of the legislature
this subject the governor mentioned the fact that an amicable
uit had been suggested to be filed in the Supreme Court of the
nited States?
A. I really don't recollect any thing was done in Mississippi by
he governor of Mississippi in regard to it.

J. D. MINOR, a witness introduced on behalf of the State of
1747 Mississippi being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Where do you reside, Mr. Minor?
A. At Ocean Springs.
Q. In what county?
A. In Jackson county, Mississippi.
Q. How long have you resided in Jackson county?
A. I have resided in the county for 39 years.
Q. Have you ever held any official positions in the county and if
so I wish you would please tell us what they were and the dates that
you held them?
A. In 1895 I was the sheriff of the county. 1895 and 1896, and
1902 and 1903 I was sheriff of the county.
Q. Well during the time that you filled the office of sheriff of
Jackson county if you knew of any serious conflict between the
officers of St. Bernard parish Louisiana and the officers of Harrison
county Mississippi or any other portions of the State of Louisiana or
any other portions of the State of Mississippi respecting the boundary
lines of these two States please mention it?
A. No sir, I never knew of any controversy between them.
Q. Have you any information or knowledge from any source
whatever as to any dispute in the waters of the Gulf as to the line
between the two States during this time?
A. No sir, I never knew of any dispute until the last four or five
years. I don't remember exactly when the commencement of this
controversy took place, but it was some time before this law suit.
We were out a good many times to make arrests out there and we
just went on and did it. And we thought we had a right to go.
Q. To what extent did the officers of Jackson county exercise
sovereignty and jurisdiction south of Mississippi's land?
A. For 18 miles south of the shore line.

Q. Have you ever been engaged in the oyster business Mr. Minor?

A. Well I have caught some oysters in the marshes. The first time I went in the marsh I think was about in 1880. I won't say positively the different years, but from 1880 to 1890. For the ten years off and on.

Q. During this time was there ever any trouble at all about the State line?

A. No sir.

Q. Have you ever been a member of the Mississippi Oyster Commission?

A. Yes sir.

Q. When were you first appointed?

A. I was appointed when the commission was first formed. It will be two years next September 1902.

Q. Were you — of those who made an agreement with the Oyster Commission of Louisiana as to the neutral zone?

A. Yes sir, I was at the meeting in New Orleans.

Q. Where is that line?

A. The line that we agreed on on that day?

Q. Yes sir?

A. Well we began at the mouth of Pearl river and run to Malheureux point, and we followed the marsh to Grand pass, and then out to Sundown island, a northeast direction until we struck Cat Island channel.

Q. Well now that was the line. What was the agreement as to the line?

A. The agreement was that the two commissions would respect the license of either State.

Q. Up to that line?

A. Up to that line. That is if a Mississippi boat was in there with a Mississippi license why the Louisiana boats would pass her by as though she was in her own territory. The same with Louisiana.

Q. It was agreed that Mississippi boats should not cross
1748 that line into the marshes without a license from the State of Louisiana?

A. Yes sir, she would have to be licensed.

Q. The Louisiana fishermen should not cross this line?

A. No sir. It was from what was supposed to be the deep water channel to the marsh that was considered neutral ground. Both States could fish in there until the determination of this suit.

Q. Where was the territory that both States could fish in?

A. Beginning with Pearl river and going to Malheureux point, and down through Grand pass out to Sundown island, and then in a north east direction to Cat Island channel, and then following Cat Island channel back to where we started from.

Q. Following the channel?

A. Yes sir.

Q. What they term the deep water channel?

A. I term it the Cat Island channel.

Vell between that channel and that line both States could there?

Both States could fish in there provided they had a license ither State.

And below that line. South and west of that line Mississip- could not go?

And north of Cat Island channel the Louisiana people could ?

They were not permitted to go unless they had a Mississippi e.

That then deprived and debarred the Mississippi boats and ssippi fishermen from going into the marshes west of Grand

South of that line.

They were cut out of that entirely?

They were cut out of that entirely.

Now that was the action of the joint commission of the two s?

Yes sir.

Did they undertake or understand that the two States, or the ens of the two States were to be bound by that?

No sir, it was understood that this agreement that they were king had no legal standing. That is that either State could ik away from it, or the citizens of either State need not pay any ntion to it. The idea was to make this agreement so as to do y with any difficulty that might come up in the boats going into s territory.

Q. And if the Mississippi boats would not cross that line they uld not be arrested by the Louisiana authorities?

A. No sir.

Q. But if they did they would be arrested?

A. Yes sir.

Q. And *vice versa*?

A. Well no, with our lines it was different.

Q. How was it on our lines?

A. Louisiana could come in on our lines provided she took out a lississippi license.

Q. The Mississippi boats could not go into the Louisiana territory ith a Louisiana license?

A. She could go in there with a Louisiana license, but she must tay in Louisiana. The oysters had to stay in the State.

Q. Could the Louisiana boats come into Mississippi territory with a Mississippi license and haul oysters back to Louisiana?

A. Yes sir.

Q. It looks like Mississippi was playing a losing game, does not it?

A. The oysters from Mississippi were carried into Alabama from Mississippi last year. They paid a two cent tax.

you state the commercial importance of that business to the State of Mississippi?

A. I have prepared a paper here, and I want to say in this connection that I was selected as chairman of the testimony committee from the Commercial Club. As such I have tried to gather different things that might be useful.

Q. If this is correct you can file it as your statement.

A. I have prepared what I consider as a statement which in my judgment is as near correct as it can be and which I now submit.

The statement above referred to is here offered and introduced in evidence and is marked Exhibit A to the testimony of this witness.

Exhibit A furnished by the witness as an exhibit to his testimony is here filed as a part of the testimony in this case, and a copy thereof is furnished to counsel for the State of Louisiana.

By Mr. DYMOND: To which offer the counsel for the State of Louisiana object and except on the ground that it has no relation to the subject matter in controversy in this suit. And it is a statement in regard to the assessed values of property, and the cost and the value of the products produced in the counties forming the coast of the State of Mississippi, together with the statement as to the population of the several counties and the number of boats and vessels, without relation to the subject of oysters, or the territory in dispute in this case.

Cross-examination.

By Mr. DYMOND:

Q. As I understand it you have been familiar with the oyster industry on the coast for the past 18 or 20 years?

A. Yes sir.

Q. And have taken quite an active interest in the matter from the Mississippi point of view?

A. Yes sir.

1760 Q. Was I correct in understanding you to say that the first knowledge that you had of the dispute between Louisiana and Mississippi was when the two oyster commissions got into a dispute over the revenues that would come from the disputed area?

A. I can say that there was no contention or conflict until the Oyster Commission of Louisiana started to look into the question for revenue. There was no conflict or contention prior to that time so far as I know.

Q. Well as I understand it you say that in January 1902 the State of Mississippi appointed an oyster commission on the suggestion of the canning interests of the State of Mississippi thinking that by the production of a revenue the oyster interests could be better protected, and subsequently in the month of May 1902 the State of Louisiana appointed a similar commission who also provided for a

enue following the statute of the State of Mississippi, and it was
a result of this that there developed a dispute between the two
ates, especially over the revenue which was to come under the
eration of the two oyster laws?
A. Well now that is a very lengthy question and I would like to
plain it fully. There was no confusion or any thing of that sort
til the Louisiana commission did according to the views of the
ssissippi authorities usurp their authority arbitrarily by going
on these grounds and putting a patrol boat there for the purpose
arresting citizens of Mississippi. That is what brought about the
ginal question as to bringing about some amicable arrangement
tween the two commissions on a working basis.
Q. Well now Mr. Stenographer will you please refer to the testi-
ony of Mr. Heidenheim where he gave his explanation of the
rt of the controversy and read it to Mr. Heidenheim so that he
y refresh his memory as to what he has just testified to?
(The former testimony of the witness is here read over to him from
e stenographer's notes.)
Q. Mr. Heidenheim, have you heard your testimony as re-read to
u by the stenographer?
A. Yes sir, I heard that.
Q. Is that statement correct as you have heard it reread to you?
A. Yes sir, that is correct to the best of my knowledge and belief
s sir.
Q. Then as I understand it the dispute originated in 1902 between
e two oyster commissions that were appointed by the respective
ates to control the oyster industry of the respective States?
A. I hold to the original position that this conflict is due to the
ster commission sending a patrol boat into Mississippi, and that
e whole dispute rests upon that.
Q. When was this?
A. By sending a patrol boat into Mississippi and it was due to
at act.
Q. When was this done?
A. It was right after I think the Louisiana commission took pos-
ssion.
Q. After the Louisiana commission was created by act No. 153 of
e legislature of Louisiana of 1902. Then the patrol boat that you
fer to was the patrol boat of that commission?
A. No sir.
Q. It must have been subsequent to the creation of the commis-
on?
A. I think it was in 1902.
Q. You never heard of any dispute prior to that?
A. No sir.
Q. Now were you in the oyster industry in 1898?
A. Yes sir.
Q. Did you ever hear of an expedition having been gotten up by

the police jury of the parish of St. Bernard, State of Louisiana in January or February 1898, sent out by the sheriff of the parish of St. Bernard to warn from the Louisiana marshes non residents fishing there?

A. No sir, I never heard any thing of that.

Q. Did you ever have any of the fishermen to report to you

1761 that they had been expelled from that section?

A. No sir, not prior to 1902.

Q. Then as I understand it definitely and positively you had never heard any thing of the dispute prior to 1902?

A. No sir, not until these patrol boats got on our waters.

Q. And these patrol boats did not go until 1902?

A. As far as I know there has never been any patrol boat out there until 1902.

Q. You could not be mistaken about this?

A. No sir, not as I remember.

Q. I would like now to give you the benefit of every opportunity to put yourself on your guard and refresh your memory in regard to this?

A. Well as far as I know we never had any trouble until 1902 when the oyster commission was created.

Q. Now Mr. Heidenheim as I understand it you persist to state that it was 1902 when there was first any dispute as to the boundary or any endeavor to enforce the rights of the State of Louisiana?

A. That is the first information that we took any interest *any interest* in was in 1902 after the commission was formed.

Q. Now is it not true that there was held in the city of New Orleans on January 19th 1901, a meeting presided over by the governor of the State of Louisiana wherein resolutions were passed and a communication was written by the governor of Louisiana to the governor of Mississippi requesting the governor of Mississippi to appoint a boundary commission to see if it was not possible to settle this dispute amicably between the oyster commissions to be appointed by the respective governors?

A. I don't know anything of that.

Q. You are quite positive that you know absolutely nothing of that fact?

A. No sir, I know nothing of that fact.

Q. You are quite positive that you never took any steps that had any relation to that fact?

A. Not that I know of no sir.

Q. Did you ever have any conference with the amicable boundary commission which was appointed by the governor of Mississippi and did you ever give them the benefit of your advice concerning what you considered to be the Mississippi line?

A. Well when they first met in New Orleans I did give them the benefit of some advice.

Q. When was this?

A. I don't remember exactly the year now. I think that it was

t ten or fifteen days before they went to New Orleans that we
them some advice. I believe I was one of them that did.
You refer now as I understand it to the amicable boundary
mission that was appointed by the governor of Mississippi A.
Longino, to confer with a similar commission that was appointed
the governor of Louisiana?
A. Well I don't know that I understood it in that way. I under-
sd it that they were to go to New Orleans and have a conference
ether. That is the way that I understood it.
Q. You will please refer to the bill of complaint——
A. I want to correct that one minute please. There was a com-
ittee appointed. I got the oyster commission mixed with this
mmittee that you speak of. There was a committee appointed by
e governor as you say. Mr. Bowers and Mr. Neville and so on.
e thought that we had no choice as far as the packers were con-
rned. We had nothing to do with this committee at all.
Q. What committee is that?
A. That is the commissioners. The commissioners. I remember
hen they were appointed, and that we gave them no advice at all.
Q. Now you will notice that this letter of Governor Longino is
ated February 9th, 1901?
A. Yes sir.
Q. And you notice from this Exhibit "D" attached and
1762 made a part of the original bill of complaint on the part of
the State of Louisiana that this commission met in joint ses
sion on the 26th of March, 1901?
A. Yes sir.
Q. Did you as a citizen of the State of Mississippi having at heart
the welfare of the oyster industry of the State have any conference
with this Mississippi Boundary Commission either before or after it
met the Louisiana Commission in joint session in New Orleans on
the date designated?
A. I was present before this commission went to New Orleans and
there was one time, that I remember Mr. Bowers, if I am not mis-
taken, Mr. White and Mr. Ford, that is had a conference that I was
present at, but it was unanimously decided to maintain the bound-
ary line as laid down by the statute.
Q. Had you had any discussion with the commission at that
time?
A. No more than we conferred together. I think that Mr. Joul-
lian was present in this conference too. I think that it was Mr.
White, Mr. Bowers, Mr. Ford, Mr. Joullian and myself. I think
there were one or two more.
Q. Did you give that commission the benefit of your advice in
regard to the matter?
A. We just told them just what we tell you now. That we always
understood that 18 miles out from Pearl river to Pascagoula was
the boundary of the State of Mississippi.

Q. Did you give them the benefit of any study or investigation that you had made in connection with the matter?

A. I don't think that question came up at all, because Mr. White is as familiar with that question as we are ourselves, having been counsel for the oyster packers here for years, and that line of argument was therefore not necessary.

Q. Then as I understand it do you now persist in your original statement that you knew of no dispute prior to the month of September 1902 as to the boundary between the two States?

A. I mean to say that there was in 1902—I remember this transaction of 1901. I don't deny that. Now if there was any dispute with reference to oysters prior to that time we were not interested in it because as I understood it it was brought about by dredging, and this was practically no conflict at all, but it was a contention about dredging, at that time before as you say the real contention. There was no such thing at all until that patrol boat came into existence.

Q. I would like to get clear on this point. Do you maintain that this is a dispute between two States as to oysters or as to boundaries. Which is the important thing that the States are trying to settle?

A. I think that the question of oysters in this matter is only a secondary question.

Q. Is not the question of boundary the principal point?

A. The question of boundary and therefore I hold in the question of boundary there was no dispute.

Q. Is not the matter of oysters simply a result that flows from the settlement of the boundary?

A. Well I don't know that it is. I look upon the boundary question; the question of jurisdiction as of the highest importance involved therein.

Q. And the other oyster question is secondary?

A. The other is secondary, so if there would be no oysters or would be oysters. There may be gold mines out there or some thing else. There might be some thing leading up to it.

Q. If the boundary was the important matter, is it not a fact that the boundary issue was officially under consideration since the month of March 1901?

A. That might have been possible.

Q. Don't you know about that?

A. Well the only thing I know about it was I remember the first trouble we had with the patrol boat, which went on the ground trying to keep our people out of here. If that was 1901 or 1902, I am not positive.

1763 Q. Now did you ever take any steps to determine from official records what was the boundary between the States of Louisiana and Mississippi?

A. Well that is a question that I think had better be left to legal talent. I have had a resort to everything that money could buy in

the way of books and library and so on. It would take three weeks to tell you all that I know on it.

Q. Reread the question to the witness and get him to answer it yes or no, and then to explain afterwards if he desires to make any explanation?

A. I can answer that right straight and say yes. Yes sir.

Q. Did you give the benefit of the data that you so obtained to the amicable boundary commission appointed by the governor of the State of Mississippi?

A. No sir, because I have only read it since the question has been in the court.

Q. Then as I understand it you took no steps prior to October 1902 when this case was filed in the court?

A. What I want to get straightened out was, I do not deny that we were in the office with Mr. White, whatever year that was in, and Mr. Bowers and Mr. Ford I think it was, and as I stated the question did not come up as to what we knew of oysters because we knew that Mr. White was fully informed, but the question was gone over and maps submitted and everything gone over, and the contention there was the boundary line was as the act made it.

Q. You spoke of the submission of maps to Messrs. Bowers and Ford and White, members of the Amicable Boundary Commission of Mississippi?

A. Yes sir.

Q. Was this prior to the report made by that commission on July 20th 1901, when it made its final report to the Commission of the State of Louisiana?

A. That is all the conference that we had. They called us in to ask us what our opinion was on it and we gave it to them.

Q. I will have the question reread to you. "Did you give the benefit of the date that you so obtained to the amicable boundary commission appointed by the governor of the State of Mississippi?"

A. Yes sir.

Q. What maps did you submit to this commission?

A. We did not submit them any maps. They had the map and asked us our opinion of it.

Q. What map was it that they had?

A. I don't know.

Q. Did you have any maps at that time?

A. No sir.

Q. Did you have any papers at all at that time which you had gotten as a result of your investigation on this subject?

A. We had the charts of the United States Geodetic Department. We had the Fish Hawk map and one that they had in a book. I don't remember which one that was.

Q. Were these all of the maps that you had?

A. That is all that I remember.

Q. Could you possibly have had any other map that you now do not remember?

suggested by any body that the courts of the country could settle these matters. Did any body ever say that the civil courts could try men for violating the oyster laws like they did for violating any any other law, murder or larceny?

A. No sir, that question was never brought up. It was understood by all hands that this agreement we were making there was nothing binding on either State.

Q. That is not the question. I am asking you if in the general discussion in fixing on these lines; that is the neutral territory, if any body ever suggested that the courts of the country could settle all of this dispute, or were you absorbed in the idea of armed
1755 fleets and patrols and things of that sort?

A. No sir, it never was suggested.

C. JOULLIAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McCLURG:

Q. Where do you reside?

A. Biloxi.

Q. How old are you?

A. 40.

Q. How long have you lived in Biloxi?

A. 16 years.

Q. That is in Harrison county?

A. Yes sir.

Q. What is your present occupation Mr. Joullian?

A. Oyster and shrimp canner.

Q. How long have you been engaged in that business?

A. In the business actually; the canning of oyster- and shrimp for seven years. Oysters seven years, and shrimp 14 years, and previously shipped oysters about eight years.

Q. Where have you been taking your oysters and shrimp. In what territory?

A. Where I have been getting my supply of raw material?

Q. Yes sir?

A. From the territory down here in front of Pass Christian, and Bay St. Louis, Waveland, and some from Pascagoula, and some from Alabama, and some from down at Grand pass, and some from down in the marshes which might be termed Karako bay, and Fox bay, and Drum bay, and Bayou Greecue and Cranetown, and Three Mile bayou and Jack Williams, and a half a dozen other places down there.

Q. Where did you find the best oysters for the raw trade?

A. I am not in the raw trade now.

Q. Well when you were in it?

A. Out of Louisiana marshes.

Q. You understand do you this agreement that the two commissions entered into?

A. Yes sir, I understand that agreement fully.

Q. That precludes Mississippi boats from going in there and bringing raw oysters into Mississippi does it?

A. Yes sir.

Q. I believe you stated that the best raw oysters are found in the marsh.

A. Yes sir, I will qualify that by saying in any quantity. In a commercial quantity.

Q. It is alleged in this bill of complaint that there was contention over the line dividing the two States. That at the time of filing the bill on October 27th, 1902, there was a threatened armed conflict between these civil officers of St. Bernard parish Louisiana, and Harrison county Mississippi. Did you know anything about any such condition of affairs having existed prior to October 1902?

A. No sir.

Q. Did you ever hear of anything of that sort?

A. No sir.

Q. It is also alleged in this bill of complaint Mr. Joullian that the true line dividing the two States was this deep water sailing channel, commonly called Cat Island channel I think. You know where that is?

A. Yes sir, I know where that is.

Q. Do you know anything of that line being recognised as the true dividing line between these two States?

A. Not prior to the claim as set up by Louisiana.

1756 Q. The commercial interests as we understand it Mr. Joullian, are considerably involved in the correct adjustment of this matter, and I would be glad if you would state to the commission some thing of the importance of this matter to the commercial interests, especially with reference to fish and oysters and shrimp and that sort of commerce, in order that we may get in the record some idea of the commercial interests involved.

By Mr. DYMOND: The above question is objected to by the counsel for the State of Louisiana on the ground that the results flowing from a correct legal interpretation of the disputed boundary issue have nothing to do with this case, and are therefore irrelevant.

A. Well to the best of my calculation the present consumption of raw material and oysters on the coast by the factories that are situated within Mississippi would amount to some thing like a million and a quarter barrels for all purposes. Canning and bulk oyster trade, and a million of shrimp which is the only fish practically canned. It would amount to some thing like ten thousand barrels as near as I can judge. The finished product from this raw material after being turned out by the canneries would amount to near two millions of dollars.

Q. Well taking the oysters and the prosecution of the oyster interests in the territory you have described. What State were you in?

A. In Mississippi in transacting my business.

Cross-examination.

By Col. ZACHARIE:

Q. Mr. Joullian what name is that territory west of Isle à Pitre and running towards the Mississippi river called generally amongst the fishermen and people along this coast?

A. You mean the marshes where they take the oysters?

Q. Yes sir?

A. They have been known and called by people that I have come in contact with Louisiana marshes. I have seen them described on the survey of the United States Government at one time as the Grand marshes.

Q. You gave us some mental estimates both of the raw products and the finer products received and turned out by the Mississippi canneries. How large a proportion if you can fix it of this raw material was derived from that territory west of Isle à Pitre, and from these islands, the Malheureux islands in that neighborhood?

A. Well now that would have to be answered in a way that would supply the separate intervals. I will say that prior to the time that Louisiana set up her claim to the line of the deep water channel that ninety per cent. of oysters used for canning and raw came from the lands west of this line as claimed by Louisiana. Since Louisiana has set up this claim I think it can safely be said that sixty to seventy per cent. is gotten from east and north of this line.

Q. Outside of the disputed territory?

A. Yes sir. I can only answer that in so far as my individual business applies to. I don't know where the others get their oysters.

Q. I think you said if my memory serves me right in your examination in chief that you never had heard of any threats or trouble or armed conflicts between the officers of the State of Mississippi and those of Louisiana until the beginning of this suit. You were in this business in 1898 were you not. The same business?

A. Yes sir.

Q. Did you not at that time hear complaints from your fishermen and boatmen employed, and by others that they had been threatened with arrest and ordered to leave this territory?

A. I did not hear that they had been threatened with ar-
1757 rest, but the fishermen reported that some dagoes had ordered them to leave the marshes without any authority whatever.

Q. Did you or did you not hear of an armed expedition or posse being set on foot by the sheriff of the parish of St. Bernard in the State of Louisiana, and that came down and drove these people out and warned them off, the Mississippi fishermen from this territory?

A. No sir, nothing in any manner official.

Q. Of course you knew of the appointment of these boundary commissioners and their deliberations and meetings that they held in

January 1901. That was about 18 months prior to the institution of the suit in October 1902?

A. I would like to get that part of it straight. I considered that the beginning of the matter when it was set up by Louisiana that she had the sold right to the territory as she now claims it.

Q. You speak of the beginning? The papers were filed when?

A. The papers were filed some time subsequent to that.

Q. In October 1902?

A. Yes sir.

Q. You knew of the meeting of these boundary commissions and the discussion and so on?

A. Yes sir.

Q. When it took place in January 1901?

A. Yes sir.

Q. Have you ever visited this territory yourself?

A. A portion of it. Not all of it.

Q. Which portion of it?

A. The northern portion of it.

Q. That is along the shore line of the sound?

A. Yes sir, along the shore line.

Redirect examination.

By Gen. McCLURG:

Q. I understand you to say Mr. Julicun that you regard the initiation of the suit to be some time prior to the actual bringing of the suit?

A. Literally yes sir, I would judge it could be called the initiation of the suit when Louisiana set up her claim for this territory as she now claims it.

H. HEIDENHEIM, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. McCLURG:

Q. Where do you reside?

A. I reside at present in Biloxi, Mississippi.

Q. How long have you resided in Biloxi?

A. For about 20 years.

Q. What is your business?

A. At the present time I am the secretary of the Barrataria Canning Company and manager of the Biloxi plant.

Q. How long have you been engaged in that business?

A. About 18 and ½ years.

Q. The Barrataria Canning Company as I understand it is engaged in the oyster and shrimp business?

A. Yes sir.

Q. And it is located in Biloxi?

A. Biloxi, Mississippi.

Q. Where has your company been getting its oysters and shrimp?

A. Oysters and shrimp? They have been getting them out of the waters of the Mississippi sound. Principally out of the grounds that we understood to be Mississippi territory.

Q. Designate to the stenographer now what you considered to be Mississippi territory?

1758 A. We always considered Mississippi territory to include all that territory, beginning at Pearl river and running in a southern direction about 18 miles out, and then extending in an easterly direction down as far as the marshes went. Ten miles on the other side of Pascagoula.

Q. You have read the act of Congress admitting Mississippi into the Union and the statutes of the State of Mississippi defining her boundaries have you?

A. Yes sir.

Q. In taking oysters and shrimp for your factory within the limits that you have mentioned, in what State did you consider that you were exercising that privilege?

A. We always considered that we took our oysters in the State of Mississippi.

Q. It is alleged in this bill of complaint Mr. Heidenheim that there was such contention as to the boundary line between the two States in the waters of the sound or Gulf, that at the time of the filing of the bill of complaint in October 1902 there was a threatened armed conflict between the officers of St. Bernard parish Louisiana and the sheriff and officers of the county of Harrison Mississippi. If you have any personal knowledge or any information as to such a condition of affairs I wish you would please state what it was.

A. Well as far as that is concerned that was all imaginary. For 20 years we have been getting a supply of oysters out there and never had any conflict or trouble in any shape or form. We never had any trouble until there was a revenue laid on the part of the State of Mississippi by appointing commissioners, and *the* Louisiana then followed up the Mississippi commission.

Q. That Mississippi commission was appointed in 1902?

A. That Mississippi commission was appointed in 1902, and a revenue bill framed. It was framed on the ingenuity of the packers. It was to cull oysters and protect the reefs etc. Shortly after that Louisiana also framed a bill and a commission was also appointed, and as the contest then arose between these two commissions as to getting this revenue, then the conflict was brought up between the two States which was all imaginary. There never was any conflict. If there was a conflict it was the two commissions trying to get the revenue, as to which one would get it. Prior to that time, and prior to the formation of these two commissions every thing worked amicably, and my opinion is they would be working amicably today if it was not for the question of revenue. That was at the bottom of it.

Q. And that originated in 1902 you say?

A. I don't know exactly what year it was, but it originated shortly after the Louisiana commission was put in legal force, and legal working order.

Q. Now during the 18 years that you had been engaged in the canning business up to that time, if you had ever heard any dispute or controversy of any kind over the location of the State line we would like to know it.

A. No sir, there was never any dispute raised up to that time which I think was 1902.

Q. Now it is also alleged in this bill of complaint that this Cat Island channel or deep water sailing channel out of the mouth of Pearl river by Cat island, north east of Chandeleur is claimed by Louisiana as the true dividing line between the two States. What have you heard of that before if any thing?

A. My contention is that that contention is unsound and contrary to reason. If that was right Louisiana would have 34 miles, which is her coast line to Chandeleur.

By Mr. DYMOND: Objected to on the part of the State of Louisiana on the ground that the witness has not qualified himself to speak as an expert in regard to the legal correctness of the deep water channel as the boundary dividing the two States.

1759 A. I claim if that contention was sound that the boundary line from the coast of Louisiana to Chandeleur would be 34 miles or about that. Furthermore it is contended that it is not in the strict meaning of the language as I understand it defining the boundary line of the State of Mississippi and Louisiana.

Q. You mean the line that is defined in the law?

A. Defined in the different acts creating the several States. It is not within the meaning of the English language as the boundary line reads.

Q. Mr. Heidenheim, you are familiar with the oyster industry generally in Mississippi are you?

A. Yes sir, that is so far as the oyster industry is concerned. I have only been in the marshes about six or seven times. I might have been out there ten or twelve times in the 18 years that I have been out there.

Q. When were you first out there?

A. The first time that I was out there was in the year after I came here. That was in 1886.

Q. When were you there last?

A. The last that I was there was about; I think it was about four years ago.

Q. Have you noticed any difference in the general configuration or conformation of the marsh territory between the time you first went there, and the last time you went there tell us what it was?

A. No sir, it has always been practically the same.

Q. You are familiar with the oyster and fishing industry generally down along the Mississippi shore. I would be glad to have

There were no restrictions there or nothing. There would be camps out there and a big pile of men living in them.

Q. A big pile of men living there?

A. Yes sir.

Q. At what time?

A. The first camp that was built out there was built by some Baltimore people that built a cannery at Pascagoula. They had their camps built at Cranetown pass.

Q. When was this?

A. The camps were out there before I went out there. They abandoned the camps just about the time I went in the marsh. In the '80's.

Q. Did they have a store there?

A. I don't know what all they had there. They had some big buildings there.

Q. Can you name some other parties who had camps and buildings there?

A. No sir, those are the only people that had any thing there.

Q. Did you know the Biloxi firm, later on that had a camp and store there?

A. That was put up after I was out there.

Q. What was the name of this firm Ondrons and Wensel?

A. I don't know anything about that.

Q. Did you ever know of any Mississippian from Hattiesburg who had a store established on Three Mile bayou?

A. No sir, I don't know any thing about it.

Q. Then I understood you that while it was claimed that the Mississippi line extended 18 miles south, you never heard or understood exactly where this territory terminated?

A. No sir.

By Mr. DYMOND:

Q. You stated in your redirect examination awhile ago Mr. Minor that in your personal opinion you thought that the attitude of the two oyster commissions in their conferences and in their contentions was more of a bluff than any thing else. That was your personal opinion simply was it not?

A. Yes sir, and I don't think any one else thought otherwise.

Q. If your judgment in that respect had been in error and if you had acted on your judgment that it was a bluff and had refused to enter into an amicable agreement would not it have been in your opinion rather a risky thing to do, to conclude that it was a

1754 bluff?

A. Well in my judgment it was the best thing that we could do.

Q. Well did you not think it was too serious to run the risk of calling that bluff?

A. What I mean by the word bluff; that what they were doing would not bind any body. It was just sorter laying down some

; where we were trying to keep out of any trouble that might

When you used the word bluff you did not intend to belittle eriousness of the condition, where ten men of intelligence were g to do the best they could under the existing circumstances?
No sir, I did not use it that way.

By Col. ZACHARIE:

Mr. Dymond may be more familiar with the terms of poker you are. He asked you if you did not think it was too serious ll the bluff. Did you not think it was such a serious matter you could not afford to test it, as to whether it was a bluff or
In other words you did not propose to carry out what you con-red your full rights for fear that there would be a collision of e kind?
. Why certainly I thought that was best for all hands was what lid. We did a good deal of bluffing before we got to that line. Louisiana people wanted us to go back further than what we and we wanted to go further south than what they agreed to, that is where we were doing the bluffing.

Redirect examination.

By Gen. MCCLURG:

Q. Now I want to ask you Mr. Minor with reference to these ffing games that were played down there. All of this blood and nder that was raised about armed conflicts and the like of that. t any time before these two commissions met in Mr. John Dy-nd's office in New Orleans and assumed legislative, judicial and ecutive authority; with all the powers of the army and navy and Government, if there had ever been a single act of violence?
A. I had never heard of any.
Q. There had never been a single serious contention between the ople of the two States that you can recollect out there?
A. No sir.
Q. And so this was gotten up and discussed. When they got wn there and talked about what might be done by armed patrol ats and the like of that. That was a regular bluff game. Is that t about the size of it?
A. Well the newspapers were full of it, and it was talked by the atmen that it did not matter whether Louisiana armed a boat and t it out there or not, but what they would go ahead and fish these sters.
Q. That is what Louisiana claimed?
A. The Mississippi boatmen. It was given out after this act was ssed in the legislature. The law claimed that they had the right arm vessels and keep any body out of the State, and these men ought that they had the right to go there.
Q. In all of this discussion by these two commissions was it ever

A. You can find it in the atlas of 1850.

Q. Whose atlas?

A. Now I think it is Collins' if I am not mistaken.

Q. Don't you know as a matter of fact Mr. Heidenheim that it was not until 1840 that this body of water got any name at all?

A. No sir, it was called Pascagoula sound prior to 1850, and then it was called after that Mississippi sound, and Lake Borgne was a part of Pascagoula sound. A sound is a body of water connecting the — with the deep sea.

Q. Will you please look at this map marked map No. 19, offered by Louisiana and state whether you see any Mississippi sound as given to the body of water now called by that name. The map being B. Lafond's map of 1806?

A. What I want to get is I told the gentlemen that I got my reference from Collins' map of 1850, and I have also looked up other authorities on the question, and for that reason, am of the opinion that maps as a general rule are very uncertain and unreliable. I am only giving you the information as I get it.

Q. Will you please look at the map of 1834 by L. Augustus Mitchell, and say whether you find south of Hancock, and Jackson counties and Harrison county, any reference to the name Mississippi sound?

A. As far as that question is concerned, my best recollection is all old maps have been made on that line.

Q. Well I am asking you the special question which you can very readily determine by looking on the map. Is there any name of Mississippi sound on this map No. 19 of B. Lafon's of 1806?

A. No sir.

Q. Is there any name on this map of Mitchell 1834, called map Louisiana No. 24?

A. No sir, but there is no distinction on this map as to whether this is the gulf of Mexico in there.

Q. Is there anything on this map of Graham & Tanner of 1834 giving the name of Mississippi sound to the body of water south of Hancock county?

A. No sir, but I would understand by that map that all of that body was Lake Borgne.

Q. Do you see any name Mississippi sound on this map of Tanner of 1837?

A. No sir, I do not see any on the gulf of Mexico there.

Q. Will you now look at Hardee's map of 1871 and state whether you see the name Mississippi sound there?

A. Yes sir, I see Mississippi sound on this map.

Q. This is the first time you have seen that word, and those words on the maps I have shown you cover the water in question does not it?

A. That is on the maps that you have submitted to me yes sir.

Q. This last map is Louisiana map No. 30?

A. Yes sir.

Q. Will you please look at Bailey's map of 1855, called map Louisiana No. 28, and state whether or not this body of water is under the name which we call Mississippi sound?

A. There is none here for the Mississippi sound and none for the gulf of Mexico.

Q. I am not asking you about the gulf of Mexico. That is voluntary information. I am asking you about Mississippi sound.

By Mr. McCLURG: He has a right to state it.

By Mr. DYMOND:

Q. Will you look at Schonberger's map of 1866, and state whether or not the body of water that we are discussing has any name?

1771 A. The body of water that we are discussing?

Q. Is it called Mississippi sound?

A. According to this map I would consider that all of the body of water in Mississippi sound from there way down to the southern part of Louisiana.

Q. Will you please answer the exact question Mr. Heidenheim yes or no and then explain afterwards. I am asking you the simple question what we now call the Mississippi sound. What it was called before it was marked on map of Louisiana No. 29.

A. Mississippi is marked on there. I suppose sound too.

Q. Is not that word sound there?

A. Yes sir.

A. And therefore 1866 is the earliest on which you have seen this?

A. There is Pascagoula bay mentioned. That is the same body of water. Mississippi sound is not mentioned there. That is 1834. The map of 1834.

Q. Will you look at map No. 25 and state what the name of the body of water is that is south of Jackson and Harrison counties in Mississippi?

A. Pascagoula bay. Map of 1834.

Q. That is your opinion as I understand it that this Pascagoula bay extends westward until it meets Lake Borgne?

A. Yes sir.

Q. And that Lake Borgne extends eastward until it meets Pascagoula bay?

A. They come together right here.

Q. Then Pascagoula bay passess all of these intervening islands and jumps over into Lake Borgne?

A. I will call this Pascagoula bay. A lake is a body of water surrounded by land. A sound is a body of water connecting the land with the deep sea.

Q. What is a bay?

A. A bay is a name given to any irregular body of water regardless of any other name.

Q. Well is — not a fact that Pascagoula bay is called Pascagoula bay there?

A. It is called that on that map.
Q. Is it not so called there today?
A. No sir.
Q. What is Pascagoula bay called there today?
A. It is called Mississippi sound. That body of water.
Q. Do you mean to say that around Round island and off Scranton and Pascagoula that is not called Pascagoula bay?
A. No sir, this is Mississippi sound.

By Col. ZACHARIE:

Q. Mr. Heidenheim, what time of the year was it that Governor Longino visited down here and you had that conference?
A. I think that it was in 1900 Col. Zacharie.
Q. What time of the year was it. What season of the year. Was it in the spring, or summer or winter?
A. It was during the late spring or early summer.
Q. Does your recollection correspond with that?
A. Yes sir, I think so.
Q. You were aware at that time there was a question in regard to the boundary?
A. Yes sir, that is what we asked him to come here for.
Q. You knew that fact prior to the appointment of the boundary commission in 1901?
A. I think it was prior to the time the commission was appointed.
Q. If it was in the spring or summer of 1901 it must have been six months at least?
A. Yes sir.
Q. You have attempted to give the definition of a sound?
A. Yes sir.
Q. Do not all of the lexicographers give the definition of a sound as being a species of *straight* or an arm of the sea?
A. It is in one sense of the word an arm of the sea.
1772 Q. Who was Collins and where did you find this map? We have gone through everything in the public libraries of the United States and we have never come across that name yet. Where can we find it?
A. I have it in my possession, and if you wish I can submit it to the attorneys. I think it is Collins' map of 1850. I think that is the correct name. It was printed in Philadelphia.
Q. We would like to see it.
A. I am almost sure that it is Collins. I can get it for you.
Q. Mr. Heidenheim, you have been the chairman of the Commercial Club hunting up evidence in this case have not you?
A. No sir, not exactly that. I will give you the particulars if you wish. The Commercial Club held a meeting and concluded that it would be advisable to appoint a committee on testimony. That is to get what names and other desirable matter that would be useful to the attorneys. It was not a question of evidence.

Q. Had you been investigating this question for some time prior to your appointment as chairman of this committee?

A. Well I have investigated this question off and on in various ways but not exactly bearing on this care.

Q. How long have you been investigating it back?

A. Well I have been reading up on the question directly and indirectly ever since I have been in the oyster business. Ever since 1885.

Q. You have a considerable interest in the State of Mississippi winning this case have not you?

A. Well I can not say that we have any more than any other person would have that had their money tied up in an investment.

Q. How much money have you tied up in that investment?

A. The Barrataria Company has two plants. One in New Orleans and one in Biloxi. The one in Biloxi has $125,000.00 tied up in it.

Q. It would be a considerable expense and loss to you would not it if you had to remove this cannery to Louisiana or discontinue the business?

A. It would be a considerable expense. It would not be a question of discontinuing the business.

Q. You would move to Louisiana?

A. I don't say that we would. We are going to start up in Louisiana anyhow.

Q. Then you have felt a great interest individually have not you in sustaining Mississippi's side?

A. Yes sir.

Q. Your committee advertised in the news papers did not it for evidence that would go to substantiate Mississippi's case?

A. There were notices in our local papers.

Q. Did you have interviews with these witnesses?

A. Not that I know of no sir. All that we did was to furnish the attorneys with a list.

Q. Well how did you know when you furnished these lists to the attorneys what the witnesses would testify to?

A. We only went this far. We got together, our testimony committee of five, and we would recommend what we thought were desirable witnesses, and this was put before the committee. If they thought they knew any thing they were added to the list, but if they thought they did not know any thing they would drop them.

Q. In finding out what these witnesses would testify to did you or did you not state what points you wanted to establish?

A. No sir, we just saw what the testimony we wanted was. We just merely wanted to have testimony from such people as knew any thing about this question and that is about all they were asked.

Q. Did you not specify what you wanted to know about this question?

A. No sir, no more than that they should know something about

the question, that is all. Not to burden them with any unnecessary testimony.

Q. Did you not state that you wanted to establish the fact that the boundary of the State of Mississippi extended 18 miles south of the shore line?

1773 A. No sir, I don't think that question came up at any of our meetings.

Q. Did you not state that you wanted to establish that these marshes over there were not called Louisiana marshes?

A. No sir, not that I know of.

Q. Then you handed these lists to these attorneys perfectly blind as to what these witnesses would testify?

A. Yes sir, in other words the attorneys did not take one fifth of the names that we handed them.

Q. But those that they did take you put them on there blind without knowing what they would testify to?

A. No sir, we did not know any more than if you want witnesses on jurisdiction these are the people, and if you want any on the islands, these are the people.

Q. I want to know how you came to give these names in. Do you mean to say that without knowing exactly what these witnesses would testify to you gave these names to the attorneys without knowing what they would testify to?

A. No more than we had our outlines made. We had read up decisions on boundary cases prior to this one. We knew from the ruling of the court about — circumstances would come up at issue, and we formulated our plans on that basis, and we said "These are your witnesses if you want to establish jurisdiction," or "These are the ones if you want old citizens that have fished out there. If you want them for this, or this, these are the ones you want."

Q. You did not know whether these witnesses would testify in favor of or against you?

A. No sir, we did not know anything about that.

By Gen. McCLURG: Counsel for Mississippi desires now to inform the counsel for Louisiana that the witnesses who testified on the part of Mississippi in this case were not trained, nor crammed, nor fixed, nor interrogated in any manner previous to being put on the stand in this case.

By Col. ZACHARIE:

Q. Then I ask you the question again, you in no way intimated to these witnesses, a list of which you gave to your attorneys, as to what you wanted them to testify to you?

A. No sir, this committee had nothing to do with any thing of that sort. They were merely to select the witnesses and that is all.

Q. Now Mr. Heidenheim, could you produce all of the correspondence that passed between you and Mr. McLean?

A. I think I can sir. I don't think there were more than about

wo letters. One asking for information and one he sent me addressed to Mr. Dymond. I don't think there was any more correspondence.

Q. You say that you met Mr. McLean the Congressman, some time afterwards. Did you ask him or inquire any thing about why you did not receive this report from the Coast and Geodetic Survey which was promised according to the letter that he sent you?

A. No sir, I don't think I did. I think that the correspondence ended with that letter. That is the best of my recollection.

Q. I am not speaking of the correspondence. I am speaking of when you met him afterwards personally as you say you did afterwards. Did you make any inquiry as to why you did not receive any report that he had notified you by letter that it was referred to the Coast and Geodetic Survey?

A. I don't think I have seen Mr. McLean sir.

Q. I thought you said in your testimony in chief that you met him when he was canvassing?

A. I think that was prior to this correspondence. He is not now representing us in this territory.

Q. Have you seen him since that correspondence?

A. No sir.

Q. You took no further steps to make any inquiry why
774 you had not received the report that was promised?

A. No sir, not as I remember.

Redirect examination.

By Gen. McCLURG:

Q. You have been questioned rather closely Mr. Heidenheim by counsel for Louisiana with reference to obtaining witnesses on the part of Mississippi, and especially whether you had conferred with them or not. I wish you would tell the commissioner whether you have directly or indirectly procured any false testimony in this case, and have undertaken to get any witnesses to testify to any thing except the truth as they understand it?

A. All I can say about that is that the testimony committee of which I was the chairman had the duty delegated to it, and that duty was merely to get the witnesses, and that was the end of their duty and not to ask them how they would testify or what they would testify to. The lists were handed to the attorneys. Witnesses in jurisdiction. Witnesses on this thing and on that thing.

Q. How were these witnesses selected. How did you select them?

A. They were given to us by the people in Biloxi and here and elsewhere, etc.,

Q. How did you select your witnesses?

A. We did not select any particular witnesses. We handed the whole batch in to the attorneys.

Q. What did you have?

A. I have the messages of Congress. I have the opinions deliver on these questions, and I have historical matter on this questio If you will come down there I will show you what I have got.

Q. That is nothing that you bought as a result of the meeting January 19th 1901?

A. I have some that I bought before and some since.

Q. Any documents?

A. No sir, no documents only what I have in my books.

Q. You have no documents at all?

A. No sir, no documents at all.

Q. Then you did not write to Washington to get data from Was ington in regard to this dispute?

A. Yes sir, I did and I am glad that you brought that up.

Q. As a result of this meeting on January 19th 1901?

A. Yes sir, I wrote to Mr. McLean.

Q. And you did not get any reply?

A. No sir. That is the queer part about it.

Q. Did not Mr. McLean transmit to you the document that got?

A. No sir, I never did get it. I wondered why he did not send it me. I never did get it.

Q. What was it?

A. I don't know any more what the contents of this docume were than the man in the moon. I did not know until I saw it the newspapers on the day of the trial.

By Gen. McCLURG:

Q. What trial?

A. On the day you were in New Orleans when you were takin testimony there.

Q. In April?

A. Yes sir.

By Mr. DYMOND:

Q. What I understand is, Mr. McLean, although he received t document from the Coast and Geodetic Survey at the department Washington, obtained at your request you never got that documen

A. No sir, I never got an answer or anything. I never knew an thing about it until I saw it in the New Orleans newspapers.

By Gen. McCLURG:

Q. Do you know anything about that document or that McLe got it?

A. No sir, I don't know anything about it. All I know is tha have a letter in my possession which reads "I received your let and will give the same my attention." I wrote to him to try a find out what he could on this boundary question so as intellig people we would know where we stood. That was the purpose o

and no other purpose. We understood that we had money
1766 tied up in that investment. As business people it was our business to know where we stood. I wrote that letter to him. I did not know anything about this matter until I saw it in the New Orleans papers.

Q. Mr. McLean is a member of Congress from the State of Mississippi?

A. Yes sir.

Q. Is not he the Congressman from your district?

A. He was at that time.

Q. Is he a member of Congress from the State of Mississippi now?

A. He is now, but he has been re-districted I think.

Q. Do you see him frequently?

A. No sir, the last time I saw him he was running for office. He was along here after that but I did not see him.

Q. Did you ever make any complaint to him about that fact?

A. No sir, I never heard any thing more of it and I thought that it was lost sight of.

Q. Did you ever see the reply that Mr. McLean got from the Coast and Geodetic Survey?

A. No sir, not until I saw it in the New Orleans papers. That is the first information that I had of it. I expressed surprise that Mr. McLean should get information asked for by me as an individual and others should get notice of it before I did.

Q. Did you know that a report was made by the Coast and Geodetic Survey to Mr. McLean on the 30th, of January 1901?

A. No sir.

Q. And 11 days after the meeting in New Orleans?

A. No sir, all the correspondence that I had with Mr. McLean I hunted up. It was "I received your letter and will give same my attention." That is the last that I heard of him.

Q. Have you got a copy of the original letter that you wrote to Mr. McLean?

A. I think I have and I think I have his answer. There was only a few lines between us.

Q. Can you give us a copy of the letter that you wrote to Mr. McLean?

A. I think I can get it. I handed it to Mr. McClurg and he did not think he would have any use for it. I think I can find it again.

Here the commission took an adjournment for the noon recess, to resume the taking of testimony at 2 o'clock.

1767 Pursuant to the adjournment for the noon recess the commission met at 2 o'clock, with the same present as this morning and the following testimony was taken, towit:—

Mr. Heidenheim requests leave to make the following correction in his testimony of this morning. In or about 1900 I remember that some oystermen come ashore and told me that there were some

officers of the parish of St. Bernard, they did not know whether it was the sheriff or whom, that had told some of the boats to keep off of that ground. I do not know what part of the ground they alluded to. There was an agitation of the boundary line about 1900, but as near as I can remember no boats, patrol boats, were put on the oyster ground until 1902. There was no contention and no unlawful steps taken by Mississippi. That these complaints were reported to the governor of the State, and the governor came here and had a conference with us and advised us to adopt lawful methods in bringing about a solution of this question.

By Mr. DYMOND:

Q. What was the date, Mr. Heidenheim, on which the governor came to this coast?

A. The governor came on our request.

Q. About when was this?

A. I think this was in 1900 prior to the time the boundary line commission was appointed.

Q. You therefore, now, as I understand it, correct your testimony to the extent that you no longer deny——

By Gen. MCCLURG: Counsel for Mississippi objects to counsel arguing with the witness. Let him ask him questions.

By Mr. DYMOND:

Q. That you *not* longer deny that there was a dispute as to the boundary line prior to the filing of this suit in 1902, and that you knew it?

A. I won't say it was a dispute. I say that it was an agitation. There was an agitation but no dispute.

Q. Well was not there a dispute in 1901 when the two governors appointed their respective boundary commissions?

A. I would not understand that there was really a dispute. It was to the extent that there was an agitation.

Q. Well will you please define for our benefit what you call a dispute?

A. A dispute is where two disagree. An agitation is a thing where some thing is just brought up for a final consideration or solution, is the way that is the way that I understand it.

Q. Well then you conclude that there was no dispute until Louisiana and Mississippi found that they could not agree through their amicable boundary commissions?

A. There was no dispute until the two had come up and brought the matter up for consideration. If there was such a thing as a dispute it was in 1901. That was when the boundary commission met. Prior to that I would not consider it a dispute. It was merely an agitation that brought this thing up.

Q. Well then you do admit as I understand it that the dispute originated as early as July 1901?

A. When ever the governor came on the ground?

Q. When the Mississippi commission said that they could not agree?

A. Exactly. As soon as they said that they could not agree I understood that there was a dispute.

Q. Was there a dispute prior to that?

A. Not that I know of, no sir.

1768 Q. Well then, if there was no dispute prior to that why was it that you wrote to Mr. McLean, a member of Congress in the month of January 1901?

A. I have already explained it. If you want it explained again I will do it for you.

Q. If there was no dispute why did you do it?

A. I wanted to be settled in our judgment as to the business proposition where we stood. That is the idea of it.

Q. That was after you had built your factory was not it?

A. Oh yes sir, but we are always making repairs and improvements, and I wanted to see whether we were justified in making any more or not. That is the idea.

Q. Will you please look at this document called Document No. 9, offered by Louisiana and examine this letter and state whether you are the same I. Heidenheim referred to in the letter of F. A. McLean to O. H. Tittman, Superintendent of the Coast and Geodetic Survey under date of January 27th, 1901?

A. I admit getting the letter from Mr. McLean addressed to Hon. O. H. Tittman.

Q. Are you the Mr. Heidenheim referred to in this letter that you are looking at?

A. Yes sir.

Q. Had you previously written to Mr. McLean?

A. Yes sir, I had.

Q. Have you a copy of the letter that you wrote to Mr. McLean?

A. I think that I could find that in my correspondence. In our correspondence.

Q. Will you produce if you can that letter, and your letter book containing that letter and bring it where we can get it?

A. I will try my best to get it for you. What is the date of that letter?

Q. That letter would be subsequent to the 19th of April, and prior to the 27th of January 1901. Now you will please look at the next document which is a letter from Mr. McLean to Mr. Tittman. Will you please state whether you have the original of this letter?

A. I have no such copy as this. This is the only letter that I have written to me by Mr. McLean. I have the letter written by Mr. McLean.

Q. Written by McLean to Tittman?

A. No sir.

Q. Is it not a fact that you have the second letter?

A. This is the letter that I have a copy of or the original. January 27th, 1901. Either the original or a copy of this letter.

Q. Of the letter written by McLean to Tittman?

A. That is the letter I have. Either a copy or the original.

Q. How come you to have the original of this letter after it became a part of the archives of the Coast and Geodetic Survey at Washington?

A. I think that Mr. McLean gave me a copy of it to show me what he had done. That he had sent this to Mr. Titman.

Q. Could not it be that Mr. McLean sent you the letter that he received from Mr. Tittman?

A. That is the one I never got. The letter of February 1st, 1901. I have no knowledge of receiving it. The original or a copy.

Q. Now will you look at the letter of February 8th, 1901, and state whether Mr. McLean ever forwarded you the original or a copy of that letter?

A. The letter of February 8th, 1901 I have no knowledge of to my best knowledge and belief.

Q. Now will you please look at this report of Mr. W. C. Hodgkins of the United States Coast and Geodetic Survey called Louisiana Document No. 11 and state whether or not Mr. McLean ever forwarded you a copy of this report?

A. That I never did get. To my best knowledge and belief I never got any letter from Mr. McLean addressed to Mr. Titman on January 30th, 1901.

1769 Q. You don't understand me. This is a report made by W. C. Hodgkins, assistant of the United States Coast and Geodetic Survey to O. H. Titman, Superintendant of the same department on January 30th, 1901. Have you ever seen this before?

A. To the best of my knowledge and belief I never saw that report before until I saw it in the Times Democrat.

Q. Will you please look at these blue prints marked sketches 1, 2 and 3, accompanying Louisiana Document No. 11, being the Hodgkins report, and state whether you have ever seen this before or any thing similar to it?

A. Oh, I have seen this report. It is embodied on these charts as I call them.

Q. I am asking you about the blue prints or similar blue prints?

A. You mean from Mr. McLean?

Q. Made by Mr. Hodgkins?

A. No sir, I did not receive any or see any made up by Mr. Hodgkins.

Q. These blue prints are attached to and made a part of Mr. Hodgkins' original report, and originally by tracings, and these blue prints made from these tracings. Have you ever seen the original tracing or blue prints made from them before?

A. I never received any blue prints or tracings from Mr. Hodgkins or Mr. McLean, and never saw any from that source before up to now.

Q. You say when you had your conference with Messrs. Bowers, Ford and White, that you did not have before you this report of Mr. Hodgkins?

A. No sir, we did not.

Q. And you did not know that Mr. Hodgkins as the assistant in the United States Coast and Geodetic Survey had suggested the information as his opinion on the request of the Congressman from Mississippi that the deep water channel was the proper boundary line between the States in this dispute?

A. I never have recognised the report of Mr. Hodgkins as being the boundary line.

Q. You think that Mr. Hodgkins' report is wrong?

A. Why certainly I do, as other experts have been before.

Q. Were you aware that when Congress created the State of Louisiana that she gave Louisiana all islands within three leagues of her coast?

A. I don't know that she has any islands three leagues from her coast. That is not the English language or the construction of the English language.

Q. I will repeat the question to you and ask you to answer yes or no and explain afterwards. Were you aware that when Congress created the State of Louisiana that she gave Louisiana all islands within three leagues of her coast?

A. No sir, I was not aware of the fact.

Q. When Congress created the State of Louisiana she used the following language. "And from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the coast."

A. Yes sir.

Q. Were you aware of that fact when you concluded that Mr. Hodgkins' conclusions were wrong.

A. I can only add on that question that from that language as embraced in the boundary line Mr. Hodgkins is undoubtedly wrong.

Q. For what reason?

A. For the simple reason from the reading of this boundary line I concluded from my judgment that Mr. Hodgkins is undoubtedly wrong. Taking the reading of the English language in this boundary line, and if there were any islands in this boundary line it was after the line got down to Sabine river to the place of beginning.

Q. Do you know what the body of water which we today call the Mississippi sound was called in 1812 at the time the State of Louisiana was created?

1770 A. Why undoubtedly I do.

Q. What was it called?

A. Pascagoula sound.

Q. What makes you think that it was called Pascagoula sound?

A. Because I have an authority on that question.

Q. Where do you find that authority?

A. No sir, there were only three maps there. The charts and this map that I spoke of, and some map that they had in some book. I don't remember what book it was.

Q. You are quite positive about that?

A. I am quite positive that is all that were there.

Q. Now at this point Mr. Heidenheim I again desire to take no advantage of you, and put you on your guard and expressly request you to refresh your memory before you answer the question as you have done before unless you are positive about what you stated.

A. I am positive that we were there and had that meeting with them.

Q. Did you have any other meeting with that commission or those members of that commission?

1764 A. No sir, we never met them after that.

Q. In which you submitted any other views that you had?

A. No sir.

Q. Well now did you have any other evidence or any other data on subject matter or reports on this subject other than what you have stated prior to the month of October 1902?

A. Certainly.

Q. What other data did you have?

A. In 1885 our company organized a factory here, and we conferred with counsel in Jackson Mississippi, and Gen. Joseph Davis who was our counsel here, and before we invested money in that corporation as business people it was necessary for us to be governed by intelligent legal advice, and we were advised at that time that the Mississippi boundary line was as it reads in that statute and as it was made by Congress, otherwise we never would have come here with this question hanging over us, with a doubt of getting it settled right and investing $75,000.00 or $100,000.00

Q. Then as I understand it the other data that you got was professional legal advice?

A. Yes sir.

Q. What I am anxious to ascertain is whether between January 19th 1901 and October 1902 you had secured any data on the subject matter of this dispute and had shown such data to the Oyster Commission of Mississippi other than what you have testified to just now?

A. Well the minute that this thing was agitated, I made it my business to become thoroughly informed, and my reading has been from that time on up to the present time, and that the knowledge we had before that time is as I have stated to you, being advised by counsel that this territory belonged to Mississippi, and knowing by the reading of the act that we understood it that way we came here and made the investment. Now of course after the question was agitated it became necessary to look into the question fully the same as we did any other question in which our business was involved.

Q. Well what did you do subsequently. What did you do if any

ing subsequent to January 19th 1901 as a result of this meeting hich was held in the city of New Orleans prior to the appointent of the commissions on the part of the State of Louisiana and e State of Mississippi on the subject of boundary?

A. I won't confine myself to dates——

Q. I desire to know specifically about it. I desire that you conne yourself to dates and noticing dates answer the question careilly, fully understanding the question as propounded?

A. What I want to get at is this. I might say some thing happened in 1901 that happened in 1902. I can refresh myself from y books. I don't mean to cover 40 or 50 years. It was all in the nge of a few years.

Q. If there be any desire on your part to refresh your memory ou may do so. I don't want to take any advantage of you. As e will now adjourn for luncheon I will give you a chance to refresh our memory?

A. What is the question you want directly, and I will answer it r you.

Q. I want to know whether subsequent to January 19th, 1901 you ok any step to get any data concerning this controversy and if so hether you submitted that data to the Mississippi Boundary Commission?

A. Well the only thing that we submitted to the commissioners, hey went to New Orleans. There were the oyster commission, and ne as I understand it was the boundary commissioners. Now when he oyster commission went to New Orleans, we had spoken to them f the same thing. There was nothing except what we have spoken o the other people, only we spoke to them and told them that is Mississippi's contention under the law, and we understood that it as their duty to hold out for that contention. That is all of the onversation that we had with them.

Q. I do not desire to know any thing about your confer-765 ence with the oyster commission. What I desire to know is in regard to your conference with the Boundary Commission f Mississippi and confining it entirely to them I desire to know whether you submitted to them any data or documents, which you ourself had obtained, and if you did not whether you had documents that you did not submit to the commission?

A. We had nothing to do with the boundary commission except hat one conference in Mr. White's office which the record shows.

Q. You did not submit to them any documents other than what ou have mentioned?

A. No sir.

Q. You had no documents which you had obtained other than what you submitted?

A. I won't say that I did not have any. I might have had them n my library.

Q. Did you have any documents there?

A. Certainly I had them in my library.

Q. How was he ejected?

A. He was ejected from the state house in this way. General Ames, who was at that time a young man and whose training was that of a soldier, was appointed military governor, and he sent up an officer and some men to request Governor Humphries to vacate the office in the state house, and the governor declined to do that, and then he sent up I think an officer and four men to exclude him. The governor looked at them and he told them that they were insufficient to take charge of his office, and they asked him what number of men would be required, and he said that he would be the judge of that when they came. Afterwards the men under an officer came to the governor's office and demanded the office. They came in the office and the governor walked out to the attorney general's office, and they made no objection to that, but when he came back they stopped him with their bayonets, and told him that he could not go in there, and he was ejected then from the mansion subsequently. Well from that time on, between those dates and while Senator George was chairman of the executive committee; he succeeded me as chairman of the Democratic executive committee. I came over here. I was living at that time in Brandon, and I was on my way to make a speech I think in Brookhaven. I was stopped by some
1785 of our friends and they stated that a citizens' meeting had been held, and that 16 persons had been appointed to wait upon Governor Ames. At that time the negroes were drilling I suppose less than half a mile from the capital, over there at the southern part of the city. Every thing was in a very bad condition at that time. The object of our people was to save a conflict if possible. They waited on General Ames with that view, and after discussing the matter for some time it was agreed: General Ames had ordered arms to different parts of the State. In —— county and some other places if I remember right. Our people desired that the arms that were in the hands of the negroes at that time should be turned over to the United States officers, some of whom were here. Governor Ames was very slow to do that, but in the end it was agreed to. That brought about some peace and things went on that way until 1875, when the people of the State succeeded in the election, and when the election was upheld Governor Ames was brought to trial, and the house returned quite a number of charges and specifications against him. There were probably 15 or 20, and during that time his father in law, General Butler, sent attorneys here. And pending the matter General Ames had his attorneys to state to those who were in charge of the matter, gentlemen who were appointed by the house of representatives to bring in the charges and specifications; Governor Ames' attorneys stated to them if they would withdraw them he would retire and resign his office, which he did and left the State and has never been in it since. Subsequently the lieutenant governor stood his trial and was convicted.

Q. Who was the lieutenant governor?

1786 A. The lieutenant governor was a man by the name of Davis. A negro.

Q. He was a negro lieutenant governor?

A. Yes sir, he was a negro lieutenant governor. But to return back to the maps, I will say that I was no more impressed with the transaction about the maps than I was with any other occurrence at that time. I knew Captain Hardee agreeably and met him frequently, or I saw him occasionally.

Q. Did you know him as a cartographer or a maker of maps?

A. No sir, the most that I knew of him was that he was a nephew of General Hardee, but I knew nothing about what he did or what his avocation was, or what his profession at all was until I saw the maps. There was a good deal said about Hardee's maps.

Q. It is the integrity of the map we are assailing, you understand, We want to get into the record the conditions under which it was made that the court may estimate its value in this matter. I want you to go forward Governor and tell us about the map. The second map. Wall's emigration and statistical map. What you may know of that?

A. Well now sir that seems to have been approved on March 8th, 1882.

Q. You were governor at that time were you not?

A. I was governor at that time. Prior to that time there was a negro that was commissioner of emigration. The negro lived in Issaquena county. I knew him. The fact is I was elected to the legislature. I might remark there that I am a member of the State senate from my district, and I had resigned and I thought I was graduated in that line. After my resignation I believe the next year I was

1787 canvassing with Governor Alcorn. I was elected to the legislature from my county, the lower house. I knew this man. The negro commissioner of emigration. It seems that in 1882 Mr. E. G. Wall, who was a Confederate soldier with one leg. He had lost a leg in the army. They had him elected. And like the other commissioners he published a map. It was approved by the legislature. He published a map and I suppose his object was to get as many people here as he could. He was trying to get emigrants I took it. So far as I know Mr. Wall was about here. He never went away I reckon. If he was ever down in the locality that you speak of in your pleadings I have no knowledge of it. I have no idea that he was though. He simply got up a map in which the main object was to give his views about emigrants and where they could come. I don't know any thing else as to its accuracy. I don't know that any body paid any attention to it.

Q. I want to ask you the general question Governor. In addition to the general conditions stated by you under which these maps were made, what bearing according to the maps themselves—we have them here and will show you the maps if you would rather see them. We are taking it for granted that you are more familiar with the conditions than you are with the face of the maps——

By Mr. DYMOND: Objected to by counsel for the State of Louisiana on the ground that the witness has not qualified himself to speak authoritatively on this proposition, and it is purely a matter of opinion to which he can not testify.

By Mr. MCCLURG:

Q. Go ahead Governor and tell what effect those maps have
1788 made under those conditions upon the boundaries in the waters of the Gulf?

A. Why as far as my view is concerned I will state that I don't think they are of any value. I don't think they received any more attention from the people of the State than any other matter that was being enacted at that time.

By Mr. DYMOND: It is understood that the same objection is made by the counsel for Louisiana to all similar testimony of this character.

A. That is my view of it, as I have stated.

Q. Do you have reference to the Hardee maps and the map of Wall both?

A. Well as I stated—I want to make myself understood as far as Captain Hardee is concerned, because I remember him very kindly. But I don't think that the maps of Captain Hardee at that time received any consideration any more than any other act that was made by the legislature, which was composed largely of negroes and radicals, and foreigners and strangers to the people of the State. There were a very few of our people there is my recollection. I say this without any discredit to the maker or the author of the map, but I don't consider that any more than any other act that occurred at that time; nothing at that time received any consideration, because it was a period in the history of Mississippi when the people were struggling for a government under which they could live. That is the way that I understand it.

Q. Are you a native Mississippian?

A. No sir, I am not.

Q. How long have you lived in Mississippi?

1789 A. I have lived here almost all of my life. I was born in Chesterfield district, South Carolina, but my father left there before I recollect any thing about it.

Q. I wish you would state to the commission what positions you have held in this State?

A. I have been a member of the lower house of the legislature, and I have been a member of the State senate, and governor of the State for eight years.

Q. And you have had some military prestige have you not?

A. Well yes sir, I was in the army from 1861 to 1865. I went out as a private in Company B., Sixth Mississippi regiment, and I was appointed; was elected colonel of the regiment afterwards, and was then appointed brigadier general.

Q. I asked you that question Governor in order that the supreme court might understand that you are familiar with those conditions, and ask it with the purpose of making the most of it before the court for our State of course. Now I want to ask you another general question in view of your long life in the State and in her service with reference to her boundaries in the Gulf. It is alleged in the bill of complaint filed by Louisiana against our State that the true boundary between them is the deep water channel flowing out of the most eastern mouth of Pearl river, north of Half Moon island and to the south of Cat island, to the north east of Isle à Pitre through Chandeleur sound into the gulf of Mexico. Mississippi's contention substantially stated is that the acts of Congress admitting these two States into the Union, Louisiana in 1812 and Mississippi as you know in 1817 definit-ly fixed the boundary, and that Mississippi has jurisdiction and sovereignty according to these acts and
1790 under the constitution framed by her pursuant to the act of Congress admitting her, six leagues or 18 miles from her shore, and every part of her shore, including all islands within that reach.

If you have anything to say with reference to the exercise of sovereignty and jurisdiction by our State over the waters and islands within the limits that I have mentioned I would be glad for you to state it to the commission?

A. Replying to that I will simply state that I have never given the subject embraced in that question any special consideration, but my understanding has been that Mississippi had jurisdiction according to the act of Congress stated in the question. That has always been my understanding and as far as I know the understanding generally of the people of our State.

Cross-examination.

By Col. ZACHARIE:

Q. General, did you know either personally or by reputation Captain T. S. Hardee prior to the Civil war?

A. No sir I did not.

Q. Have you ever heard or did you know that prior to the Civil war he was one of the assistant engineers with Hazlehurst that run the Jackson and Great Northern railroad?

A. No sir, I did not know Captain Hardee prior to the war, nor did I know what his profession was.

Q. You therefore did not know that he was a resident of
1791 the Yazoo district engaged in planting operations in partnership with Gen. Wirt Adams?

A. I did not, no sir.

Q. You first knew him in the army?

A. My recollection is that I have seen Captain Hardee in the army. I knew his uncle very well, General Hardee, but I could

not say that I remember to have met or known Captain Hardee during the war, but I suppose I did.

Q. Did you know Captain Hardee on the staff of his uncle General Hardee as an engineering officer?

A. I did not. I will state in connection with that Colonel that I was in General Hardee's corps, and I was in his corps at the battle of Shiloh, but after that time upon the re-organization of the army generally I was not in General Hardee's corps, but I often saw him and I knew as well as a younger man would a gentleman of his prominence and age at that time, but I have no recollection of Captain Hardee.

Q. You don't remember Captain laying out—while you were a member of Hardee's corps, laying out the military lines and the engineering work?

A. No sir, I will make a further statement so that you will understand. As I stated before Mr. McClurg, I went into the army as a private, at the organization of the regiment in Tennessee, the regiment was made up in this section right here, and they organized later at Union City or Trenton probably. No, they organized at Grenada. I was elected major. Our lieutenant-colonel was sick and I was acting lieutenant-colonel at the battle of Shiloh, and was wounded there as the colonel was. He did not return to the army and I was elected colonel, and after that time it was reorganized, and at that time occupying the position that I did I knew a
1792 little of who was on the staff of this man and the other you know, but very little, and I suppose that accounts for my not knowing Captain Hardee.

Q. Do you *you* know or can you remember whether Captain Hardee was not promoted to major of engineers, and subsequently lieutenant colonel of engineers in the Confederate army.

A. No sir I do not.

Q. Do you know where T. S. Hardee resided after the civil war?

A. That conversation we had this morning has recalled to my mind, while we were talking about Captain Hardee, that after the war he at one time lived down on the I. C. railroad about Chattawa or some where down there. I don't know that to be a fact but that is my recollection that he was down about there some where.

Q. Do you know what his politics were?

A. I do not. No sir, I do not.

Q. He figures upon this map as State engineer. Was not he appointed State engineer by Governor Alcorn?

A. I can not tell you that Colonel. I will answer that a little further there. Whether he was appointed by General Alcorn or not I don't know for I had but little intercourse with Governor Alcorn or any of his people at that time you understand, and I did not know what was going on much. I was generally against the whole business you know.

By Gen. McCLURG:

Q. What do you mean by any of his people?

A. I mean the negroes and the carpet baggers as they were called at that time you know.

By Col. ZACHARIE:

Q. From what you know of Governor Alcorn outside of
1793 politics, was not Governor Alcorn known as a man of integrity and high personal character. I mean outside of his politics?

A. Yes sir, well I would like to answer that question in my own way if you will allow me Colonel. General Alcorn, prior to the war was a Whig. An able man and a man of large property and very highly regarded by his party. The secession convention elected with General Clark and General Van Dorn and some one else—the major general was President Davis, and there were three or four brigadier generals. General Alcorn was one of them. General Alcorn went into Kentucky as I understood it, I saw some of his people up there, and remained some sixty days or three months. I don't know how long. At all events he came back I think having some difference with Mr. Davis.

By Gen. McCLURG:

Q. You mean President Jefferson Davis?

A. Yes sir, President Jefferson Davis, believing as he did that the president should appoint him as brigadier general in the Confederate army as I understood it. He was not appointed, and after the war General Alcorn believed, it was a theory of his that the white people should take charge of the negroes, and that he could take them from the radicals or carpet-baggers as they were designated then. And General Alcorn announced himself as a Republican, and he took in charge and did have control for a long time, and he had more influence in the State with the negroes than any one else. I believe myself that personally, in all personal matters that General Alcorn was a man of integrity. I believe furthermore that he had convinced himself that the negroes could
1794 be influenced and that he could take charge of them and he would hold his leverage, and with the old Whig party in the State to follow him; that they would go with him. And he made that effort and it failed, and he had such an influence with the negroes and carpet-baggers that he held it for a time and was elected governor. General Alcorn's great ambition was to go to the United States Senate. I don't believe that General Alcorn wanted to oppress the people of Mississippi if he could avoid it, and evidently, from my standpoint, when he found he could not take the white people, the old Whig party with him, that he intended to take the negroes and make the most of it, and he did go to the United States Senate by their vote.

1776 Recross-examination.

By Mr. DYMOND:

Q. As I understand it Mr. Heidenheim, you concluded that if you can not get your oysters from south of the deep water channel which Louisiana claims to be the boundary that your factories here would suffer. Is that your idea?

A. That is not the question as I understand it. What would be the commercial losses to the territory is what I understand the question. The commercial losses to the territory would be as I stated $100,000,000.00, taking it all in all.

Q. Following it right down to its last essence. That is I understand it in your opinion what would result?

A. That would result.

Q. Because Mississippi could not get oysters out of the Louisiana marsh and what is now the neutral territory, if her claims are maintained by the decision of the Supreme Court of the United States?

A. Well now for a fuller answer to that question. Is the channel line supposed to be the one that you are figuring on?

Q. Yes sir? We have since the beginning claimed the deep water channel to be the boundary between the two States. Now that deep water channel emerges from the mouth of Pearl river and runs through Mississippi sound, south east through Cat Island channel, between Cat island and Isle à Pitre, north east of Chandeleur islands into the gulf of Mexico?

A. Then I would understand that the commercial losses from all sources directly or indirectly bearing on the oyster question would in 25 years amount to $100,000,000.00.

Q. That is if you were excluded from that territory, that is the loss that would result?

A. Yes sir.

Q. Now is not that on the assumption that there would be no development of the very great water area that is open to Mississippi and lies right in front of the Mississippi coast?

A. There would be some development, but it would be nothing compared to what it would be if there was a favorable report in behalf of Mississippi.

Q. Let us suppose Mr. Heidenheim that the Mississippi oyster law was changed so as to permit the private ownership under laws or otherwise of our bottoms in extensive reefs in the undisputed territory belonging to Mississippi. If such a law as that was passed would it not tend to increase the oyster production of Mississippi and diminish the losses which you think now might result?

A. Well the oyster packers prefer not to lose the ground. As to whether or not that territory could be benefitted, it would be very slow, and I doubt if the conditions which now exist could be reestablished in 25 or 50 years.

Q. Do you mean to say that it would be impossible to successfully cultivate oysters in Mississippi sound on any ground?

A. Well we know that the oysters won't grow on all ground. The grounds in our territory are not suitable to grow oysters, and the progress would be very slow.

By Gen. McCLURG: This is all objected to by counsel for the State of Mississippi on the ground that is is a mere proposition calling for an estimate by the witness to suppose future contingencies that are merely possible.

By Col. ZACHARIE:

Q. Mr. Heidenheim will you please examine the last three pages of Mr. Heidenheim's report, Document No. 11, and which are headed Boundary Appendix 1, 2, and 3, and see if you had received that document or appendix, whether it would not be the records which you were after. Upon which he based the report?

A. I don't think it would be what I would want from the fact that I do not take much stock in maps.

1777 Q. What records did you expect to get except the old maps, surveys and so on which were in possession of the department at Washington?

A. I would prefer to rely upon original treaties, acts of Congress and some thing more substantial than maps which are colored to suit individual desires of the parties. Of the lexicographers.

Q. You mean the cartographers?

A. Yes sir, the cartographers.

Q. Mr. Heidenheim, are not the treaties that you spoke of accessible in any library?

A. There are treaties and acts of the different governments.

Q. Are they not accessible in any public library?

A. Yes sir.

Q. Why did you apply to the department at Washington when these maps and acts of Congress were accessible almost any where. Was not this the sort of information that you wanted. The maps?

A. For the simple reason that when I applied to Mr. McLean I did not understand that getting information in reference to what he knew about the boundary question of Louisiana carried with it only what was available in the geodetic department of the Government but what might be available from any and all sources that might give me an intelligent idea of the conditions pertinent to the boundary line.

Q. Did you not understand that in this report and in these lists of maps and surveys that Mr. Hodgkins consulted every thing that was in every department in Washington?

A. Every thing that he thought would be useful without going into a very long and detailed search.

Redirect examination:

By Gen. McCLURG: You wrote for the official records and you got a sub's opinion?
A. Yes sir.

It is admitted by the counsel for Mississippi that the large map made at their request by A. T. Baldwin computer of the Coast and Geodetic Survey, Washington, D. C., made in the Department of Commerce and Labor in the Coast and Geodetic Survey, June 8th, 1904, styled a photographic reproduction of the composite chart, with the red line, purporting to mark the boundary between Louisiana and Mississippi as shown on said map, and the tinting in colors of the territory within the said boundary line do not appear on the original from which the copy was made, but that said red line and tinting of the entire map were made at the instance of the counsel for the State of Mississippi, and that the quotation from the act of Congress of March 1st, 1817, found in volume 3, page 348 of the Statutes at Large, pasted to the lower right hand corner of the said map, and the statement in relation thereto, was not on the original from which this map was made but was affixed thereto at the request of counsel for Mississippi, and that the certificate attached thereto on the upper right hand corner may be considered modified accordingly.

The commission here adjourned its sitting at Bay St. Louis, and by agreement to meet at the capitol in Jackson Mississippi on Thursday, August 18th, 1904.

1778 Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

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1780 JACKSON, MISSISSIPPI, August 18th, 1904.

Pursuant to agreements heretofore made and to adjournment at Bay St. Louis Mississippi on August 10th, last, the commission on the part of the State of Mississippi to take testimony in the case of The State of Louisiana against The State of Mississippi, pending in the Supreme Court of the United States, met at the attorney general's office on this the 18th, day of August, 1904.

Present: Hon. William D. Bullard, commissioner on the part of the State of Mississippi. Hon. Walter Guion, attorney general of the State of Louisiana, and Hon. Frank C. Zacharie, and Hon. John Dymond Jr., associate counsel on the part of the State of Louisiana.

Hon. William Williams, attorney general for the State of Mississippi, Hon. James N. Flowers, assistant attorney general, and Hon. Monroe McClurg associate counsel for the State of Mississippi, and Frank M. Peyton, official stenographer.

By agreement the commission adjourned until 9 o'clock to-morrow morning.

JACKSON, MISSISSIPPI, August 19th, 1904.

The commission met this morning pursuant to the adjournment of yesterday, and there were present Hon. William D. Bullard, commissioner on the part of the State of Mississippi. Hon.
1781 Walter Guion, attorney general of the State of Louisiana; Hon. Frank C. Zacharie and Hon. John Dymond Jr., associate counsel on the part of the State of Louisiana. Hon. William Williams, attorney general for the State of Mississippi, Hon. James N. Flowers, assistant attorney general, and Hon. Monroe McClurg associate counsel for the State of Mississippi, and Frank M. Peyton, official stenographer.

The following testimony was taken to wit:—

Gov. ROBERT LOWRY, a witness introduced on the part of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLURG:

Q. General, you are one of the ex-governors of the State of Mississippi?

A. Yes sir.

Q. When were you governor of the State General?

A. I was elected in 1881, and inaugurated in January 1882, and was governor for eight years. Until 1890.

Q. I believe you are also one of the authors of a history of Mississippi?

A. Yes sir.

Q. This case, General, of The State of Louisiana against The State of Mississippi, is a suit involving the boundary between the two States in the waters of the Gulf. Among the pleadings is a general replication by the State of Louisiana to the answer and cross bill of the State of Mississippi, responding to the original bill of
1782 complaint filed by Louisiana. In this replication to our answer and cross bill I find on page 6 a reference to Hardee's geographical and statistical map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas, promulgated in the year 1868, and the second edition in the year 1872; also reference made to the map made under the direction of E. G. Wall, the State emigration agent in 1883. Those maps are pleaded by the State of Louisiana and sought to be made effective in establishing the boundary set up in her bill of complaint, which is to state it to you in a general way, the deep water channel, and what is marked on the United States maps as the sailing line out of the mouth of

Pearl river, northeast through Cat Island channel, Chandeleur channel and into the Gulf proper.

We will be glad to have you to state to the commission, Governor, what you may know about the maps of 1868 and 1872 and 1883 to which I have called your attention, so far as they may relate to the issues involved between these two States as I have above indicated and with which you are doubtless somewhat familiar. Please answer this question in your own way, not forgetting to let the commission know the conditions under which these maps were prepared and promulgated?

A. Well personally I know a little of the first maps of which you speak. The maps promulgated in 1868 and 1872 — made by Captain Hardee.

From 1868 to 1872 the State was in the hands of what is known as the Radical party, it was during the radical regime. A large number of negroes were members of the legislature. The
1783 people with property in the State, property holders, did not have much to do with the Government. I remember seeing a map prepared by Captain Hardee at the time. My recollection is that some one sent me one. I was then living at Brandon. What became of it I do not remember. I have not got it now at least. I would like to state here that I knew personally Captain Hardee, and I have served a time in the war under his uncle General Hardee, and I met with the Captain frequently, but what induced this map and how it came to be made at that time, or for what purpose except to sell I don't know.

As I say, our people, and I mean by that the property holders of the people of the State, the home people, had little to do with the Government. Up to 1875 when our people were driven to desperation almost: taxes had become so burdensome as to amount to confiscation almost, and the amount of lands that were forfeited for non payment of taxes was very great, I can not recollect the amount now, but it has been stated perhaps in the papers at that time. I remember so many circumstances about it, that the conditions so far as the most of our people was concerned, that they were trying to get a government under which they could live, and that they did nothing but to try and prevent taking money from the people by the legislature any way they could do it. I recollect that the public printing for one year during this time and perhaps two years was immense. Probably six or eight or ten times more than it should have been. I don't remember what it was. I recollect that during that regime there was an amount taken out of the treasury, which our people very much regret now, for a monument to a negro that
1784 stands out here in the cemetery. A monument to a negro that died, Jim Lynch, paid for out of the treasury of the State. Expenditures, which I conceive were robberies, at that time, were beyond what any one would suppose now. It exceeded anything that I ever knew. After one of the governors, Governor Humphries was ejected from the mansion——

Q. What I mean is this. They were gotten with reference to being oystermen and old sailors or what?

A. The list was submitted in this way. We first went to work and got up witnesses as to old oystermen that were in this territory and that knew some thing about the question at issue. The list was made up, and then the list was gotten up on such matters as we thought would be useful on jurisdiction, and then we had other witnesses that we thought might be useful in the way of furnishing old maps and some thing on that line.

Q. Were there any of these witnesses ever interrogated before they were put on the stand under oath?

A. No sir.

Q. Now I want to ask you about this McLean correspondence. I see by Document No. 9 offered by the State of Louisiana on the 13th, of April 1904, a copy of a letter written by F. A. McLean to the Hon. O. H. Tittman, Superintendent of the Coast and Geodetic Survey at Washington in which Mr. McLean quotes from your letter to him as follows "Give us all the information on record at Washington bearing on the question of the boundary line between Louisiana and Mississippi." Mr. McLean adds "I think he," meaning you, "only wants that information pertaining to the boundary line at or near the coast." That letter is dated January 27th. 1901, and the answer to it on February 1st 1901 by Mr. Tittman to Mr. McLean says that the information in regard to the Mississippi and Louisiana boundary asked for in his letter of the 27th ulto., has been collected and will be sent to McLean as soon as it can be put in the proper form, probably next week, and that on February 8th, Mr. Tittman wrote Mr. McLean that he sent him a report of three sketches showing information that he had been enabled to obtain in this matter, and he adds "Like all boundary questions much is left to be desired on the score of a clear definition of the original acts." And in connection with that letter Louisiana has introduced these blue prints marked Document No. 11, to which we find at-
1775 tached, not any records as called for by your letter to McLean, nor by McLean's letter to Tittman, but a lengthy opinion by one W. C. Hodgkins, an assistant in the Coast and Geodetic Survey. But no records at all that you called for. Are those things all you know about that matter?

A. All that I know about it is what I have previously stated, and I might add that I was not authorized to act for the State of Mississippi in asking for this information. It was an individual inquiry.

Q. In your letter you ask for records bearing upon this question?

A. Yes sir.

Q. Have you ever gotten any of the records?

A. No sir.

Q. You have never seen any thing except the voluntary opinion of Mr. Hodgkins have you?

A. No sir. That is all. And I saw that in print in the New Orleans papers.

Q. Do you know whether this is the same Mr. Hodgkins that ote this letter that testified in New Orleans in this case?
A. No sir, I don't know him at all. I never saw him or heard of n until I saw his name in print.
Q. I understood you to state that the Barrataria Company had out $125,000 invested in this State?
A. Yes sir.
Q. Could you state about what the Lopez & Ducate Company ve invested?
A. In Biloxi?
Q. Yes.
A. You mean in the canning plant or altogether?
Q. I mean in the fish and oyster business?
A. In the fish and oyster business, I would say about $225,000.00 $250,000 including boats etc.
Q. What other concerns in Biloxi have investments?
A. There is the E. C. Joullian Packing Co., and the Biloxi Canng Co. and the William Gorenflo Canning Co.
Q. Is there any other industry there engaged in the fish and ster business?
A. The whole Gulf coast is directly or indirectly engaged in the dustry.
Q. If the jurisdiction and sovereignty of the State of Louisiana ould be established according to their claim in the original bill, arked out on Exhibit E, filed with the bill and introduced in stimony in this case, showing that it would strike the Mississippi ain land some where about Pass Christian I believe, what effect ould that have upon the commercial interests of the State of Mississippi.

By Col. ZACHARIE: To which the counsel for the State of Louisiana object and except on the ground that *as to* the consequences or esults of any decision in this case are irrelevant, and it has no earing on the question at issue. The question simply being one f the location of boundary, and no question being involved as to hat would be the consequences or results to either side.

By Mr. DYMOND: And counsel for the State of Louisiana further bject and except on the further ground that Exhibit E, simply sets orth the deep water channel, running from the mouth of Pearl iver eastward, through Cat Island channel to the gulf of Mexico.

A. Well now to give you some idea of what the loss would be; when I came here Biloxi had 1200 population and today she has 7500 or 8000. The other places on the sea shore have equally grown directly or indirectly by this industry. The industry is in ts infancy and in my opinion if we would consider time, depreciation of real estate, and other commercial conditions that now exist that would be disturbed in the present and future that I could safely say that the losses would be over $100,000,000.00 in the space of not over twenty five years.

A. Yes sir, that is my recollection.

Q. Now General as I understand it you have been placed on the stand as a witness to testify as to the two maps of Hardee and Wall in the idea that they were begotten in the evil days of Mississippi's history and therefore not much reliance was to be placed in them. Is that correct?

A. My testimony has been to that effect. I don't know whether I was called for that or not.

Q. If there were shown to you the maps that were the children of better times in the Democratic period immediately preceding
1807 the reconstruction *area* or following the reconstruction era, after the Democrats and better people had gotten into the government of Mississippi, would that affect you in your conclusions as to the weight to be given to the maps as evidence in this case?

A. If you were to show that it came in before or afterwards. Is that the idea?

Q. Both. The first map, the Hardee map was the creature of the period when Humphries was governor, and the Wall map was the creature of the time when you were governor, would that affect your conclusion as to the weight to be given to the two maps as evidence?

A. If one map was to come in during the time that I was governor?

Q. And the other map was at the time Humphries was governor?

A. Yes sir.

Q. Would they have any better standing in your estimation than if they were the creature of the evil days of Mississippi's history?

A. I take it for granted if the appointment was made, the map of 1871, had been made in 1882 or 1888 or 1890, that I would consider myself that it was a map then made by the people of the State. The better people of the State.

Q. Suppose it was proven that the Mississippi map of 1866 was made by Hardee, and that it was made in 1866 at the time that Humphries was governor and before the reconstruction period. What would you then say of that map?

A. Well sir, I don't know. The only answer that I can give to that. If the map was made in 1865 or 1866 when Governor
1808 Humphries was governor, if there was a legislative act appointing some one to make the map at that time, and if afterwards the map was made at the time I have spoken to you of, I would give it about the same respect that I have told you here in my testimony.

Q. Well General I desire to read you and I desire the stenographer to take down the message of Governor Humphries dated October 16th, 1866 directed to the senate and house of representatives of the State of Mississippi which reads as follows. Page 17, House Journal of Mississippi 1866 and 1867.

"A State map.—I deem the publication and distribution of a

State map to the various State and county officers, whose business requires the possession of one, a matter of sufficient importance to call your attention to it. It should contain a correct delineation of everything of importance and information that it can embody, and be a reference not only to our officials but to all persons interested in the affairs of the State, whose correctness should settle all doubts on any points or subjects it embodied. I don't believe it can be published without some pecuniary aid from the State, which expenditure would be more than repaid to the State by the benefit its publication would give it. Nearly all of the old maps were destroyed during the late war. They were published nearly thirty years ago. Since then changes have been made and improvements have taken place of such a character as to render a new map, even an indispensable necessity, that is one — which we stand in very great need." That is an extract from a message signed Benjamin G. Humphries, dated Executive mansion.

I now read to you General from the Laws of Mississippi 1866 and 1867, chapter 17, page 27 as follows:—

"An Act to Create the Office of State Engineer for the Pur-
1809 pose of Compiling a New State Map under Certain Conditions.

SECTION 1. Be it enacted by the legislature of the State of Mississippi. That the governor is hereby authorized to appoint a State engineer, whose duty it shall be, under his direction to compile a geographical, historical and statistical map of the State; said map to be not less than five feet by three feet in size, to contain such information, as the governor in his judgment might deem necessary, and the publication to receive his sanction and approval.

SECTION 2. Be it further enacted, That the said engineer thus created shall continue in office for the period of 12 months from the date of his appointment, and shall receive no regular salary or compensation for his services, and shall be bound by the terms hereafter to be made as part of the provisions of this act.

SECTION 3. Be it further enacted, That the copy-right of the said map shall be vested in the State engineer and he shall receive from the State on the completion of the work the sum of twenty dollars ($20.00) per copy for each map, to be furnished as per schedule and filed, for the purpose of assisting in the expense of engraving and publication, and the said engineer shall be required to enter into an acceptable bond of security in the full sum to receive for and deliver to the State without further compensation than that which is hereinbefore provided, of such a number of the copies of the said map, for the use and benefit of the said State as will carry out the following schedule for distribution, viz: the secretary of state to whom the maps will be delivered shall cause three copies to be furnished to each county in the State, to become the
1810 property of the said counties, and for use respectively in the offices of the sheriffs, and the circuit and probate clerks, at

each county site in the State. He shall also provide the different State officers at the capital, each with a copy, and six copies for the State university, and besides those, shall have delivered to him such additional copies as will enable the governor to exchange for maps of other States and Territories, and the maps so received in exchange shall become a part of the property of the State library.

SECTION 4. Be it further enacted; That it shall be the duty of the different county officers throughout the State to afford the State engineer every facility for obtaining such information as he may require in the completion of the said work.

SECTION 5. Be it further enacted, That this act shall be in force from and after its passage.

Approved October 26th, 1866.

Was not Benjamin F. Humphries governor at the time this act was adopted and was not this in furtherance of his message to the legislature concerning which I have just asked you and read an extract from?

A. Well it would seem so from the reading of it.

Q. I now beg to direct your attention to the Laws of Mississippi of 1871, and more particularly to page 737, chapter 349 reading as follows:

"An Act to Grant Aid for the Purpose of Revising and Publishing an Official Map of the State."

"Whereas, the publication of an official map of the State of Mississippi, by T. S. Hardee, State engineer, has been entirely suspended since January 1st, 1870, by reason of the formation of new counties within the State, and,

1811 Whereas, on account of the formation of said new counties, and for the further purposes of preparing a map in greater detail, embracing the sectional lines and the sectional numbers, said T. S. Hardee has had much additional expense in having the whole work re-engraved, thus loosing entirely the cost of the original engraving, therefore.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That on the completion of the new edition of the map as above set forth, and the approval of the same by the governor, and when a number of the maps due to the State for distribution of the different counties shall have been delivered to the secretary of state, in conformity with the act of the legislature, approved October 26th, 1866, together with 54 additional maps, then, upon the certificate of the secretary of state to the effect, the auditor of public accounts is hereby authorized and required to issue to said T. S. Hardee, his warrant on the treasurer, for the sum of thirty five hundred dollars ($3500.00,) out of any money in the treasury, not otherwise appropriated, for the purposes and uses of the said T. S. Hardee for additional labor and expense incurred in the revision and republication of said official map of the State.

SECTION 2. Be it further enacted; That this act take effect from and after its passage.

Approved May 10th, 1871."

Now General I will ask you to please look at the date of the approval on this map concerning which you have been testifying, and which is known as Louisiana map No. —, and state whether this is not the map which was originally suggested in the gov-
1812 ernor's message of October 1866; authorized first in October 1866 when Governor Humphries was governor and finally revised, re-printed and approved again in 1871 on the 10th, of May.

A. Well I cannot say whether it was the map that was contemplated then or not. It might have been the map, the map upon that order, but the recommendation to Governor Humphries was made in 1866, that was when the people of the State, the property holders of the State made up the two bodies of the legislature. Five years afterwards this map was approved, but before I make further answer I want to get the journals of 1871 and look over the members of the legislature of that date.

The commission here took a recess for the noon hour, to reconvene at two o'clock p. m.

1813 The commission met pursuant to adjournment of this morning at two o'clock, and there were present the same as this morning.

Governor ROBERT LOWRY, being still on the stand, testified as follows:—

A. I have looked over the journals of 1871, and I want to say in answer to the counsel that I do not believe that the map here as approved by General Alcorn in 1871 has any connection whatever with the recommendation made by Governor Humphries in 1866. I have no recollection of any map smaller than this made by authority of this map, nor do I believe that there is such a map in the archives of the State. If so it is smaller and of little value, whether made by Hardee or any one else. My belief is that this map here had its origin in the legislative enactment which has been read by Mr. Dymond who propounded this question to me.

Q. Which act General?

A. The one that you spoke of in 1870 or 1871.

Q. Now General as I understand it you don't dispute the fact that in 1866 the legislature of Mississippi authorized the creation of a surveyor and the preparation of a map?

A. You read that awhile ago. Governor Humphries' recommendation did you not?

Q. I read the act of the legislature of the 26th, of October 1866?

A. Did you not read the recommendation of Governor Humphries?

Q. I read that at first?

A. Well let me look at that a moment will you?

Q. Now I am not asking you at all about the governor's recommendation. I am asking you about the act of the legislature?

1814 A. I want to look at the governor's recommendation at all events.

Q. Now General I will ask you the question. As I understand it you don't dispute the fact that in 1866 the legislature of Mississippi authorized the creation of a surveyor and the preparation of a map?

A. Yes sir, I say in 1866 the law approved October 26th of that year, that a law was passed authorizing the governor to appoint a State engineer to perform certain duties. To make a historical and statistical map etc.

Q. Do you know how maps are made generally so far as the preparation and compilation of the data is concerned?

A. I do not.

Q. Therefore would you be prepared to say that work on this map had not been started prior to 1866. Work on the compilation of the data?

A. No sir, I am not prepared to say anything about it either way.

Q. Are you prepared to say that work was not done on that map immediately after 1866 and prior to 1871?

A. I have no opinion upon that subject.

Q. I understand you have very considerable feeling and no doubt justly on the conditions as they existed in 1871 and during the period when reconstruction was existing in Mississippi. Now let's eliminate that entirely from our present discussion and refer to conditions existing under Governor Humphries. As I understand it Governor Humphries was an honest man. Is that right?

A. Well in answer to that question I desire to say that I think that I have sufficient conservatism to answer questions, any

1815 questions, without regard to any feeling that I might have had years ago. In my answer in regard to this map.

Q. General, I don't want to get you off. I am asking you a plain simple question as to whether Governor Humphries was or was not an honest man?

A. No sir, your question embraces more than that. I will ask you to repeat it.

Q. If you consider that my question embraces more than that I will cut my question down to the specific question. Was Governor Humphries in your opinion an honest man?

A. Well then that is the entire question is it?

Q. Yes sir, that is the one I now request you to answer. Answer it yes or no please and explain afterwards?

A. In my judgment he was an honest and honorable man.

Q. Do you then know General whether Governor Humphries appointed Mr. Hardee as a surveyor provided for by the act of 1866?

A. I do not.

Q. Will you swear whether as a member of that senate you voted for the confirmation of his appointment?

A. I don't know that either.

Q. Do you know anything at all about the ability of Mr. Hardee to prepare a correct map of the State of Mississippi?

A. I do not.

Q. Do you know whether this map that you have been testifying to is or is not a correct map of the State of Mississippi?

A. Well I have not testified any thing about its correctness or incorrectness. I never have examined it specially.

Q. Will you examine it and state whether you know it to be a correct map of Mississippi?

A. That will take some time Mr. Dymond. You want me to look over it and see whether I think it is correct or not?

Q. You might confine your investigation more particularly to the southern portion of Mississippi regarding the disputed area

1816 in controversy in this case?

Q. I want to say about the map, that I gave you in my previous answer all that I knew about it. I never paid any attention to it at the time it came out. I say I paid no attention to the map and in my judgment when that map was issued in 1871, the people of the State, the people whom I generally go with, the people who own the property and who pay the taxes here had no more to do with that map than they had with any other piece of legislation that was done in that character of legislature. Not only in Mississippi but your State and other States.

Q. Well General will you please answer what that had to do with the correctness of that map?

A. Well I don't know what it had to do with it. I don't know whether the map is correct or incorrect. I don't pretend to say. I pretend to say this, you understand——

Q. Have you any reason to suppose General Lowry that this map at the time it was prepared by Mr. Hardee did not represent the conditions as they were understood to exist at that time so far as the geography of the State was concerned?

A. I don't know whether I have or not sir.

Q. Now in 1882 E. G. Wall, commissioner of emigration and agriculture of this State prepared a map. Were you governor at the time Mr. Wall was commissioner of emigration and agriculture?

A. Yes sir, I was the governor at that time.

Q. Did you appoint him or was he elected?

A. I suppose he was elected.

Q. You don't remember though?

A. I don't remember, but I think that he was elected.

Q. Was he a Democrat?

A. I suppose he was yes sir.

1817 Q. That is at the time that the State had gotten back in the control of the Democratic party?

A. Yes sir.

A. Perhaps I can make myself better understood in this way. That during the radical days a man that wanted to get a thing passed by the legislature was here and with them, and he got it through, and if he did get it through and it was a success, the people who paid the taxes and supported the government had nothing to say about it. They could not help it.

Q. What year General did the government of the State of Mississippi pass back into the hands of its people?

A. Well now I don't recollect. You can get that from the records.

Q. Who was the first governor under the Democratic regime?

A. Governor Humphries.

1798 Q. He was displaced was he not?

A. Yes sir, he was displaced. Ames was the military governor then, and then Alcorn succeeded Ames.

Q. Well then who succeeded Alcorn?

A. Well sir Alcorn went to the United States Senate. Was elected to the United States Senate by a radical legislature. A negro by the name of Davis was lieutenant governor, and he was impeached and convicted. John M. Stone was then president *pro-tem.* of the senate, and John M. Stone was then made governor by promotion from that position.

Q. He served the unexpired term?

A. He served out the unexpired term.

Q. Or Ames?

A. Yes sir, and then he was elected governor.

Q. Who succeeded Stone?

A. I did.

Q. What year did you come into office?

A. I went in there in January 1882.

Q. Can you remember in what year the railroad commissioners for the State of Mississippi were appointed?

A. Well I think it was in 1884.

Q. Do you or not know that this same Captain Hardee was appointed under the Democratic administration as one of these railroad commissioners?

A. I do not. I don't remember. I was trying to think if there had not been one before 1884, but I don't remember.

Q. When did your last term expire?

A. It expired in 1890.

Q. Are you certain that during the term that you were governor that you did not appoint Captain Hardee one of the railroad commissioners?

A. I did not. That is my distinct recollection.

Q. You are positive that you did not?

A. I am satisfied that I did not. No sir.

1799 Q. You don't know whether he was appointed under Governor Stone. There was no railroad commission then was there?

A. I don't think there was. I appointed Governor Stone railroad commissioner under this bill creating them in 1884. I don't think Hardee was ever appointed by a Democratic administration. You know that there were a great many railroads chartered at that time. There were some men canvassing in different parts of the State for different railroads. It might have been from that that you think so. I will answer that question that I feel perfectly sure about it. Governor Stone as I stated filled out the unexpired administration of Ames, and he then served another term and I succeeded him, and then succeeded myself and then Stone succeeded me, and he was not appointed during this Democratic administration.

Q. You say General that you know nothing about the Gulf boundaries of the State of Mississippi and have not paid any special attention to it, except the general understanding that the boundaries of the State of Mississippi extended to a certain distance from the shore?

A. Yes sir, that has always been my understanding. The understanding of the people.

Q. Well now this map which was issued by E. G. Wall, the chief of the Mississippi State board of emigration and agriculture. That was issued during the Democratic administration?

A. During my administration I think sir.

Q. Was not he appointed by you?

A. I think he was elected. He was a negro.

By Gen. GUION:

Q. He was elected by the Democrats?

A. Yes sir, I think so.

Q. And after the Democratic party had taken possession of the State government?

1800 A. Yes sir.

By Col. ZACHARIE:

Q. Do you know General while you were governor of the State of Mississippi whether any taxes for the State or the counties of Mississippi were ever levied on this disputed territory. Let me ask you first, you know the disputed territory?

A. You mean the islands.

Q. The islands or what is regarded as the main land of St. Bernard parish?

A. I only know two or three of them. As I stated my general understanding was that Mississippi's jurisdiction extended as Congress provided. In the act.

Q. Well about the taxes. Did you ever know of any taxes being levied on these islands and this territory here. Those are within this red line as shown on Mississippi A.?

A. Well I am not prepared to answer that question.

Q. You don't know one way or the other?

A. No sir, not about that. The governor does not have much do with that part of it.

Q. You have spoken of the acts of Congress admitting the Sta of Mississippi; the State of Mississippi was admitted in 1817. Louis ana was admitted to the Union in 1812. Have you ever examine the act admitting Louisiana into the Union in regard to he boundaries?

A. Well my recollection is about that Colonel—I don't know tha I recollect it now, because I have not the data. When I, in co junction with Col. McCardle wrote the history, the school history Mississippi, and at that time the adjacent States—at the time Gov ernor Claiborn was you know first in this State and then over i Louisiana—I then had occasion to look up the data to see some thing that I desired to see about it, and that is about my recol
1801 lection of the examination that I made so far as Louisian was concerned.

Q. You have no recollection therefor- of what the act admitting Louisiana prescribed in regard to her boundaries?

A. No sir, I don't remember. I have no distinct recollection o that. All of my definite recollection is as to the State of Mississipp and the act of Congress as to her.

Q. Do you or do you not remember whether this map that wa approved by Mr. Wall, as the chief of the Mississippi State board o emigration and agriculture in 1883 was in pursuance of authority vested in him under the act of the State legislature of the State o Mississippi directing him to prepare such a map?

A. I don't recollect the character of the authority conferred upon the commissioner. My recollection is that it was by the immigra tion board at that time. I don't remember about that, but I pre sume though that he had some authority for it.

By Gen. GUION:

Q. It is a fact is it not General also that J. L. Alcorn was governor of Mississippi on the 10th, of May 1871?

A. Yes sir, I think he was.

Q. Do you remember whether T. S. Hardee was State engineer of the State of Mississippi in 1871?

A. I do not, no sir.

Q. Do you know as a fact that the map made by T. S. Hardee and approved by J. L. Alcorn as governor of Mississippi on the 10th, of May 1871 is a part of the archives of the land department of the State of Mississippi at this time?

A. Well I don't know personally about that sir. I know that that map was made at that time there. I don't know, I don't remember about the map at all. I don't know whether it was among the ar chives or not.

1802 Q. This came from Mr. Wall's office. I thought perhaps you knew that?

A. No sir, I don't know where it came from.

Q. Has the State of Mississippi by legislative acts or otherwise ever voided or repudiated or attempted to repudiate this map made by T. S. Hardee in 1871, and approved by Governor Alcorn in 1871?

A. I don't suppose that they ever took any action one way or the other about it. The map was made at the time I have indicated and under the circumstances and conditions that I have stated.

Q. It is a fact though is it not General to your personal knowledge that the State has never passed any act since the approval by Governor Alcorn of this map repudiating it as a correct map of the State of Mississippi?

A. Not to my knowledge sir. I don't know of any thing of that kind ever being done, no sir.

Q. Don't you know as a fact that it has never been done?

A. I suppose I would have known some thing of it if it had been done. My opinion is that it never has been done.

By Mr. DYMOND:

Q. General Lowry as I understand it you have been offered as a witness here to prove the conditions that existed at the time, supposedly, of the production of two maps, one being T. S. Hardee's map of Mississippi approved May 10th, 1871, by Governor J. L. Alcorn, and the other known as Louisiana map No. 32, a map prepared in 1883 by E. G. Wall, commissioner of emigration and agriculture. Well now first take up this map of Mr. Hardee as it is the earlier of the two maps. What do you know General as to the correctness or to the incorrectness of the southern boundary of Mississippi as interpreted by this map of Hardee?

1803 A. I don't know sir anything about it. I don't know as to the correctness or to the incorrectness of Hardee's map.

Q. I understand then if this map is correct or is not correct, you are not supposed to testify anything as to that?

A. How is that sir?

Q. As to the correctness or the incorrectness of this map you are not supposed to testify anything about that?

A. No sir.

Q. As I understand it further personally you know nothing in regard to the southern boundary of the State of Mississippi carried out in detail where it touches Louisiana?

A. I do not.

Q. You were governor from 1882 to 1890 as I understand it?

A. Yes sir.

Q. Now I believe you stated that you were unable to testify definitely as to when the white people came into control of politics in the State of Mississippi?

A. No sir, I did not state that.

Q. Can you fix that date?

A. Yes sir.

Q. What was that date?

A. In 1875 we won out.
Q. 1875?
A. Yes sir.
Q. The war ended in 1865?
A. Yes sir.
Q. What party were in power in Mississippi immediately succeeding the war?
A. The Democrats and the white people. There were Democrats and Whigs. Governor Humphries was elected and he was a Whig.
Q. There was a good government then was not there?
1804 A. Well if we had any body that was good in our State Ben Humphries was good.
Q. When was it that the radical and carpet bag element came into power in this State?
A. When Governor Ames was appointed military governor.
Q. When was this?
A. When he run Humphries out of the state house and the executive mansion.
Q. What date is that?
A. I could not give you the date now.
Q. Could you get it and familiarize yourself with it please. It is quite important to have that date. What year?
A. Well I can not say about the year sir. Let me see. It was probably in 1867. I don't remember. I can not state about the dates.
Q. Was there a good government here in 1866. Say in the month of October?
A. 1866. It is my recollection that—I am not sure—I don't think that Governor Humphries had gone out before that time. If he was in we had a government of our own people. If he was out we did not.
Q. Can you not fix that now. Have you not access to some record?
A. Excuse me. I can not come within two or three months of it. My recollection is not that good.
Q. Is there not some record which you can refer to and refresh your recollection?
A. Yes sir.
Q. Can you do it now?
A. Yes sir. That was in 1867 that Governor Humphries was ejected.
Q. Then as I understand it in 1866 on the 26th of October you say that there was a good government in the State of Mississippi?
1805 A. Yes sir, he was inducted into office on the 15th of October 1865.
Q. And remained in there until that date?
A. I think until 1866, because in the convention of 1868 the

Democratic party nominated him as a candidate on the Democratic ticket.

Q. Did I understand you to say a moment ago that he was governor on the 26th of October 1866?

A. He was inaugurated. He was governor in 1866. 1865 and 1866.

Q. Up to what time?

A. Well my impression is—I do not find the time here exactly, but my impression is that he was ejected in the latter part of 1866. He convened the legislature by a proclamation in August 1866, and I think a short time after that, on the 15th day of the following October they were to meet, a short time after that I think, before 1867 I think probably he was succeeded by Ames as military governor.

Q. I desire now to repeat the question and ask you again whether or not Governor Humphries was governor on the 26th of October 1866?

A. On the 26th of October 1866. Yes sir, I take it that he was because on the 16th of October 1866 he sent a message to the legislature.

Q. Can you fix with definiteness when he was succeeded by the military governor. You testified a moment ago that you thought that it was in 1867?

A. Yes sir I can find that I reckon.

Q. Can you from any reference you have made indicate about the time that Governor Humphries was removed from his office of governor?

A. General Humphries was a candidate for governor in 1806 1868. He had been removed——

Q. Will you please look at the School History of Mississippi by F. L. Riley, page 297, paragraph 663, and read the first paragraph to the stenographer?

A. On June 4th, 1868, General Gillam was succeeded by General Ruffain McDowal who commanded the district until July 4th, when General Gillam was reinstated. McDowal's brief reign was marked by the removal of Governor Humphries, and Attorney General Hooker, it being alleged they were an obstacle to the reconstruction cause. Brevet Major General Adelbert Ames was appointed provisional governor in the place of Governor Humphries. A military officer was detailed to perform the duties of attorney general. On February 9th, following the secretary of state was removed.

Q. General is that Humphries mentioned in the paragraph that you have just read from the Governor Humphries concerning whom you have been testifying?

A. Yes sir.

Q. I notice in the history of Mississippi gotten up by Lowry and McArdle page 371 the following clause "The legislature adjourned on the 21st of February 1867." Was Governor Humphries governor at that time?

By Mr. McCLURG:

Q. What kind of a legislature was it that elected him to the Senate?

A. It was a radical legislature. Negroes and carpet-baggers.

By Col. ZACHARIE:

Q. From your personal knowledge of Governor Alcorn, as well as from his general reputation are you of the opinion that he would have appointed to this position of State engineer Captain Hardee if he was not competent man for the position?

A. Well in answer to that question I will say that General Alcorn made appointments that he believed would benefit his party and secure influence to himself. And I want to say further that I feel that I could not do otherwise than answer when I tell you, who are a lawyer, that General Alcorn appointed to the supreme bench of Mississippi a carpet bagger, and a man who had no standing as a lawyer. He appointed him as one of the supreme judges of
1795 Mississippi, and I think I would be justified in saying, when a man would appoint as a judge of the court of last resort a man who did not have the qualifications, and he was willing to make him supreme judge, that then he would certainly make other appointments that he thought would be advantageous to himself.

Q. General, if it be shown, as we intend to show, that Captain Hardee was a Democrat, bitterly opposed in politics to the existing government at that time. Would you think that under these circumstances Governor Alcorn would have selected a man opposed in politics to himself and opposed to his government unless he had full confidence in his integrity and competency?

A. Well I would answer that question in this way. That in my judgement under the conditions that existed at that time I don't believe any living man who opposed the Republican party and had spoken against it in Mississippi could have gotten any thing from those in power at that time.

Q. I notice upon this map that there is an official endorsement as required by the statute I believe, from Governor Alcorn as the governor of the State of Mississippi. From what you know of Governor Alcorn of your own personal knowledge and by reputation, are you of the opinion that Governor Alcorn would have approved that map if he did not consider it correct. Approved that map of Mississippi?

A. I will answer that in this way. That if the legislature appointed a party; appointed Captain Hardee as State engineer. If he had been appointed as State engineer by the legislature; they appointed him to make a map of the State, my impression is that from the conditions at that time that Governor Alcorn had a competitor in the person of General Ames, and it was a contest between them my idea is that General Alcorn would have approved
1796 the act of the legislature with the hope of retaining a majority of his people.

Q. I am now speaking of and asking you questions Geneaal in regard to the act of Governor Alcorn in approving this particular map. In your opinion and from what you know of Governor Alcorn personally and by reputation, would Governor Alcorn have approved a map as governor, as the official map of the State of Mississippi, unless he believed and was satisfied that the map was a correct delineation of the State of Mississippi?

A. It is a difficult matter for one to draw a distinction between personal integrity and official life, and more especially so at the time that this map was made. I have no doubt that Governor Alcorn approved many things that he would not have done under a different state of facts.

Q. That Governor is not yet a specific answer to my specific question in regard to this particular map. I am now speaking of and asking you questions General in regard to *to* the act of Governor Alcorn in approving this particular map. In your opinion and from what you knew of Governor Alcorn personally and by reputation, would Governor Alcorn have approved a map as governor, as the official map of the State of Mississippi unless he believed and was satisfied that the map was a correct delineation of the State of Mississippi?

A. I will say this. How Governor Alcorn came to appoint a civil engineer I don't know. If he had any precedent for it I am not aware of it. My impression is that the authority of that map secured it- acceptance by the legislature from the character of men that at that time filled the two houses. The lower house and the State senate, and that General Alcorn approved that map; not only approved that, but approved other laws that he would not have done as James L. Alcorn, Whig leader of Mississippi.

Q. Now General, my brother Dymond has suggested that we are entitled to a categorical answer to the cat*a*gorical question
1797 and then of course you will be allowed to explain. I have not yet gotten a specific answer from you as to whether Governor Alcorn would have approved that map as the official map of the State of Mississippi unless he was satisfied that it was a correct and proper delineation of the State. Now I will ask you to please state yes or no according to your belief?

A. I believe he would at that time have approved it whether he believed it correct or not, and I will go further and state from party considerations. That is my opinion.

Q. General you have mentioned that he would have been influenced by an acceptance of the map by the legislature. Was there any acceptance in fact, or was there any acceptance required by the legislature. Was not it left to the approval of the governor?

A. Well now Colonel I can not answer that question. I don't know what the statute was upon the subject.

Q. Part of your reasoning was based upon the fact that he would do so and so, because of the acceptance of the legislature. Now suppose there was no acceptance by the legislature?

the channel and harbor at Gulfport of which you have spoken leading out to Ship island. That this 9. nautical blue line from Isle à Pitre reaches very nearly to the channel?

A. I notice that according to this map, if this map is correct. I can not testify that this map is correct.

Q. And you will also notice that there is a- inner line marked 9. nautical miles from Grand pass, and still another inner line marked 9. nautical miles from the main body of the marsh land. As I understand the purport of these lines Colonel, they mean the three leagues from the coast mentioned in Louisiana's bill of complaint, and that that State expects to establish her boundary or the limits of her jurisdiction there at nine miles from the main body of the marsh land; nine miles from Grand pass, and nine miles from the northeastern end of Isle à Pitre, either of which lines as you will observe strike the Mississippi shore east of Point Clear. In this connection I also call your attention to the red lines
1832 running parallel with the Mississippi shore marked 1 statute miles, and 18 nautical miles from the coast of Mississippi. You will gather from these lines a general idea of the contest in this particular locality. State what you may be able to state the effect on the commerce of Mississippi would be if the jurisdiction of Louisiana should be established according to the blue lines to which I have called your attention?

A. As I understand your question it would absolutely shut in Mississippi from Cat island and the waters east of it for several miles taking your northeastern line of nine nautical miles from Isle à Pitre. Taking your inner line it would shut off about half of Cat island. Taking your southernmost line it would shut off the most of the islands southwest of Cat island, where I was informed are the greatest oyster beds. But what effect it would have on the commerce entering into Gulfport I can not say unless Louisiana would have control of these waters. If the United States Government remained in control of the waters then I don't see how it could affect the commerce coming into Gulfport and going out into the gulf of Mexico, except it might affect the commerce that now comes down Pearl river and in Bay St. Louis that now comes to Gulfport for loading on foreign ships. That would of course be entirely shut off if Louisiana claimed absolute control of the waters.

Q. It has been shown during the progress of the testimony that has been taken in this case that licenses have been required of boats fishing in the waters of the respective States of Louisiana and Mississippi. Would the extension in your judgment of Louisiana jurisdiction according to the lines materially affect the revenues of the State of Mississippi with reference to these licenses and
1833 other matters over which the State has jurisdiction or may have concurrent jurisdiction with the Federal Government?

A. There is no question about it would shut off practically all of the State's income from catching the fish and oysters out of the water south of Mississippi as it has done. For all of the oysters

practically lie within the claims of Louisiana according to these lines and this map.

Q. How long did you say that you had been in Gulfport?

A. I would like to say that when I said nine tenths of my time, that is just an estimate. I have spent the greater part of my time in the State. Previous to that I have been interested in Gulfport and Mississippi since 1896. The fall of 1896, but I have taken charge of my property there since April 1st, 1901.

Q. State in a general way please what developments; industrial enterprises have grown up along the line of your road through southern Mississippi since you have been interested in it, and tell us something of their values?

A. There was practically no development or very little in that section of the State of Mississippi until the Gulf & Ship Island railroad started to build in 1896. There had been some work done on the railroad previous to that but it failed to mature to any benefit to the projectors of it. Since then the development of Gulfport has been from three little wooden shacks and half a dozen souls to nearly seven thousand people and various industries as pertains to such a city. The commerce at Gulfport has developed from nothing to about 22 or 23 million feet of export lumber per month, and 150,350,000 the last seven months, and 175 ship loads left the harbor 1834 for foreign lands and export trade since January 1st, 1904, to August 1st, 1904. The industries along the Gulf & Ship Island road have increased from practically nothing to 130 saw mills, with towns and little cities from Gulfport to Jackson, scattered along the road. I have been creditably informed by the commissions that assess property, that the valuation of the properties have increased over fifty million along the Gulf and Ship Island railroad, and the industries have grown in proportion, with four or five large oil mills, several cotton compresses, and four or five large manufactories. Nearly all of the naval store business, which includes turpentine and rosin from the State of Mississippi, part of Alabama and part of Louisiana come to Gulfport. Most of it from Louisiana and Alabama come by the way of the water in Mississippi sound, along the coast of the mainland to Gulfport; there it is prepared for export, and within the last two months there are three large steamers loaded with turpentine and rosin for Europe. A large steamer came to the pier this month loaded with perites of iron from Spain for the oil mill of Gulfport, and there is no question but what hundreds of more of such cargoes must come there as it is the cheapest point for all of the manufactories of the cotton seed oil mills, and fertilizing plants between Gulfport and Jackson.

By Mr. FLOWERS:

Q. Colonel Jones, you stated that if the lines which appear on this map No. 7, were established as the boundary lines of the State of Louisiana, that it would include within Louisiana territory nearly all of the valuable oyster beds. Please state whether that

would be the result if the line marked on this map No. 7,
1835 as the deep water channel claimed by Louisiana was established as the real boundary line between the States?

A. It would unquestionably cut off Mississippi from the most valuable oyster beds, leaving a very small amount of it near Cat island.

Q. Colonel Jones. Please state if you know whether the land all along the coast of Mississippi between Gulfport and the mouth of Pearl river is of considerable value?

A. Oh yes sir, it is of great value.

Q. State whether or not it is thickly settled?

A. There is a large population along the coast from Gulfport to the mouth of Pearl river, including Pass Christian, Long Beach, and many other houses along the coast.

Q. Is it not a fact that the land along the coast from Gulfport to the mouth of Pearl river is divided up into lots?

A. The most of it.

Cross-examination.

By Gen. Gunos:

Q. Col. Jones, will you be kind enough to tell me whether or not you know what the claim of Louisiana is as to the lines dividing her territory from that of Mississippi?

A. Only as I see them on map No. 7, before me.

Q. There are several lines on map No. 7, which is now before you. Will you kindly indicate to me which line is the one that Louisiana claims?

A. No sir, only as they are laid off here. Here are the lines, and I am satisfied that it is one of the three lines or four lines there.

Q. You see four lines do you not all in blue marks?

1836 A. Yes sir, I call these two lines here close together as one line, and I call this one running *paralel* more or less with the coast, and this called the deep water sailing line, that I would call the fourth line.

Q. Now if I would say to you that the State of Louisiana claims as the real boundary between it and the State of Mississippi, what is on this map marked No. 7, as the deep water sailing line from Pearl river to the gulf of Mexico, would not that line run between Isle à Pitre and Cat island?

A. Yes sir.

Q. If that should be recognized by the Supreme Court of the United States as the line between Mississippi and Louisiana will you be kind enough to state in what way there could be any interference in regard to the canal or channel that you have got from Gulfport to Ship island?

A. None whatever as I understand it except it would cut off o prevent the timber now coming down Pearl river, and sawed at th

mouth of Pearl river coming to Gulfport, only by going through Louisiana possessions or claims.

Q. Then your idea is if Louisiana is successful in having the line indicated on this map marked No. 7, as the deep water sailing line from Pearl river to the gulf of Mexico is the correct dividing line between it and Mississippi, that it would be cut off at Gulfport from any timber and supplies of any kind coming out of Pearl river. Is that your understanding?

A. No sir, unless it comes through the possessions of Louisiana as shown by this map.

Q. Do I understand you to believe that any lumber or products of any kind coming out of the eastern mouth of Pearl river down into the Mississippi sound into Lake Borgne would be cut off
1837 from coming to Gulfport altogether simply because this line between Mississippi and Louisiana would be held to be what on this map marked No. 7, is the deep water sailing line from Pearl river to the gulf of Mexico?

A. Do you ask me for my opinion?

Q. I thought that you stated opinions is the reason that I was asking you?

A. I don't think it would have any effect because I don't think that Louisiana would interfere with it.

Q. Will you state what the distance is from Gulfport to Ship island?

A. 11 miles. Now let me understand that. It is 11 miles from Gulfport pier to Ship Island light house, but only seven or eight miles to the deep water around Ship Island harbor.

Q. What is the length of the channel that you have got?

A. About eight miles from the south end of the pier.

Q. How do these vessels get to what you call Ship Island channel from the gulf of Mexico?

A. Come between Ship island and Cat island, but much nearer to Ship island where the Government has dredged the channel through the bar.

Q. Then if I understand you Col. Jones, you can not understand in what way there could be any assertion of claim of jurisdiction by the State of Louisiana between Gulfport and Ship island should Louisiana be successful in establishing as the boundary line between her and Mississippi what on this map is marked No. 7 as the deep water sailing line from Pearl river to the gulf of Mexico?

A. It would have no effect whatever sir.

Q. That would be entirely north would not it that Louisiana claims, if that be the line she claims in?

A. Yes sir, be north east.

1838 Q. And the channel by which the vessels would come out to the sea from Gulfport would be between Ship island and Cat island?

A. Yes sir.

Q. Do you know any thing at all about the channel between Cat island and Isle à Pitre?

A. I do not, only from casual expressions of other people. Not personally.

Q. Have you ever been there?

A. Yes sir, but with no intention of measuring the water or looking for any channel or any thing of that sort.

Q. You don't know the depth of the water then between Cat island and Isle à Pitre?

A. No sir, I do not.

Q. Do you know if there is a channel in between them?

A. I have been told so. I never sailed over it that I know of, only sailed around down there.

Q. Now you spoke just now of the oyster territory if I mistake not, and I understood you to say that if the line claimed by Louisiana should be held to be the proper line of boundary between it and Mississippi, that the oyster territory would be given exclusively to Louisiana or almost entirely to Louisiana. Am I mistaken in that?

A. No sir, you are not. As I understand it from this map nearly all of the valuable oyster beds would be excluded from Mississippi.

Q. Where are the valuable oyster beds located with reference to this line on map marked No. 7. called the deep water sailing line?

A. South and southwest.

Q. Have you ever been down in this territory that is broken up by lagoons and bayous, what is called the marshes, and Louisiana claims as a part of St. Bernard parish and which Mississippi claims to be within the 18 mile limit?

1839 A. Only along the northwest part of these islands, and never down among them.

Q. You have never been down into this territory proper?

A. No sir.

Q. What part did you say that you had been in?

A. The northwest, down here.

Q. That is the north east?

A. Yes sir, but I mean down over here. I have gone over the water south of the line as you state it, through here, but never down in the southern part of these islands and marshes.

Q. In other words you have never gone into what Louisiana calls the parish of St. Bernard. That is what she calls the parish of St. Bernard?

A. No sir, I never have.

Q. How old is Gulfport?

A. I think that the name was given to that port some 23 or 25 years ago, but the recent Gulfport is from 1896, and there were only about three little shacks there at that time.

Q. When did it begin to be a port of any consequence for the exportation of lumber and other materials by vessels. In other words when did it assume any commercial importance?

A. I think on the 6th day of January 1902, the first ship capable of drawing 20 feet landed at Gulfport. That year 29 ships came to Gulfport. They had a very narrow and imperfect channel.

Q. That is the first instance of vessels coming to Gulfport?

A. Yes sir, in 1903, 111 came to Gulfport.

Q. And it has been increasing ever since?

A. In seven months, in 1904, 175 up to August 1st.

Q. Colonel Jones, have you any data or information of any kind that would enable you to state to this commission, and to the Supreme Court, that in 1817 Gulfport had any commercial importance at all?

1840 A. I could only state that from my recent experience that there was nothing but the coast along there.

Q. Nothing but the coast?

A. Yes sir, with very small timber. Of course I cannot say it was all small timber at that time, but we found it very small timber. I am speaking as we found it in 1896.

By Col. ZACHARIE:

Q. Col. Jones, do you know or do you understand that since almost the foundation of the Government of the United States that it has been decided that the United States Government has exclusive jurisdiction over the navigable waters lying within the boundaries of the State?

A. I can say that has been my information and understanding.

Q. According to your understanding does not that jurisdiction refer only to the navigation and commerce passing over navigable waters?

A. I cannot say that, for on the Ohio river they assume a certain right to control the sale of liquor. Just what that right is I can not say but I know that to be a fact.

Q. You can not say that they asserted any right to control the sale of liquor except under the internal revenue law?

A. No I will not say that because I don't know what the foundation of their claims were [illegible] the sale of liquor on the Ohio river.

Q. Did you not understand that the property—that the bottoms of navigable streams and parts of the sea and sound within the jurisdiction of the State are the property of the State and can be governed by the State except in as far as not to interfere with navigation?

A. That has been my understanding so far as the commerce of the country was concerned.

1841 Q. Well what you have said about the United States interfering with the works on this channel and so on at Gulfport was simply because the United States was exercising its undoubted right to see that the rights of navigation were properly protected?

A. That was my understanding. I got that information direct

and within your knowledge independently of the face of the map or of the legislation, in that connection that indicates that these maps had any purpose or bearing upon the boundary in the waters of the Gulf between Louisiana and Mississippi I wish you would state it?

A. Well no sir. The original map as I understood it was to divide the State into counties, and giving the counties, etc., and I never knew or understood any thing about the dividing line between Louisiana and Mississippi on the maps.

Q. Prior to the institution of this suit, while you were governor, and before and since have you any knowledge of any controversy between these two States as to the boundaries in the waters of the Gulf?

A. I have none. I have not heard any dispute about the boundary. I don't remember whether it was during my first or
1821 second term as governor that I sent a message to the legislature in regard to the oysters down there. To protect the oysters. That is my only recollection. I knew nothing about the dividing line and heard nothing about the discussion of that. If there was I did not hear it. I was induced to send this message from the fact that I thought that these oyster interests ought to be preserved. I called the legislature's attention to the fact that I thought that interest should be preserved. So far as these maps are concerned I never heard any discussion of them.

Q. The messages of the governors and the acts of the legislature don't increase the power of a fellow to make a map correctly does it?

A. No sir, it does not.

Q. As I understood it in answer to the question by counsel for Louisiana in reference to the Wall map. That is a sort of revenue map. Emigration map?

A. Oh, this little thing here is about as near nothing I suppose in the shape of a map as could be gotten up. I will say this in connection with that. George Carlisle, who lives up the street here, a man of means and of property and sense. Carlisle became commissioner of emigration and I think that he got ten dollars a year. He made a much better map than this one. I was going to look in my office for Carlisle's map. He made a map and this man made a map, and Carlisle's is much better than this one.

Q. Carlisle succeeded Wall?

A. Yes sir, and he sold the Illinois Central railroad a number of maps of that kind. To, I forget his name, the man who comes down here and talks about immigration. Captain Merry.

1822 Q. Do you recognize maps as being of material value in settling State boundaries?

By General GUION: Objected to on the part of the State of Louisiana as being simply a conclusion of law and not a matter of fact.

By Mr. DYMOND: And also on the ground that the witness is not an expert on boundary matters.

Q. Governor, if there is anything else that you desire to say in this connection I would be glad for you to do so?

A. I don't know of anything that is embraced in your respective contentions that I would like to mention, but I would like to say this much. The counsel for Louisiana, as I understand it, Col. Zacharie propounded a number of questions to me about the integrity of Governor Alcorn and whether he would sign any paper or approve any law that he thought was improper etc. Now I want to say this. Governor Alcorn was a gentleman. I esteemed him very highly. A man of courage, and a man of great force of character, and will force, before he got in that condition here politically with his own people. Those who had been his friends previously as a great Whig leader of the State. He got into trouble with them and lost them all nearly, except now and then a personal friend would stand by him. Then unfortunately he failed in what he intended to do in carrying out his purpose with the negroes and carpet baggers, and then he come in conflict wih Governor Ames, and these people that had been in with him began to shove him off. He was just in that condition that he wanted to bring friends to him, and I think that the governor had to
1823 shield himself as well as he could, and my opinion is that he approved laws that differently situated he would not have done. I think that the governor was a gentleman of personal integrity, but politically he lost out, and he retained many personal friends notwithstanding he lost his political influence in the State. Now I want to add further in regard to Captain Hardee. In my intercourse with him I always esteemed him as a gentleman, and in the passage of this bill through the legislature as I have already stated in my answer today, I don't believe any living man who is a Democrat, and Col. Zacharie referred to that, I don't believe any living man could have come here as a Democrat and got any character of bill that would have been of any advantage to him through the legislature, which was composed largely of negroes and of white men who had no interest in the State. I have been looking through this legislature of 1871 and you can scarsely find one of them now that is an inhabitant of Mississippi. They did their work and left. They got what they could and cleaned out. I know nothing of the contention as to the boundary lines whatever personally nor have I ever investigated or tried to investigate the question. I have always in looking over it accepted as true the acts of Congress. That is my information generally on the subject.

1824 Col. J. T. JONES, a witness introduced on behalf of the State of Mississippi, being duly sworn, testifies as follows:

By Gen. MCCLURG:

Q. Where do you reside Col. Jones?

A. My home is in Buffalo, New York, but for the last three and a half years I have spent at least nine tenths of my time in Gulfport Mississippi.

Q. As you doubtless know we are engaged in a suit in the Supreme Court of the United States respecting the boundary between the State of Louisiana and the State of Mississippi in the waters of the Gulf, and one feature of this controversy presented by the State of Mississippi is of a commercial nature. Our contention being that matters of commerce entered into the consideration of the boundary at the time that Louisiana and Mississippi, and especially at the time that Mississippi was admitted into the Union. There is a great deal of historical matter especially in the committee reports of Congress to the effect that each State should have its frontage on the Gulf and water inlets, and as we see from Louisiana's claim by her bill of complaint and by some exhibits and maps that she has filed, this question is of importance to the State and we have asked you to come and testify along this line of commercial interest, believing as I have stated before that these matters enter largely into a proper consideration of the acts of Congress admitting these two States.

By Mr. DYMOND: Counsel for the State of Louisiana now requests of the counsel for the State of Mississippi to disclose under what allegation of their answer and cross bill they set forth these claims, and propose to introduce such evidence as is mentioned in that statement.

1825 By Mr. MCCLURG: Counsel for the State of Mississippi answer this demand first, by saying that they regard contemporaneous history, especially that part of it made by the Congress which created and admitted these States into the Union as being competent to aid the construction of the acts creating and admitting these States.

That such testimony we regard as competent in supporting our denial of the boundary claim by Louisiana, and of the boundary which is claimed by Mississippi in our cross bill, and especially with reference to paragraph 8., of the cross bill where it is set up on the part of Mississippi that the Congress in carving States out of the Louisiana purchase treated the Gulf coast or shore as a line running generally from east to west, and intended to form and bound the States on the Gulf so as to give each State jurisdiction over the waters adjacent to the shore or coast for a certain specified distance southward from its main land line, and that it was not intended by the Congress to give any State jurisdiction over waters adjacent to, and immediately south of, and in front of any other State or Territory. In view of paragraph 8. of the cross bill and of Mississippi's general denial of Louisiana's original bill, and looking to contemporaneous history, it is now proposed to be shown by the witness that the construction of the acts of Congress contended for by us is correct in view of the history of the two States in this section since their admission into the Union, and in view of the present conditions from a commercial point of view.

1826 By Mr. FLOWERS: One of the principal reasons which prompted the Congress in laying off the States along the

Gulf coast so as to give each State jurisdiction over the waters in front and immediately south of the main land was to give to the several States equal commercial advantages. The purpose of the testimony here offered is to show that the conditions along this part of the Gulf coast in controversy are such that the commercial advantages to accrue to the State of Mississippi are involved in this controversy.

By Gen. GUION: Counsel for the State of Louisiana object to any evidence being introduced by the State of Mississippi either in support of the allegations of Mississippi's answer and of her cross bill along the lines announced by counsel for the State of Mississippi because any such evidence as may be offered would be irrelevant and immaterial and inadmissable under the pleadings: that there is nothing in any of the allegations of the bill of complaint filed by the State of Louisiana, in the nature of a claim of any exclusive rights of navigation in the waters between the two States of Louisiana and Mississippi, and no claim made in any of the allegations of the pleadings of Louisiana to any exclusive commercial advantages on said waters.

By Gen. GUION: Counsel for the State of Louisiana specially objects to the line of inquiry which the State of Mississippi has just announced its purpose to persue in the examination of its witness, who has just been sworn, because the statements made by the counsel for the State of Mississippi are of such a character as to amount practically to leading the witness to the answers desired.

1827 By Mr. DYMOND: And that it is improper to state as facts contemporaneous congressional history as facts which by the record are shown not to have been proven as such.

The question was here read to the witness from the stenographer's notes as follows:

Q. As you doubtless know we are engaged in a suit in the Supreme Court of the United States respecting the boundary between the State of Louisiana and the State of Mississippi in the waters of the Gulf, and one feature of this controversy presented by the State of Mississippi is of a commercial nature. Our contention being that matters of commerce entered into the consideration of the boundary at the time that Louisiana and Mississippi, and especially at the time that Mississippi was admitted into the Union. There is a great deal of historical matter especially in the committee reports of Congress to the effect that each State should have its frontage on the Gulf and water inlets, and as we see from Louisiana's claim by her bill of complaint and by some exhibits and maps that she has filed, this question is of importance to the State and we have asked you to come and testify along this line of commercial interest, believing as I have stated before that these matters enter largely into a proper consideration of the acts of Congress admitting these two States. What interest have you if any on the coast Col. Jones?

A. I have large interests at Gulfport, and along the coast between the coast and Ship island.

Q. We would be glad to have you state to the commission in order that the court may learn the conditions existing on the Mississippi Gulf coast, with reference to her maritime and commercial
1828 interests, and in view of showing the effect of a decree establishing the line sought to be established by the State of Louisiana; what you may know about the maritime and commercial interests down there?

A. We have a harbor opposite the city of Gulfport extending over a mile from the main land or shore out into the Mississippi sound, in a direct line towards the light house on the west end of Ship island. We have dredged a channel from the end of the pier or harbor to deep water in the harbor known as Ship Island harbor.

Q. Who do you mean by "We"?

A. Well I will say the Gulf and Ship Island Railroad Company. That is to the deep water known as Ship Island harbor. We have also dredged what we call the Anchor basin, a quarter of a mile wide and a half a mile long with its approaches from the Anchor basin to the mouth of the channel. We have received 320 ships into the harbor within two years and about a half, or in other words about thirty months. We have sent out of the harbor loaded 395 ships up to the first of August this year. We believe that port to be destined to be one — the greatest ports on the southern coast of the United States. With a reasonable and moderate amount on money we believe that the channel can be cut down to 32 feet, also the harbor by which and through which the largest vessels afloat on the gulf of Mexico can go in and out of that harbor without any difficulty. We believe and our experience for the last three years has demonstrated the fact, that the channel can be kept open at a moderate, very moderate expense, and that the harbor can be maintained at a very moderate expense, cheaper than most of the harbors according
1829 to my best information. The channel is the shortest of any along the coast leading from the deep waters of the harbor of Ship island to the harbor of Gulfport, and is one of the most accessible from the waters of the Mexican gulf. We further believe that with the southern terminal of the Gulf and Ship Island road at Gulfport, that we will have one of the most active and best ports in this country. That we can take care of all of the imports, and can deliver a great quantity of exports, especially in lumber for the next 20 or 25 years, as the Gulf and Ship Island railroad runs through and practically controls the finest long leaf timber lands in the southern part of Mississippi. That is, I mean by controls, controls the freight after the timber is cut into lumber.

Any thing that would interfere with that harbor and that channel would be a most serious detriment to the whole State of Mississippi, as the Gulf and Ship Island railroad extends northward 160 miles to the capital of the State of Mississippi and the city of Jackson, connecting with one of the greatest systems of railroad in this State. That its freight can be carried to the north or northwestern territory of this country and can be received from the northwestern

section of this country and delivered through the harbor at Gulfport. The lumber interests to-day at the mouth of Pearl river are being shipped in small vessels or lighters from the mill to the harbor at Gulfport, and they are loaded on to the foreign or export ships, and any thing that would interfere with that would interfere with the harbor interests of the harbor of Gulfport. The great oyster beds that Mississippi has been getting her oysters from lay around and through the various islands south of the main land of Mississippi, as I understand the situation. Several
1830 of us owned an oyster factory at Gulfport and got our oysters from that section which lies south of Mississippi around and close to Cat island and the various islands near by Cat island. I have never known any thing about the lines or controversy between Louisiana and Mississippi at all until I saw this map before me, which is map No. 7, filed by Louisiana, as explained to me by counsel for Mississippi. If Louisiana should have the sole jurisdiction over the islands and the water that the lines on this map No. 7, as shown to me indicates, it would unquestionably deprive the State of Mississippi from getting but very few of the oysters as the oyster beds now exist. As to what effect Louisiana's jurisdiction, or sole jurisdiction of those waters as between the two States would have I don't know, as according to my experience the United States claims jurisdiction over those waters between the State of Mississippi and Cat island.

We were compelled to make a contract with the Government of the United States before we were permitted to dredge any mud from beneath the waters at the south end of the pier at Gulfport as they claimed jurisdiction, and they compelled us to carry the mud that we dredged from the channel over towards Cat island where we were allowed to dump it, and they disregarded the jurisdiction of Mississippi, as our charter rights gave us six miles out towards Ship island and a mile wide, one half mile on each side of our track, which the United States would not respect. I know nothing about the law.

Q. You have reference to the charter granted to the Gulf and Ship Island railroad by the State of Mississippi?

A. Yes sir.

1831 Q. You mean to say that that charter granted you the right out six miles from the coast shore?

A. Yes sir.

Q. And the Federal Government required you to get permission from it to make the channel?

A. Yes sir, the Gulf and Ship Island channel manager located one of its dredge boats just beyond the end of the pier, and the officer in charge of that district; the United States officer in charge of the district notified him that he would arrest him at once if he did not stop and wait until a contract between the Gulf & Ship Island railroad and the United States was executed.

Q. Now calling your attention to map No. 7, Col. Jones and to which you have referred you will note that the blue lines nearest to

Q. Now this map of Wall's reads on its face that it was prepared, and published in accordance with the act of the State legislature in question which is found in the Acts of 1882 of the State of Mississippi, page 26, chapter 18; is an act to organize and regulate the duties of the department of emigration and agriculture pursuant to article 12, section 23 of the constitution and for other purposes, and section 5 reads as follows: "Be it further enacted etc., and it shall be the duty of the State commissioner under the direction of the State board to cause to be made a geographical, geological and topographical maps or charts of this State, showing the various counties with all of their water courses, railroads, location of timber plots, classification of soil, and the number of acres for sale in each county. Industries, towns and internal improvements etc.

Will you please look at this map which is known as Louisiana map No. 32, and state whether you recognize it to be the map prepared in accordance with that act of the Mississippi legislature?

A. Well I will tell you all that I remember about this map. Wall was made the emigration agent, the emigration commissioner, and the object of this little map as I understood it, was like the railroad maps, and like the other little maps that you get up to induce people to come to the country. Nobody regarded this as a map of accuracy or anything of that sort. For instance he puts off here a big scope of country as long leaf pine, and he puts over here another yellow loam region.

Q. You seem to have misunderstood my question. I desire
1818 that the answer shall be responsive to my question. I have not asked you anything about the accuracy of this map at all. I desire you to understand the question and answer it.

By Gen. McCLURG: Counsel for Mississippi insists that the witness answer the question in his own way, and that the counsel for Louisiana will not be permitted to cut him off.

By Mr. DYMOND:

Q. I say you are not answering the question as asked. I don't think you understand it?

A. Let me see the act of the legislature. Now what is it you want to know.

Q. I want to know if you recognize this to be the map prepared in accordance with the act of the Mississippi legislature?

A. It is a map that this man prepared. I don't think it was in accordance with this law. That is the one that he prepared intending it to be in accordance with it I suppose. That is the only one that I ever knew that he prepared.

Q. Now General you never knew of any dispute as to the boundary existing in 1866 or 1871 with any body did you?

A. No sir.

Q. So there was not any reason why the map; either of these

maps should not have been as accurate as the respective parties were able to make them was there that you know of?

A. I never heard any thing of it by them at all. Whether they are correct or not I don't know any thing about that.

Q. Now you are unable to state whether this map of Hardee's known as Louisiana map No. —, and this map of Wall's
1819 known as Louisiana map No. 32. You are unable to state whether they disagree or are in accord with the previous maps so far as the southern boundary of Mississippi is concerned?

A. I can not say about that. But in regard to this map of Wall's, the greater part of his duty was to try and get emigration, and to present the counties and the number of acres of land that were clear and various things. If you want my opinion about the map and his ability I will give it to you?

Q. No, I did not ask you about that?

A. Well I say that it is defined by this law. There are so many duties, but the great object of this law was to bring immigrants here, and to advise them as to the character of the land etc., and this map here, any one would see that it was just one of those little maps gotten up for a specific purpose, just as they get up the railroad maps.

Q. Are you familiar with the maps of Mississippi prior to 1866, especially in regard to the southern boundary of the State?

A. Well sir I could not say that I am. I am pretty familiar with all of the localities of the State and the counties of the State, and I don't know whether there is a county in Mississippi that I have not been in, but I don't remember about the previous maps. I am not familiar with them now and I could not state about that.

Q. Well you have kept in touch with the maps of Mississippi since 1871, with especial reference to the delineation of the southern boundary of the State?

A. No sir, I have not.

Q. Would you or would not you be able to say under these
1820 circumstances how these two maps that you have been talking about compare with the previous and with the subsequent maps of the State so far as the southern boundary is concerned?

A. As I stated this morning my only information in regard to the southern boundary is not from maps, nor is it from information that I had from others, but it is from the act of Congress defining it. That is my opinion on the subject.

Redirect examination.

By Gen. McCLURG:

Q. Governor, you have been examined at considerable length with reference to these maps. The one by Hardee of 1872, and Wall in 1883. If there is any thing on these maps or in connection with the legislation whatever out of which they are claimed to have grown,

within the territory that you have described, and I am told that oysters will thrive upon that small area.

Q. Do you know the extent of the area?

A. No sir, I do not. I understand it to be a fact only as

1851 told me.

Redirect examination.

By Gen. McClurg:

Q. Have you ever known Colonel as to the conditions of the waters with reference to its soft temperature. Its brackishness, in relation to the growth of oysters. Fresh water and the like of that?

A. I am informed by those who grow oysters that they prosper most where they can get a certain amount of fresh water. The fresh water mixed with salt water. Too much fresh water kills them. And in the salt water they don't thrive very well. That is my opinion.

The commission here took an adjournment to meet at nine o'clock tomorrow morning at the State capitol.

1852 Jackson, Mississippi, August 20th, 1904.

Pursuant to the adjournment of the commission on yesterday evening the commission met this morning at nine o'clock at the State capitol, in the attorney general's office to resume the taking of the testimony on the part of the State of Mississippi.

There were present Hon. William D. Bullard commissioner on the part of the State of Mississippi. Hon. Walter Guion, attorney general on the part of the State of Louisiana, and Hon. Frank C. Zacharie, and John Dymond Jr., associate counsel on the part of the State of Louisiana. Hon. William Williams, attorney general of the State of Mississippi. Hon. James N. Flowers, assistant attorney general on the part of the State of Mississippi, and Hon. Monroe McClurg, associate counsel, and P. M. Peyton, official stenographer. The following testimony was taken to-wit:—

Hon. E. H. Nall, a witness introduced on the part of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. McClurg:

Q. How old are you Mr. Nall?

A. My next birthday I will be fifty-five.

Q. You reside in the city of Jackson?

A. Yes sir.

Q. What position do you hold?

A. State land commissioner.

1853 Q. How long have you held that office?

A. Since July 2nd, 1898.

Q. Did you hold any other office in the State before that?

A. Yes sir, assistant secretary of state.
Q. During what period?
A. From 1893 to 1898.
Q. As State land commissioner you have in your official keeping the records pertaining to the public lands of the State have you?
A. Yes sir.
Q. I wish you would state if you have made an effort to have some maps made of our sea coast frontage?
A. About the 20th, of July I sent a request to the Land Commissioner at Washington to send me triplicate copies to the various islands there, but they have been misplaced. Thinking that the maps might have gone to Jackson, Michigan I telegraphed there, and also to Jackson Louisiana, and the replies were that there were no maps to my address at either place.
Q. Have you made any other effort to get them?
A. I telegraphed yesterday to send duplicates of all of them.
Q. When you receive them I will ask you to file them with the commissioner?
A. Yes sir, I will do so.

Counsel for Louisiana state that this is satisfactory to them, with the understanding that when the maps come, if the counsel for Louisiana desire to cross examine the witness he will appear before the commission for that purpose in New Orleans.

1854 Q. This suit Mr. Nall involves a portion of what is termed the marsh lands east of Louisiana and to the south of the State of Mississippi. Have you any records in your office showing any survey of any of that marsh land by the State of Mississippi?
A. Yes sir.
Q. What portion of it?
A. Well there are the section, townships and ranges there on this plat book.
Q. And of these records that you refer to you exhibit these official copies?
A. Yes sir, these are the originals. They have the copies.
Q. That is Grand island and some parts near the mouth of Pearl river. Those appear on these maps?
A. Yes sir, Grand island is right here.
Q. Now I want to call your attention to that part of the marsh that extends from Malheureux point eastward to Isle à Pitre. Is there any record of that part of the marsh land in your office?
A. You will have to call the township and range before I can answer that question General. If there has been any record of it I am unable to find it.
Q. The lands that I ask you about according to the Louisiana maps are in townships 10, 11, 12 and 13, and ranges 17, 18, 19 and 20 east?
A. There is no record of it in my office that I have been able to find.

Q. What can you say if anything Mr. Nall about the ownership of this territory in the townships and ranges above mentioned belonging to the State of Mississippi, and if you know whether the government of this State was ever applied to for the patents for these islands?

A. I don't know. That rests solely with the governor. He
1855 is the one authority to ask for patents from Washington.

Q. Have you ever known as to whether any governor of this State has ever asked for the patents to the land in this territory?

A. I think that Governor Vardeman asked for everything within the 18 mile limit.

Q. Recently?

A. Well it has been several months ago.

Q. No previous governor that you know of?

A. I suppose the other governors, Lowry and Stone have asked for the lands belonging to the State under the swamp land act of 1850. That would take in every thing you know.

By Gen. GUION:

Q. That is only your supposition?

A. That is all.

Q. You don't know anything personally of your own knowledge concerning the matter?

A. No sir, I do not.

By Gen. MCCLURG:

Q. What have you to say about the ownership or possession of this territory within the township and ranges above mentioned belonging to the State. In the State's possessions?

A. Well sir the act creating the boundaries of the State it seems to me would cover that, giving us all of the lands within 18 miles of the shore

Q. Have you any information as to any trouble or controversy of any kind down there prior to the institution of this suit?

A. None whatever.

Q. I mean upon the institution of the suit immediately
1856 before it or leading up to it?

A. No sir.

Q. To the bringing of the suit?

A. No sir.

Q. Under the laws of the State of Mississippi I believe you are authorized as the State land commissioner to make sales of the public lands?

A. Yes sir.

Q. Has there ever been any application to purchase any of these lands since you have been commissioner?

A. No sir.

Q. What sort of act, of possession, ownership or jurisdiction if you

ow has Mississippi exercised in the territory about which we are eaking. I mean by Mississippi, of course, her people.
A. Well our people fished and tonged oysters down there. I be- ve that is the term they use, unmolested.

Cross-examination.

By Mr. DYMOND:

Q. Mr. Nall, do you think you understood the first question that General McClurg asked you in regard to the surveys as shown by your plat book?
A. Yes sir, or I think I would not have answered it.
Q. Did you understand that question when you answered it. I will have it read to you. "This suit Mr. Nall involves a portion of what is termed the marsh lands east of Louisiana and to the south of the State of Mississippi. Have you any records in your office showing any survey of any of that marsh land by the State of Mississippi?
A. Yes sir.
Q. Will you please point out to me any survey made by the State of Mississippi?
A. Oh, no sir. That ought to be or commissions. I am
1857 glad you called my attention to that.
Q. If I understand it this — diagram you refer to in your plat book. That is not a survey made by the State of Mississippi, but it is a survey made by the United States surveyor and is a copy of his notes and plans of survey?
A. Yes sir.
Q. Now will you please look at this plat and point out upon it what land is down as belonging to Mississippi which is in dispute in this case?
A. I can not do that.
Q. Did I understand you to say that you thought that this island which is called Grand island on this map of township 10, south, range 15 west, is by this plan of survey given to the State of Mississippi?
A. I believe this island ought to have gone to the State.
Q. I am not asking you Mr. Nall whether it ought to belong or not. I am asking you whether it does belong?
A. Oh I don't know.
Q. Can you tell in what township and in what sections of that township that island is situated. From the records of the State of Mississippi. Is it not a fact that the only data given in regard to that island is that it says a certain acreage, and it is distance a certain distance from Point Clear and from St. Joseph island?
A. Yes sir, it is so many chains to that point.
Q. That is all it says?
A. That is all it says.
Q. Now will you please look at this diagram, which is marked

Louisiana Document No. 38, and which has already been offered in evidence by Louisiana, and look at the island here marked Half Moon island, and state whether it corresponds in its general formation and location to the island called Grand island on your record?

A. Well it looks the same to me.

Q. Well now will you please state according to Document
1858 No. 38 what four townships go to make up that island?

A. Well according to this it is township 10-17 east; 11-17 east, 10-18 east, and 11-18 east.

Q. Now have you on your records of the State of Mississippi, Mr. Nall, any thing that would give the data that is given by this Louisiana Document No. 38, in regard to thay particular territory?

A. You mean the township and range?

Q. Yes sir.

A. We have not.

Q. Now have you any record on your books to show the selection by the State of Mississippi of this island called Grand island and its approval by the United States office?

A. I never have been able to find it.

Q. Mr. Nall, will you please look at this township plat of township 10, range 15 west, land district east of the island of New Orleans, and east of Pearl river which for the purposes of identification will be known and marked as Louisiana Document—Louisiana 1, and state whether it is the same territory as covered by the plat on your State records of Mississippi concerning which you have testified on direct examination?

A. This is a duplicate of that it seems to me except the fractional township 10 range 15 in the lower left hand corner.

Q. You will notice that the original survey was made in 1824? And approved in 1827?

A. Yes sir.

Q. You will notice that there was a re-approval dated Jackson September 12th, 1846, signed C. A. Bradford, surveyor south of Tenn. What is the Jackson referred to here? What town is that?

A. I have no idea. I don't know whether it is Mississippi o Tennessee. I have referred to my records page 84.

Q. Do you notice that when this particular township wa
1859 approved in 1846 that no reference is made to Grand islan which appeared on the original survey?

A. There is no mention of it here.

Q. I refer now to the approval made in 1846. Was there an reference to the island?

A. The record in my office is dated 1843, and the document th I am looking at, filed by Louisiana is dated 1846.

Q. You have on your records no copy of the 1846 approval?

A. Nothing here. It is not on the records here. All of my re ords bear date 1843 and prior thereto.

Q. Mr. Nall, will you please look at this map called No. which purports to be a photographic copy of the official map of

rnard, and shows the territory south of Half Moon island and
st of a line starting the ranges 17 and 18 east, and state whether
not according to your records Mississippi has ever applied for
y of the lands there shown?
A. Well I don't know whether the governors have or not. I
now that Governor Vardeman has.
Q. When did Governor Vardeman become governor?
A. January 19th, 1904.
Q. Was that since the institution of this suit?
A. I suppose so.
Q. Now so far as your records go as I understand it you find no
record of any selection by the State or approval by the United States
of these lands under the swamp land grant?
A. None whatever.
Q. Now will you please look at this document which is marked
Exhibit G, to the bill of complaint of the State of Louisiana, and
state whether from your familiarity you recognize it as what
1860 is called an extract from the tract book of the United
States?
A. I could only tell from the official signature and the seal.
Q. Have you ever seen that tract book in any of the offices of the
United States land offices?
A. In Washington?
Q. No, in any of the land offices of the United States?
A. No sir, I have never been in a United States land office in my
life. I never have been in this one here. I have no business there.
Q. Have you a tract book in your State office?
A. Yes sir, of the land selected under the act of 1850.
Q. Do the two pages of this book look anything like the two pages
of this Exhibit G, open before you?
A. It has about the same heading. It is in a book though. They
all have simply the township, section and range.
Q. Do you recognize this to be any part of the area in dispute in
this case, for instance take the fourth item of section 13, in township
11 south, range 19 east. Do you recognize township 11, range 19
east to be the disputed area?
A. If this is the disputed area there. 11–19.
Q. And this reads "Selected by State under act March 2nd, 1849,
approved by Secretary of Interior May 6th, 1852.
A. It reads that way.

By Gen. GUION:

Q. Mr. Nall, do you know when Governor Vardeman wrote this
letter that you have just spoken of?
A. I do not.
Q. Do you know to whom he wrote it?
A. To the Secretary of the Interior at Washington.
1861 Q. Hitchcock?
A. Yes sir.

Q. Do you know whether he has received any reply to his communication?
A. No sir, I do not.

By Mr. DYMOND:

Q. Could a copy of Governor Vardeman's letter be gotten?
A. I suppose so by asking for it.

By Gen. GUION:

Q. Now Mr. Nall will you please look at this map which is now before you in this room, which is the map of the State of Mississippi made by T. S. Hardee, State engineer in 1871, and marked with the approval of Governor Alcorn as follows "Executive office, Jackson, Miss. July 4th, 1871, approved under the act of the legislature, approved May 10th, 1871. Signed J. L. Alcorn, governor of Mississippi," and being the same map concerning which Governor Lowry testified in his examination yesterday and state whether or not this map is a part of the archives of your office as commissioner of the land office of the *land* of Mississippi?
A. No sir. I think the governor gave me that map. Governor Longino, and I carried it in there and wrapped it up. I did not use that map or any other map in land matters. When I want a section township and range I go to the plots.
Q. What plats?
A. The original plats.
Q. Governor Longino, as I understand you gave you this map and you have had it ever since in your office?
A. Yes sir you see that is wrapped up. You see those white places on it.
Q. Do you know for what purpose Governer Longino gave it to you?
A. It was hanging up there and one day I asked him for it?
Q. Where was it hanging?
1862 A. In his office. In the governor's office.
Q. Do you know how long it had been there Mr. Nall?
A. I do not.
Q. Did you ask him for it or did he give it to you?
A. I asked him for the map.
Q. What was your object in wanting it from the governor?
A. Some time probably to refer to the township and range, and sections principally. This is a sectional map, and we have maps with no sections in them.
Q. You wanted it then for some uses in your office?
A. Yes sir.
Q. You considered this map did you not as a part of the archive of your office after it was given to you by Governor Longino?
A. No sir, I did not attach much importance to it except to look at the sections now and then.
Q. You did not regard it as your private property did you?

A. Oh no sir.
Q. You regarded it as the property of the State?
A. Yes sir. I would not give three cents for it. You see that map gives the sections and these little maps don't give the sections. That is the difference.
Q. Mr. Nall do you remember the date of your letter to the Land Office in Washington in which you asked for these copies that you spoke of, and that have not reached here?
A. I think it was early in July.
Q. Was it not on the 30th, of June that you wrote?
A. I don't remember.
Q. Did you receive any answer to that letter of yours?
A. Yes sir, that it would be forwarded in a few days.
Q. Have you got that letter from the Interior Department in your possession, if you received any reply to this?
A. I don't know. I gave it to Mr. Smiley, my assistant down there. He is gone and I don't know what he did with it.
1863 Q. Have you a letter from the Department of the Interior signed by J. H. Fimple, acting Commissioner, dated July 9th, 1904?
A. I don't remember.
Q. Addressed to E. H. Nall, land commissioner, Jackson, Mississippi?
A. I don't know sir. I gave all of the letters that I had to be turned over to Gen. McClurg and Mr. Williams and Flowers — to Mr. Smiley.

By Col. ZACHARIE:

Q. Mr. Nall you have been examined with reference to a letter of yours of June 30th, to the Department of the Interior General Land Office, or rather to the Commissioner. Have you a copy of your letter of June 30th?
A. No sir.
Q. What has become of that copy?
A. We never keep copies.
Q. You never keep copies?
A. No sir.
Q. You have no letter press book in which you keep copies?
A. No sir.
Q. Can you remember and state the contents of that letter to the Department of the Interior and the General Land Office?
A. No sir, we wrote so often and for so many different things that I can not recollect.
Q. Do you remember that you received a reply to your letter, the reply being dated in Washington, July 9th, 1904?
A. Well that certified copy that you showed me dated the 9th, is a copy of the original letter that I received.
Q. Have you examined this certified copy?
A. Yes sir, I read it.

from the Government agent who had jurisdiction in the waters along that coast.

Q. That being so and the United States haveing jurisdiction over such waters for the purposes of navigation, how could the State of Louisiana if she succeeded in her claim control the use of the waters within her jurisdiction so as to interfere with the commerce of Gulfport?

A. I have answered that question that I don't think it interfered.

Q. It would not interfere?

A. It would not interfere for I don't believe that Louisiana could control the water there.

Q. Then if Louisiana could control the navigation of the waters within boundaries claimed by her, how could that control interfere with the dredging of your channel from Gulfport to Ship island, or any other Mississippi port?

A. It could not interfere in any way unless they, Louisiana could prohibit the Government from allowing the mud taken from her channel dumped there along Cat island where we dump what has already been taken out. I don't think they could have any thing to say about that.

Q. Certainly Louisiana could not interfere with the entrance or exit of any veaaels to and from the port of Gulfport?

A. I don't think so according to my understanding.

Q. Louisiana is claiming as the boundary line the deep water channel running from the east mouth of Pearl river out between Cat island and Isle à Pitre. She is not claiming the exclusive use of that channel. Now under those conditions how could the

1842 establishment of this line interfere in any way whatever with the commerce of the port of Gulfport, or any other portion of the Mississippi shore lying between the mouth of East Pearl river and Gulfport?

A. I don't see any way for them to interfere unless they can control the exports from Pearl river, and I don't think they could.

Q. Louisiana is not claiming the exclusive use of the deep water channel. She only says that her boundary goes to the middle of the channel; consequently could she in any way interfere with any commerce coming out of the mouth of East Pearl river and coming to Gulfport or any of these ports. You know the Constitution of the United States would prohibit Louisiana or any other State from putting any tonnage tax, or export or import tax don't you?

A. That is my understanding of the law yes sir.

Q. Consequently if the boundary line was established at the middle of the deep water channel running from the mouth of East Pearl river down between Cat island and Isle à Pitre, there could be no interference whatever with the commerce of Gulfport, or any of the places lying between Gulfport and the mouth of Pearl river could there?

A. Not as I understand the law. Louisiana would have no control of the water.

Q. Then to narrow it down you are then of the opinion that the only effect upon the commerce of Gulfport, and of these ports or lands lying between Gulfport and the mouth of East Pearl river would be to prevent Mississippi fishermen from fishing oysters within those boundaries?

A. That is my present opinion and understanding, unless she sees fit to make laws to prevent Mississippi fishermen from catching fish in those waters as well as oysters, and crabs.

1843 Q. Don't you know as a matter of law that she would have no right to prohibit the catching of swimming fish?

A. No sir, I don't understand it that way, but I know who ever catches them can own them if they can get away with them.

Q. Louisiana would have no authority to establish quarantine stations that would affect your ports would she?

A. I think not sir.

Q. Then in so far as the commerce of Gulfport and of these lands and ports lying between Gulfport and the mouth of East Pearl river, you are of the opinion that the commerce of none of these ports would be affected except in the matter of getting oysters?

A. In the matter of getting oysters and shipping them from Gulfport harbor.

Q. You have stated that most of the rosin and naval stores from Louisiana and Alabama were shipped through Gulfport. I suppose you intended to mean those portions of these two States lying near your railroad. You did not mean to say that all of the rosin and naval stores and so on of Louisiana and Alabama were shipped through the port of Gulfport did you?

A. No sir, I meant to state that nearly all of the rosin and turpentine from southern part of Mississippi, and the eastern part of Louisiana, along Pearl river, and the western part of Alabama adjoining the Pascagoula river comes to Gulfport. That was my intention.

Q. Well is not that stating it a little too broadly; that all of the stuff from southern Mississippi. Is there not a portion of it shipped through Biloxi, through Bay St. Louis and Pascagoula and other points?

A. All of it comes to Gulfport in small boats now, and they are prepared for export and interior shipments from Gulfport.

Q. Is not there a considerable portion of this stuff shipped to New Orleans by vessels from Biloxi and Pascagoula and Pass

1844 Christian and Bay St. Louis and other ports for the New Orleans market?

A. No sir, not now. It was a year ago. There are two stores that control that product, and they have combined into one and made Gulfport their principal shipping point.

Q. Don't the rosin factories and the other naval store factories in New Orleans get a good deal of this stuff from along this coast?

A. Not now, They get very little.

Q. You have spoken of this territory between Gulfport on the

Mississippi shore extending to the mouth of East Pearl river as being thickly populated and being divided mostly up into lots. Are there any ports there of export or import?

A. None of any importance.

Q. Then the establishment of the lines by Louisiana at the middle of the deep water channel running from the mouth of East Pearl river down between Cat island and Isle à Pitre could not possibly interfere with any of the commerce at any of the places I have just spoken of except the taking of oysters from the boundary within the deep water channel. That would be all would it not?

A. As I understand the law now that would be all.

Q. Then in substance your testimony would amount to this. That if Louisiana was successful in establishing her boundary as claimed by her it would have no effect from a commercial point of view upon any of the Mississippi ports except in preventing oyster fishermen from taking oysters within that boundary?

A. As the Louisiana law is now according to my understanding that would be the principal loss.

Q. Would there be any other loss and if so what would that be?

A. If she could pass a law prohibiting catching oysters I don't know why she could not pass a law to prohibit catching most anything else.

1845 Q. She could not pass any law controlling the navigation of these waters could she?

A. No sir, I do not so understand it.

Q. Therefore it would not interfere with the commerce or navigation to any of these points would it?

A. I don't think so. I think I have answered that.

Redirect examination.

By Gen. McClurg:

Q. You have been questioned by counsel for Louisiana with reference to the effect tl at the establishment of a line claimed by that State would have upon the commerce at Gulfport harbor, and especially with reference to your opinions with reference to the power of that State to interfere with national commerce. If the jurisdiction of Louisiana should be extended to the middle of the deep water sailing line mentioned, or to either of the blue lines marked, first from the marsh land and second, from Grand pass, and third, from the north east end of Isle à Pitre, and the laws now in effect in the State should be thus extended that oysters taken within the jurisdiction of Louisiana should not be marketed out of the State of Louisiana and if that law should be extended to fish and shrimp and terrapins and lobsters and crabs, and by force of that statute be driven into New Orleans, would not it affect the commerce of Gulfport, and the commerce of the State of Mississippi along that line?

A. It certainly would.

Q. And to a material extent would not it?
A. Yes sir. Now shall I explain?
Q. Yes sir.
A. It would prevent the canning factories being established in Mississippi, and whatever freight or commerce they would
1846 produce, the labor that would be necessary to run them, and the provisions and commerce that are required to support these laborers. To that extent it would injure Mississippi.

By Col. ZACHARIE:

Q. You mean in these particular lines as mentioned. Fish and crabs and so on?
A. Yes, sir.
Q. Would *in* affect it in any other commerce?
A. No, sir.

Mr. MCCLURG:

Q. Col. Jones, you have been invited largely in this examination to deliver matters of opinion, and following that up with the latitude that we have gone into it on both sides can you imagine many great advantages that would flow to the State of Louisana to the disadvantage of the State of Mississippi, if Louisiana's jurisdiction should be extended over those waters according to her daim of the boundary at the deep water sailing line, or at one of these three lines to which I have called your attention?
A. I cannot think now of anything else than I have stated of any serious injury if the Government of the United States keeps control of the navigable water, as they have for years.
Q. Has not the State of Louisiana and the State of Mssissippi or any other State certain powers concurrent with the Federal Government, and subordinate to the general navigation jurisdition of the Federal Government that it could exercise in favor of one State and to the detriment of the other, such as levying taxes upon fishing boats, and the protection of the fish and oysters and other
1847 products of the waters as now provided under the laws of Louisiana?

By Mr. GUION: The counsel for Louisiana objects to this question being propounded and to the same being answered on the ground that the interrogatory calls for the expression of an opinion upon the legal propositions, and is purely a question of law, and also that it is hypothetical.

A. I don't know the laws of Louisiana. Mississippi taxes my dredge boats, and other boats that were in the waters thatthe United States claimed the control of. If Louisiana should do the same I can see the interference of one State with the income and advantages of the other. I can also see that if Louisiana should keep her boundary as laid out here, and keep possession of these isands whatever might be grown or raised on these islands would of course be

a benefit to Mississippi. If there is a drove of cattle on some of these islands, and I think there is on Cat island, I know there is a lot of cattle on that island, but the line here does not include Cat island as I understand it. Should the mud and accumulation of land increase in these islands and become solid land, of course whatever might be grown or raised on these islands would be a detriment to Mississippi, and to the benefit of Louisiana.

Q. What with reference to the products of the water?

A. I think that I have stated all practically that I know about that.

By Mr. FLOWERS:

Q. Col. Jones, there are several oyster packing industries along the coast are there not?

A. Yes sir.

1848 Q. How does this industry along the coast compare with the other industries of the people along the coast. As to size and importance?

A. It is very considerable at Biloxi, and quite heavy at Pass Christian, and Bay St. Louis. The factory at Gulfport burned down and the owners thought it inadvisable to rebuild it until this question is decided.

Q. Col. Jones please state how the oyster packing industry along the coast, compares in size with the other industries along the coast. As to its size and importance?

A. My understanding was that it was the most important *inportant* industry until the Gulf and Ship Island railroad and the harbor at Gulfport was established.

Q. Is it not a fact that even now it is the most important industry along the coast besides the business of the Gulf & Ship Island. Please state whether it is true that it is the most important except that of the Gulf & Ship Island Railroad Company?

A. My understanding is that it is and has been for some years the most important industry at Biloxi, and a very important one at Pass Christian and Bay St. Louis.

Q. From what waters have those oyster packing establishments been supported all of these years?

A. I am told that they came from the same waters and localities that the oysters that were used at Gulfport came from, and of which I own one half. Therefore my information is quite reliable and correct, and that way down among the islands that the deep water line here would deprive Mississippi of getting the oysters.

Q. Please state whether it is a fact that all of these oyster industries along the coast have been principally supported by fishing the waters claimed here by Louisiana?

1849 A. I can not state as to the fishermen, but as to the oysters my information is quite positive on that.

Q. Please state whether the fishing industry is quite important along the coast.

—. ——.

Q. Please state where these concerns ship their oysters principally.
A. My information is mostly to the interior and our own country. Many of them going over the Gulf & Ship Island railroad.
Q. Do you know as a matter of fact whether there are any of them shipped to foreign countries?
A. I cannot say that I know that to be a fact being shipped from Mississippi. I have never seen any ships carrying them. I will not say that they do not.

Recross-examination.

By Gen. GUION:

Q. Col. Jones, are you able to state what the area is between the eastern mouth of Pearl river as far as the—following the deep water sailing line you see on the map there marked No. 7, as far as the point where that channel enters between Cat island and Isle à Pitre, and north of that between the Mississippi main land and that deep water sailing channel. Can you give us an approximate estimate of the water area north of the sailing line?
A. I cannot sir except by measuring it here on the map.
Q. You could not give us an approximate?
A. No sir.
Q. Could you measure it and give us an idea?
A. With a map with so small a scale I doubt if I could sir.
Q. Do you know the distance from the Mississippi main
1850 land to Cat island?
A. Seven miles as near as we can estimate it. Eight miles from the main land and seven miles from the end of the pier.
Q. In a direct line north and south I mean can you give me the distance from the main land of Mississippi to Cat island. Do you know the distance. I don't mean from Gulfport. Is Gulfport out north of Cat island?
A. It is very nearly sir.
Q. Nearly due north?
A. Yes sir, in fact it is exactly due north.
Q. Well now what is there to prohibit the planting of oysters in all of that water territory there from that point; from the point that would be found by carrying the line due north and south between Gulfport and Cat island, and west between the deep water sailing line and the eastern mouth of Pearl river?
A. I know little about the raising of oysters except what I have been told in the last several years, but I am informed that the mud, soft mud, is so thick, or rather the depth of the soft mud at the bottom of the water as is such as to smother the oysters and they can not thrive. That is my information sir. I don't know it by experience.
Q. Well Colonel Jones, do you know as a fact that no oysters have ever been fished in the territory that I have just described to you?
A. There are spots and localities where there is a sand bottom

Q. It would appear from that that you had made application for certain certified copies of certain maps. Do you remember that you made such an application?

1864 A. Yes sir.

Q. This letter was a reply to that application?

A. Yes sir.

Q. Do you remember if with that reply to your letter, that is the letter from the land office of July 9th, there were certain enclosures made in regard to the maps and the data for which you inquired?

A. What do you mean by enclosures?

Q. In this letter from Fimple, acting commissioner who signs it says by reference to the enclosed portion of the map of the State of Louisiana, it will be seen by a line drawn parallel to the north shore line of Lake Borgne and Mississippi sound at the distance of six leagues therefrom, would include portions of townships 11, 12, 13 south, ranges 17, 18 and 19 east; and townships 10, 11, 12 and 13 south, range 20 east, St. Helena meridian, in St. Bernard parish Louisiana. In which will be found many tracts of land surrounded by water and which would therefore be denominated as islands, but which are in fact hummocks of land, surrounded by the marsh and swamp in said townships. Now Mr. Nall, you will notice that the acting commissioner in this letter refers to *to* an enclosed portion of the map of the State of Louisiana. Do you remember whether you received the portion of the map of the State of Louisiana with the letter that you received?

A. Yes sir.

Q. Now will you please examine these two tracings and see whether they were the portions of the map of the State of Louisiana which were enclosed to you?

A. I don't know, I will have to refer back to that map. Mr. McClurg has got it there somewhere.

Q. Will you get it please sir and look at it. Then I understand you to say Mr. Nall that these tracings of maps which I have shown you were copies of the same that were enclosed in the letter addressed to you on the 9th of July from the land office?

1865 A. I could not tell you from this. I would have to see the map that he enclosed to me first.

Q. Now will you examine this memoranda which was forwarded o me at the same time, in response to my inquiry for the correpondence between Mr. Nall and the Commissioner of the Land Office, nd was sent to me under cover, that being a part of the correpondence?

A. This seems to be a copy of the letter that I received. This eems to be the same.

By Col. ZACHARIE: The counsel for Louisiana offers in evidence n this cross examination a certified copy of the letter of J. H. imple, acting Commissioner of the General Land Office of the Dertment of the Interior, dated Washington D. C. July 9th, 1904,

nd addressed to E. H. Wall, State land commissioner Jackson Mis-
sissippi, to be marked by the commissioner Exhibit Louisiana 2.,
and also a memoranda headed Matter of Islands Louisiana and
Mississippi in pencil, Louisiana two pages and Mississippi three
pages, all in pencil, to be marked Exhibit Louisiana 3., being mem-
oranda which have been testified to by Mr. Nall, the witness, as
having been enclosed in the letter aforesaid on July 9th, 1904., from
the General Land Office, marked Louisiana 2.

Q. Then I understand Mr. Nall that the two documents purport-
ing to be tracings of this territory which I have shown you, and
have asked you if copies identical with the same were not enclosed
in the letter to the land office of July 9th, 1904, and you could not
testify without reference to the original?
A. No.
Q. Do you know where that original is?
A. No sir, I do not.
Q. Do you not keep such documents on file in your office?
1866 A. What pertains specially to my office I generally keep
those things. My impression is that I turned every thing
over to Mr. McClurg, or some body in this attorney general's office.
Mr. Smiley might possibly have them in his desk.
Q. Who is Mr. Smiley?
A. He is the man that stays in my office.
Q. You might possibly have turned them over to Mr. Smiley. Is
e a clerk in your office?
A. He is not.
Q. He is not employed by the State?
A. No sir, but he works in the office and then gets out side work.
Q. Where is Mr. Smiley now?
A. He is in Crystal Springs.
Q. When will he return if you know?
A. I don't know.
Q. What are his initials?
A. John M. Smiley.
Q. Does he reside in the city of Jackson?
. Yes sir.
. Could he be reached by a subpœnae?
. Yes sir.
. A *subpœnae duces tecum* if we desire to issue one?
Yes sir.
You in response to this letter from the Land Office of the 9th,
ly. Did you order any of the maps or plots which are therein
ioned?
Yes sir, three copies of each.
When?
I don't remember the date. I think it was about the 28th.
28th July?
Yes sir.

Q. You have not received them yet?

A. No sir, they have been misplaced. We have telegraphed for them.

1867 Q. Do you know or could you remember the number of maps certified copies of which you requested?

A. Here is the letter requesting it as follows:

Triplicate tracings of plot showing Deer, Ship, Cat, Round island, St. Joseph, Grand island, Half Moon, Petit pass, and an unnamed island presumably Isle à Pitre.

Q. Will you count there and state how many of the maps?

A. Nine.

Q. Those maps thus called for did not—the copies of plats did not embrace all of the maps or plots which the acting Commissioner described in his letter of July 9th, 1904?

A. No, they included Cat, Round, St. Joseph, Grand, Half Moon, Petit pass, and an unnamed island mentioned in the Commissioner's letter, and also Marianne and Malheureux islands.

By Mr. DYMOND:

Q. Mr. Nall, do you know whether or not the secretary of state of Mississippi has in his archives, or in his office, copies of this map of Mississippi of T. S. Hardee, approved by J. L. Alcorn, governor, May 10th, 1871?

A. I don't know sir.

Q. You don't know then whether there were furnished on application copies of this map from his office?

A. I do not.

Q. Mr. Nall, the Congressional Library at Washington has a copy of the Hardee map of 1868 of Mississippi, made under the administration of Governor Humphries. Could you tell whether or not a copy of that map is in any of the departments of the State government of Mississippi here?

A. I could not.

1868 By Gen. MCCLURG: The counsel for Mississippi excepts to the statement as to the map being in the Congressional Library at Washington made under the administration of Governor Humphries in 1868.

By Mr. DYMOND: The attention of the counsel for Mississippi is called to the report of Mr. Hodgkins already introduced in evidence which substantiates the statement just made by counsel for Louisiana.

By Gen. MCCLURG: And the counsel for Mississippi as it has heretofore done excepts and objects to Mr. Hodgkins' letter referred to by counsel for Louisiana to F. A. McLean, to whom Mr. H. Heidenheim had applied as his local Congressman to be furnished with certain records, and instead of furnishing the records called for by Mr. Heidenheim through Congressman McLean, Mr. Hodgkins turned lawyer, and gives us what the counsel for Mississippi con-

siders an uninvited opinion from a subordinate of the United States Coast and Geodetic Survey.

Redirect examination.

By Gen. McCLURG:

Q. Mr. Nall, counsel for Louisiana have asked you many questions about the Hardee map which it seems was either directly or indirectly the result of a message to the Mississippi legislature by Governor Humphries an act of the legislature passed pursuant to his recommendation, and several years later by a legislature composed largely of ignorant negroes and an irresponsible set of people commonly called carpet baggers. It will be noted that this map made by Hardee not only undertakes to be a map of the State of Mis-
1869 sissippi, but also of a large portion of the State of Louisiana. Our contention being that the map is wholly unreliable as to Mississippi and wholly without authority as to that part of it covering a portion of the State of Louisiana.

I want you tell the commission what you may know of the political conditions of Mississippi from the time that Governor Humphries recommended the publication of an official map of the State in 1866, *and the* until the appearance of this map after the action of the legislature respecting the same in 1871. Tell us what you may know of the political conditions existing in this section of the country at that time?

A. Well General I will have to answer that in my own way from my recollection. I recollect from the time the radicals were in power.

Q. You are a native Mississippian are you not?

A. Yes sir, I think from 1866 to 1875 we were struggling under the most corrupt government of any people that ever lived. I cannot place the date exactly, but I mean from the time the radicals came into power under the military rule up to 1875.

Q. You have been asked many questions respecting this map as being an official document in the archives of the land commissioner of the State of Mississippi, and of the secretary of state of the State of *the* Mississippi. I want you to tell this commission in order that the court may get a correct estimate of the value of this map how it has been valued by you as land commissioner, and so far as your personal knowledge or general information may extend, as to its value as an authentic record of the State of Mississippi?

1870 By Gen. GUION: Objected to by the State of Louisiana through her counsel on the ground that the answer of the witness to the question which is propounded would be an expression of opinion on a question of law, as to the weight to be given and attached to the map referred to as an official map.

A. It does not serve me any more than any other ordinary map of the State of Mississippi in my business.

Q. If you are able to state whether in the making of this m
there was any purpose within the perview of the act supposed
have authorized it, or upon the face of the map itself indicating th
location of the boundary in the waters of the Gulf between Missi
sippi and Louisiana tell us what you have to say on that subject.

By Gen. GUION: Counsel for Louisiana objects to this questio
and the answer of the witness thereto on the ground that the act
the legislature calling and providing for the making of a map is th
only evidence that should be considered on the subject of the objec
and purposes for which the map was made.

A. I can only say what I believe about it General.

Q. Well say that.

A. I don't believe any man has ever made a map for Mississippi
or Louisiana that knew any more about the dividing line that is
now in contention than we do about the burial place of Moses.

Q. Counsel for the State of Louisiana Mr. Nall have catechised
you particularly with reference to your correspondence with the De-
partment of the Interior with reference to furnishing certain maps
to the territory in dispute in this case, and more especially with
reference to your letter to the Commissioner of the Land
1871 Office at Washington D. C. written prior to the 9th of July
1904, about say the 30th of June. I want to ask you whether
or not this correspondence was the result of a request made by the
counsel for the State of Mississippi to secure certain maps of the Gulf
coast embraced in this controversy?

A. Yes sir.

Q. I hand you a letter, the original letter written to you by Mr.
McClurg, one of the counsel for the State of Mississippi on July 16th,
1904, and in order that it may be incorporated into the record in
this case I will ask you to read it?

A.—

"GREENWOOD, MISS., July 16th, 1904.

Hon. E. H. Nall, Jackson, Miss.

DEAR MR. NALL: I herewith return a letter from the Department
of the Interior of the 9th, inst., with reference to the cost of photo-
graphic copies and tracings of the islands on our southern coast. I
wish you would get certified copies, three each, of the following isl-
ands. Cat, Round, St. Joseph and Grand island, and what the Com-
missioner calls an unknown island. I don't think I can be mistaken
in my recollection of the original survey and plats of 1827. I think,
which we looked at in your office, showing that at least Half Moon
island was designated as belonging to the State of Mississippi, and I
believe Grassy island. In fact it was a tracing of this original sur-
vey and plat or Lake Borgne south of Hancock county which we
looked at in your office that we wanted. If you can get the depart-
ment to make an exact copy, not photography, but a true copy of the

same size and dimensions with the scales if possible of that
1872 original plot, it will be infinitely better.

We would want nevertheless in addition to the copy I have just spoken of properly certified, *or* three photographic copies, or of that and other outlines above mentioned. I also return that portion of the map of Louisiana enclosed to you by the Commissioner. I remember seeing the original of which this map was made, and with the coloring of the marsh territory designated as St. Bernard was done at the instance of Louisiana since the institution of their suit against Mississippi, and for the purpose of so coloring this marsh territory as to indicate that it belonged to the State of Louisiana, and then to have three maps made.

Let us have as quickly as possible the copy and photographic tracings of Cat, Round, St. Joseph, Grand, Half Moon, Petit pass, and the unnamed island mentioned in the Commissioner's letter and also of the Marianne and Malheureux islands. Please be careful to instruct the Commissioner not to have any copies made from any Louisiana survey or any other survey made showing any of these islands to be within the State if he can get them elsewhere. The truth is at the time of the admission of the two States into the Union there was no St. Bernard parish, and not until perhaps thirty years or more afterwards. The territory that is in dispute, and much that is not in dispute not being regarded as belonging to Louisiana. These latter day maps made by Louisiana not only create confusion but do us an injustice. Now *them* in addition to the copies above called for and in answer to — the Commissioner's letters explain we would like to have three copies of the plots showing on one paper as large as convenient 2 x 3 feet, all lands and islands
south of the shore of Lake Borgne and Mississippi sound in-
1873 cluding island- and bayous and lakes that are within the six leagues of the Mississippi shore, but not made from the Louisiana map. We want an impartial copy from a just survey. I will thank you to ask the Commissioner to give you the oldest data in his office respecting Isle à Pied, now called Isle à Pitre, especially whether there was ever on that island any military reservation. It is necessary for us to have the copies above called for by the eighth of August, when we begin our final taking of testimony in chief.

Very respectfully,

MONROE McCLURG."

Q. Following up the interrogation on the part of the State of Louisiana I wish you would state whether or not you complied with the wishes of Mr. McClurg as stated in his letter just read to you by calling on the Department of the Interior for the maps designated by him. Have you any copy of the letter that you wrote to the department?

A. No sir.

Q. I have here Mr. Nall a letter dated July 28th, 1904 which purports to have been a reply to a letter which you must have

written to the General Land Office at Washington, as request
Mr. McClurg, and in order that it may be incorporated in the
I will ask you to read it?

A.—

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., July 28th, 19

Hon. E. H. Nall, State land commissioner, Jackson, Mississipp

SIR: Complying with your request contained in your letter
18th, inst., and returning herewith letter from Atto
1874 Monroe McClurg, together with section of State map. I
to state that the following certified copies have been sent
under separate cover. Triplicate tracings of plats showing
Ship, Cat, and Round island- 1847, $2.25 each—$6.75. Tripl
photo lithograph of St. Joseph and Grand island- 1828, 50
each—$1.50. Triplicate photo lithograph of Marsh, Half M
Petit pass, and an unnamed island 1846—50 cents each—$1.50.

Triplicate photo lithograph of T. S. 10, 11 S. R., 20 E. 1847, s
ing as it is presumable Isle à Pitre though not named. Six co
at 50 cents each —$3.00, total due for certified copies without
$12.75. Mr. McClurg speaks of a plot of 1827 "showing Half M
island as belonging to Mississippi" a plot approved August 1
1828 according to the survey of 1827, which shows Grand islan
presumably the same. There is no data on file in this office sh
ing Marianne and Malheureux islands except an official ma
John Melish about 1819, showing Malheureux islands laying sou
east of the island called Peas "which" is in all probability the sa
island that later on was designated as Grand according to the M
sissippi survey, or "Half Moon by the Louisiana survey."

There is no record in this office that there ever was any part
Isle à Pied or Isle à Pitre reserved for a military reservation.
McClurg asks for the oldest data referable to this island. The o
data on file in this office of the township plats of which ph
lithographic copies have been forwarded, as above where this offi
has sent copies of Louisiana plats, it was the only information on
relative to the islands in question. This office is not auth
1875 ized to construct special documents for township plats a
maps and naturally does not enter into any question betwe
States as to their relative ownership of particular tracts.

Very respectfully,
J. H. FIMPLE,
Acting Commissioner."

Q. As I understand from your examination in chief you have n
yet received the maps which the Commissioner states in his lett
that he forwarded to you on the 28th, of July last?

A. No sir.

Q. And have you requested him by telegraph to send you anothe
copy of these maps?

A. Yes sir.

Q. Identical as called for in your previous letter?
A. Yes sir.
Q. And this it has been agreed may be filed in this suit?
A. Yes sir.

Q. I notice Mr. Nall that in your correspondence with the department at Washington, and to which counsel for Louisiana have called the attention of the commission volunteer, as did Mr. Hodgkins in his letter to Mr. McLean to make certain statements with reference to the boundary between Mississippi and Louisiana, and as to where certain islands or waters are, according to their gracious understanding of the matter. We want you to state as an officer of the State and in charge of its land records, whether any of these voluntary expressions made by the heads of the department at Washington or any of their subordinates have been recognized as binding upon either of these States, especially the State of Mississippi?

A. No sir, not as to the State of Mississippi. I know nothing about the State of Louisiana.

1876 Q. If you have in your keeping any other correspondence with the Interior Department relative to this matter we would be glad to have you read it to the commission in order that we may incorporate it in the record?

A. I have no other.

By Mr. FLOWERS:

Q. Mr. Nall how long have you been in public office in this State?

A. Land commissioner—I have been in office since 1892.
Q. What positions have you held?
A. Assistant secretary of state. This morning I said I was assistant secretary of state from 1893 up, but before that I was appointed by Governor Stone to adjust the direct tax commission, to refund the money. I did not put that in because I just commenced as assistant secretary of state.
Q. At that time did the secretary of state's office have any thing to do with the land records?
A. Yes sir, it had charge of the Chickasaw school lands.
Q. Any others?
A. No sir.

Q. When did you first hear that Louisiana claimed any part of the land of our territory with 18 miles of Mississippi's shore line, main land?

A. Since this controversy. I don't know when it commenced.

Q. When did you first learn that the islands in dispute south of what is claimed by Louisiana as the deep water channel through Mississippi sound had been approved to the State of Louisiana by the United States Land Office?

A. Since this morning. I believe you showed me the documents. Mr. Dymond did.

Q. Before that had the land commissioner's office so far as you

know ever heard of that application by the State of Louisiana to
United States Land Office for these lands under the sw
1877 land acts of about 1850?

A. I can not answer only for myself. I never heard
Q. When did you first hear that these lands had been appro
to the State of Louisiana by the United States Land Office?
A. From the document shown to me by Mr. Dymond this m
ing.

Q. Your office so far as you are concerned did not know t
Louisiana laid any particular claim to this particular land?
A. No sir, I did not know it.

Recross-examination.

By Col. ZACHARIE:

Q. Mr. Nall, did I understand you correctly in your examinati
in chief to testify that you did not consider the Hardee map issu
or published in 1867 or 1868 as being any more authoritative
carrying any more weight than any other map published by a
other person?

A. As far as my office is concerned and the busi*b*ess connecte
with it I do not consider it any more than any other map that wa
ever published.

Q. Now let me read to you from the official records of the Stat
of Mississippi the history of the production and publication of tha
map. I read now from the governor's message of Governor B. Hum-
phries of October 16th, 1866 to the senate and house of representatives
of the State of Mississippi, page 17, in the volume entitled Senate
Journal of Mississippi 1866 and 1867, the official edition. "I deem
the publication and distribution of a State map to the various State
and county officers, whose business requires the possession of one a
matter of sufficient importance to call your attention to it. It should
contain a correct delineation of every thing of importance and in-
formation that it can embody, and be a reference not only to
1878 our officials and to all persons interested in the affairs of the
State, whose correctness should settle all doubts upon any
points or subjects it embodied." Then in accordance with the then
governor of the State of Mississippi the legislature of 1866 passed,
page 27, chapter 17, Laws of Mississippi 1866 and 1867, official
edition, an act entitled "An act to create the office of State engineer
for the purpose of compiling a new State map under certain con-
ditions.

SECTION 1. Be it enacted That the governor is hereby authorized,
to appoint a State engineer, whose duty it shall be, under his direc-
tion, to compile a geographical, historical and statistical map of the
State; said map to be not less that five feet by three feet in size, to
contain such information as the governor in his judgement shall deem
necessary, and before publication to receive his sanction and ap-
proval."

Then under section 3 of the same act it is provided that this State engineer shall furnish a number of copies of said map for the use and benefit of the State, as will carry out the following schedule for distribution, viz.—the secretary of state to whom the maps will be delivered shall cause three copies to be furnished to each county in the State, to become the property of said counties, and for use respectively in the offices of the sheriffs, and the circuit and probate clerks, at each county site in the State.

He shall also supply the different State offices at the capitol each with a copy, and six copies for the State university, and besides those shall have delivered to him such additional copies as will enable the governor to exchange for maps of other States and Territories, and the maps so received in exchange shall become a part of the property of the State library.

1879 SECTION 4. Be it further enacted, That it shall be the duty of the different county officers throughout the State to afford the State engineer every facility for obtaining such information as he may require in the compilation of said work."

Now if it be shown that the governor did appoint T. S. Hardee in 1866 and 1867 State engineer under this act. That he qualified as such; that he prepared this map which was approved by the then governor of the State, and that these copies were distributed according to the terms of this act, and that the object of the preparation of this map was in accordance with the suggestion of the governor contained in his message that it should contain a correct delineation of everything of importance and information that it can embody, and be a reference, not only to our officials, but to all persons interested in the affairs of the State, whose correctness should settle all doubts upon any points or subjects it embodied. Now after having read to you these extracts from these official documents, are you still of the opinion that the map so prepared should have no more weight or authority that any other map prepared by other outside parties?

A. For my use, yes sir. Any other map would do me just as well in my official capacity.

Q. Is not the effect, intent, purpose and object of this recommendation of the governor as well as the act passed in pursuance thereof; that this map should be an official map, settling beyond question and beyond doubt all questions, and binding upon the officers of the State in as far as matters and things that are set forth on the map. Is not that the plan, intent and purpose of the map?

By Mr. FLOWERS: Counsel for the State of Mississippi interposes an objection to this question because it calls for the witness's opinion upon matters of law.

1880 By Col. ZACHARIE: To which objection counsel for the State of Louisiana reply that the opinion of the witness has already been called for in his examination in chief by the counsel for the State of Mississippi as to what weight and authority should be attached to this map.

By Mr. FLOWERS: I wish to add to my objection on the pa
State of Mississippi that the laws speak for themselves.

A. I still do not regard it any better that any other map. I
not go to it any oftener than I would to Rand & McNally's
body's else.

Q. Has there been any official act on the part of the legisla
the State of Mississippi repudiating or calling in question t
rectness of any of the details embodied in this map?

A. I have never heard it discussed.

Q. Have you ever heard prior to the institution of this su
correctness of this map in any particular called in question b
body. Officers or any one else?

A. No sir.

Q. Has it or has it not been the custom in suits in the St
Mississippi in the State courts of Mississippi in locating places
other matters concerning the territory in Mississippi to refer to
map as an authority in the determination of questions and locali

A. I don't know.

Q. Do you know whether this map has been exhibited; poste
the various offices of the State of Mississippi. Public offices, whe
State or county offices?

A. No sir.

Q. You don't know?

A. No sir.

1881 Redirect examination.

By Gen. MCCLURG:

Q. Mr. Nall, by permission of the counsel of Louisiana and
order to get it incorporated in the record now, furnishing Louisia
a copy, counsel for the State of Mississippi will now read to you
document copied from Goodspeed's History of the State of Mississip
published I think in 1891, and to make the testimony pertinent t
proposition is to ask you whether you regard the lines fixed in th
statement as the true boundary lines of this State, and with that vie
I read you as follows:—

"Biographical and Historical Memoirs of Mississippi.

Chapter 1. Topography and Natural History and Paleontology.

Mississippi is bounded on the south by the north line of southeas
Louisiana, Pearl river and Mississippi sound and the gulf of Mexico
on the east by the west line of Alabama, and on the northeast by
the Tennessee river; on the north by the south line of Tennessee
(latitude 35 degrees), and on the west by the Mississippi. It embraces
also the islands in the gulf of Mexico, within six leagues of the shore
viz:—Isles Dauphine, Ronde Corne, Au Chevreul, Au Vasseau, Ai
Chat, St. Josephs, Grand island, and a few smaller bodies of elevated

sand, and the territory extending from latitude 30 degrees, to latitude 35 degrees north, and from longitude 11 degrees and 25 minutes west, to 14 degrees 33 minutes west. The area in square miles, as stated in the United States census report is 46,810, the local authorities place it as 55,500.

The width of the State, on a line of latitude 35 degrees, as 120 miles, on latitude 31 degrees, 186 miles and on the Gulf coast, 78 miles.

The length of the State on a line of longitude 12 degrees 30
1882 minutes, being the greater line, is 330 miles., but the frontage on the Mississippi is continental in its proportions."

A copy of this quotation is filed in this cause as Mississippi Document No. 48, and duplicates thereof now handed to the counsel for the State of Louisiana?

A. Yes sir, it is regarded as the true boundary line of the State.

The counsel for Mississippi now introduces the following documentary evidence, and hands to counsel for the State of Louisiana true copies of each, that is to say:—

Mississippi Document No. 49, being an extract from article 9, chapter 13, (public health and safety) taken from Mississippi's Hutchinson's Code 1798 to 1848, entitled "An act to prevent the destruction of oysters in the waters of the State of Mississippi"—July 26th, 1843.

Chapter XXVI, Revised Code of Mississippi 1857. An act for the preservation of game and oysters in this State.

Chapter 30 of the Revised Code of Mississippi of 1871, being "An act in relation to the preservation of game and oysters."

Section 956 of the Revised Code of the State of Mississippi 1880 "Power of boards of supervisors."

And chapter LXXIV, Laws of Mississippi 1884 (page 89), "An act to *amend* chapter 29, Revised Code of 1880," approved March 18th, 1884.

And chapter LXXXIII, Laws of Mississippi 1884, page 88, approved March 13th, 1884.

And chapter CVI of the Laws of the State of Mississippi of
1883 1886, page 180 "An act to encourage planting oysters, and for other purposes." Approved March 4th, 1886.

And chapter 90 of the Laws of Mississippi of 1888 "An act to amend an act entitled An act to encourage the planting of oysters and other purposes," approved March 7th, 1888.

And chapter 194 of the Laws of Mississippi of 1890, page 304 "An act to protect the public oyster reefs in the counties of Jackson, Harrison and Hancock," approved Feb. 27th, 1890.

And chapter 96 of the Annotated Code of Mississippi of 1892, "oysters, crabs, fish and shrimp."

And chapter 129 of the Laws of Mississippi, 1896, page 142 "An act to regulate the fishing of oysters and crabs, fish and shrimp in the gulf of Mexico and Mississippi sound and to increase the public

revenue by leasing public oyster grounds, and to repeal chapter 9[illegible] of the Code of 1892," and chapter 58 of the Laws of Mississippi of 1902 "An act to regulate the fishing and canning of oysters in the State of Mississippi, improving and enlarging oyster beds in the Mississippi waters, and to repeal chapter 96 of the Annotated Code, chapter 129 of the Laws of 1896, an- chapter 90 of the Laws of 1898," approved February 13th, 1902.

And chapter 113 of the Laws of Mississippi of 1904. "An act to make an appropriation to purchase or build a patrol boat for the use of the board of oyster commissioners, and the inspectors appointed by said board in patrolling the waters of the Mississippi sound, and protect the natural reefs in said sound."

1884 Counsel for Mississippi next introduces in evidence as Mississippi Document No. 50.

An extract from the proclamation of the King of England of date October 7th, 1763, taken from the Annual Register for 1763 volume 6 page 208.

Counsel for Mississippi introduces as Mississippi Document No 51, being an extract from a letter of the King of France to M. d'Abbadie, ordering him to deliver to Spain the French possessions in North America of date April 21st, 1764.

Counsel for Mississippi introduces Mississippi Document No. 52, being an extract from a letter of James Madison, Secretary of State, to Robert R. Livingston, minister to France, September 28th, 1801.

Counsel for Mississippi introduces Mississippi Document No. 53, being an extract from the letter of Albert Gallatin Esq., to James Madison of date February 7th 1803.

Counsel for Mississippi introduces Mississippi Document No. 54, being a letter of Secretary of State Madison to Monroe, minister to Spain dated July 29th, 1803, taken from the American State Papers (Foreign Relations) vol. 211, page 206.

Counsel for Mississippi introduces in evidence Mississippi Document No. 55, being an extract from a letter of instructions, addressed to Monroe April 15th, 1804, as minister extraordinary to the court of Spain, with which was enclosed draught of agreement to be proposed and obtained if possible.

American State Papers (Foreign Relations) vol. 2, pages 628 and 629.

1885 Counsel for Mississippi introduces in evidence Mississippi Document No. 56, being a letter of James Madison to Monroe and Pinckney of date July 8th, 1804.

American State Papers (Foreign Relations), vol. 2, page 630.

Counsel for Mississippi introduces in evidence Mississippi Document No. 57, being an extract from the message of Thomas Jefferson, President of the United States, and both houses of Congress November 8th, 1804.

State Papers, volume 5, 1803 to 1807, second edition published in 1817, page 27.

nsel for Mississippi introduces in evidence Mississippi Docu-
No. 58, being an extract from a letter from Monroe to Tally-
lated November 8th, 1804.
American State Papers (Foreign Relations), vol. 2, page 634.

nsel for Mississippi offer in evidence, and introduce Missis-
Document No. 59, being a letter from Tallyrand to General
rong, of date December 21st, 1804.
American State Papers (Foreign Relations), vol. 2, page 635.

nsel for Mississippi introduces in evidence Mississippi Docu-
No. 60, being an extract from the letters of Monroe and Pinck-
Mr. Cerallos, dated January 18th, 1805.
American State Papers (Foreign Relations), vol. 2, page 637.

nsel for Mississippi introduces in evidence Mississippi Docu-
No. 61, being an extract from the letter of Mr. Madison and
onroe, of date May 23rd, 1805.
American State Papers (Foreign Relations), vol. 2, page 633.

Counsel for Mississippi introduce in evidence Mississippi
Document No. 62, being the people's application, by people
st Florida to be annexed to Mississippi Territory, of date No-
r 20th, 1811.
American State Papers vol. 21, Miscellaneous vol. 2, executive
page 155.

nsel for Mississippi offers in evidence Mississippi Document
, being an extract from the letter addressed to the Secretary
e by the minister of Spain, of date December 30th, 1815.
American State Papers, (Foreign Relations) vol. 4, page 423.

nsel for Mississippi introduce in evidence Mississippi Docu-
No. 64, being an extract from the letter of the Secretary of
o the minister of Spain of date January 19th, 1816.
American State Papers, vol. 4, page 425.

nsel for Mississippi introduces in evidence Mississippi Docu-
No. 65, being an extract from the letter of the minister of
to the Secretary of State, of date Feb. 22nd, 1816.
American State Papers (Foreign Relations), vol. 4, page 427.

nsel for Mississippi introduces in evidence *as* Mississippi Doc-
No. 66, being an extract from the letter to the minister of
rom the Secretary of State, of date June 10th, 1816.
American State Papers (Foreign Relations) vol. 4, pages 429,
430.

Counsel for Mississippi introduces in evidence Mississippi
Document No. 67, being an extract from a letter of Don. Jose
, to Mr. Erving, of date, August 17th, 1817.
American State Papers (Foreign Relations) vol. 4, page- 446
447.

Counsel for Mississippi offers in evidence Mississippi Document No. 68, being an extract from a letter of Don Luis, to the Secretary of State, of date January 5th, 1818.

American State Papers, (Foreign Relations), vol. 4, page 455.

Counsel for Mississippi now offers in evidence a map entitled "Mississippi Territory, Miles, taken from Carey's General Atlas, improved and enlarged, being a collection of maps of the world and quarters, their principal empires and kingdoms, etc. Published by M. Carey 121 Chestnut St. Philadelphia, 1816. A copy of this map will be filed as a part of the record in this case, and duplicate thereof furnished to the counsel for Louisiana, and will be numbered Mississippi Document No. 69.

Counsel for Mississippi also introduce in evidence a copy of a map heretofore introduced by the State of Louisiana made by Andrew Ellicott, late commissioner on behalf of the United States during a part of the year 1796, and the year- 1797, 1798, 1799 and a part of the year 1800, for determining the boundary between the United States and a part of the possessions of His Catholic Majesty in America, containing occasional remarks on the situation, soil, rivers, natural productions, and diseases of the different countries, on the Ohio, Mississippi and gulf of Mexico etc., published by William Fry of Philadelphia in 1814. This map will be found in Ellicott's Journal above mentioned between pages 202 and 203, and as filed with the commissioner in this cause, a copy of which is waived
1888 by the State of Louisiana, being already in the record as a part of the evidence introduced by that State and marked Mississippi Document No. 70.

Counsel for Mississippi now offer and introduce in evidence Mississippi Document No. 71, being "Railroad commissioners' map of Mississippi published by Rand, McNally & Co. in 1903," and counsel have hands to the counsel for Louisiana a copy of the said map.

By Gen. GUION: In addition to the agreement already entered into between counsel for the State of Louisiana and counsel for the State of Mississippi at Bay St. Louis, on or about the 10th, of August 1904, in connection with a certain map offered by the State of Mississippi, and marked Exhibit B. It is further hereby agreed, understood and admitted by counsel for the State of Mississippi that A. L. Baldwin is the computer of the Coast and Geodetic Survey of the Department of Commerce and Labor in Washington, D. C., and that on the 8th, day of June 1904, at the time he signed the certificate attached to the map marked Exhibit B., he was not acting in making such certificate by authority or under the directions from the head of the Department of Commerce and Labor of the Coast and Geodetic Survey, notwithstanding it is agreed that said map may be offered in evidence for whatever it may be considered worth by the court and may be used for the purposes of demonstration.

It is admitted by the State of Mississippi that Goodspeed's Biographical and Historical Memoirs of Mississippi show that Gov-

ernor Humphries was inaugurated in October 1865, and held
1889 office until the fall of 1868, when he was displaced under orders from Generals McDowell and Ames, the latter of whom was appointed military governor.

The commission here adjourned to meet at New Orleans on Thursday, August 26th, 1904, at 11 a. m. in the office of the clerk of the United States district court in the custom house, before Frank H. Mortimer, commissioner.

1890 NEW ORLEANS, LOUISIANA, August 27th, 1904.

The commission met this morning in the office of the clerk of the district court of the United States, in the custom house in New Orleans at 11 o'clock a. m.

There were present: Hon. Frank H. Mortimer, commissioner on the part of the State of Louisiana. Hon. Frank C. Zacharie, and Hon. John Dymond Jr., associate counsel on the part of the State of Louisiana. Hon. William Williams, attorney general for the State of Mississippi, and Hon. Monroe McClurg, counsel on behalf of the State of Mississippi.

NEW ORLEANS, August 27th, 1904.

By agreement of the two States made by their respective counsel in the presence of the commissioner, Hon. Frank H. Mortimer, commissioner on the part of the State of Louisiana, the following testimony was taken here today as a part of the testimony in chief of Mississippi. That said commissioner for the State of Louisiana is to preside, and to certify to the record when prepared by the official stenographer for the State of Mississippi, said record to be incorporated in Mississippi's testimony. All objections as to the time, place and manner of taking this testimony on the part
1891 of Mississippi is hereby mutually waived.

Counsel for Mississippi in support of her contention on the questions of the exercise of sovereignty and jurisdiction by that State over the territory in dispute, submits the following documents, now handed the commissioner to be filed by him, a true copy of each of which is now handed to the counsel for the State of Louisiana.

Mississippi Document No. 72, being an ordinance passed by the board of supervisors of Hancock county, Mississippi at the January term 1898, with reference to the regulation of dredging of oysters on the public reefs in Hancock county, and to enforce the same.

Mississippi Document No. 73, is here introduced in evidence by the counsel for the State of Mississippi, being and ordinance passed by the board of supervisors of Hancock county at the September term 1898, being an ordinance for the protection and preservation of the public oyster reefs in Hancock county, Mississippi and to enforce the same.

Counsel for Mississippi introduce in evidence Mississippi Docu-

ment No. 74, being an ordinance passed by the board of supervisors of Hancock county at the June term 1900, with reference to the catching of oysters on the public oyster reefs of the said county by means of steam vessels or any other appliances or device propelled, managed, operated or utilized by steam.

Counsel for Mississippi introduce in evidence Mississippi Document No. 75, being a certified copy of the auditor of public accounts of the State of Mississippi, showing amounts paid into the
1892 treasury of the said State on account of the oyster fund from October 1st, 1902, to September 30th, 1903, inclusive, and from October 1st, 1903, to August 24th, 1904.

Each of the foregoing documents are now introduced and offered in evidence on the part of the State of Mississippi for the purposes above stated.

By Mr. DYMOND: Counsel for the State of Louisiana now excepts to the introduction of the said documents, as they in no way show or determine or fix the boundaries of Hancock county, Mississippi, and are therefore irrelevant.

By Gen. MCCLURG: Counsel on the part of the State of Mississippi, now offers and introduces in evidence an official statement made by the secretary of the Board of Oyster Commissioners of Mississippi on May 25th, 1904, to I. Heidenheim, chairman of the committee on testimony, showing a statement of the amount collected for licenses, since the creation or the board of oyster commissioners, marked Mississippi Document No. 76.

And counsel for Mississippi also offers a similar official document of the secretary of the Board of Oyster Commissioners of Mississippi to said Heidenheim on the same date showing statements of the two cents per barrel tax, since the creation of the board of oyster commissioners of said State. Marked Mississippi Document No. 77. The original is now filed with the commissioner, and a copy of which will be handed to the counsel for the State of Louisiana.

Counsel on the part of the State of Mississippi now introduces and offers in evidence a certified copy of a report made on October 2nd,
1901, by what is known as the Mississippi Boundary Com-
1893 mission to the governor of the State of Mississippi, which is marked Mississippi Document No. 78, and is now filed with the commissioner, and a copy handed to the counsel for the State of Louisiana.

And counsel for the State of Mississippi also introduces in evidence as Mississippi Document No. 79, a report made by W. A. White, and J. I. Ford on October 1st, 1901, to the governor of the State of Mississippi, with reference to the action of the so called boundary commission on the part of the State of Mississippi. The original of which is now handed to the commissioner to be filed, and a copy handed to the counsel for the State of Louisiana.

And counsel for the State of Mississippi also introduce in evidence as Mississippi Document No. 80, a certified copy of the recommendation of the governor of Mississippi, to the legislature of the said State,

at its session of 1902, entitled Mississippi Boundary Commission. The original is now handed to the commissioner to be filed and a true copy handed to the counsel for the State of Louisiana.

1894 Hon. V. A. GRIFFITH, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. McCLURG:

Q. Mr. Griffith, I believe you are the junior member of the firm of Dodds & Griffith?

A. Yes sir.

Q. And you are the Griffith who was originally of the counsel of the State of Mississippi in this case of Louisiana *vs.* The State of Mississippi, respecting the boundary in the water of the Gulf, between the two States?

A. Yes sir.

Q. And as such counsel is it true that you undertook to have a map made showing the respective contentions of the two States on this subject?

A. Yes sir.

Q. I will show you a map marked Exhibit A. To the testimony of W. M. K. Ducate, on cross examination April 8th, 1904, filed by Frank H. Mortimer, commissioner, and ask you to look at this map and see whether it is the same as Exhibit A. to the original answer and cross bill filed on the part of the State of Mississippi by your law firm and other counsel for the State?

A. I have no positive knowledge as to how it was marked as an exhibit, though my best recollection is it is called Exhibit A. When we met at Jackson to draft the answer and cross bill, it was agreed between the then counsel for the State of Mississippi that in answer to the documents made by the State of Louisiana showing her contention that it would be necessary for the State of Mississippi to have a map made and file it as an exhibit to her cross bill, setting up her counter contention. It was impossible to use the Fish Hawk map which had been used by the State of Louisiana, because the Fish Hawk map did not extend far enough in among the islands.

1895 Some of the islands that we desired to show on the map for Mississippi were not shown on the Fish Hawk map. So our ...m was instructed by the attorney general of the State of Mississippi to have a map made, and it was agreed that in accordance ...th the averments on page 15 of the answer and cross bill that the ...p should be as near as possible a reproduction of the coast ...rts No. 19, 190, 191, and 192, as prepared by the United States ...st and Geodetic Survey, thus showing all of the islands and all ...he territory in dispute as it was viewed by the then counsel for ... State of Mississippi

The documents filed by Louisiana were mere zinc etchings, and it ... considered by the attorney general and by the counsel for Mis-

sissippi that a plain zinc etching for Mississippi would be sufficient, it not being desired to go to the expense of having a map made that would be absolutely, theoretically and technically correct, but to show the contention of the State of Mississippi only in sufficient detail. We thereupon as soon as possible made inquiries as to who could do this work, and finally decided to employ the Photo-Engraving Company of the City of New Orleans to make a map, and to print some from what is called I believe zinc etchings, and we instructed them to make a map on the same steel and the same size as the Coast and Geodetic Survey maps above mentioned. My partner Mr. Dodds, and I went to the office of the Photo-Engraving Company, and consulted with them fully, and gave them a list of the maps that we desired them to consult; furnished them with a copy of the Fish Hawk map, and explained to them how we wanted the Fish Hawk map extended to the southwest so as to cover all islands that would be within the limits of the State of Mississippi as viewed by the counsel on the part of the State of Mississippi. A gentleman in the office was called and
1896 we talked to him, and he was pointed out to us by the Photo-Engraving Co. as the man who would draw the map. He was a German. I don't remember his name, but was said to be a competent man in that line. He drew the map on stiff paper and notified us he had it ready for examination, and we called at the office of the Photo-Engraving Company and compared the map with the maps mentioned, and with the Fish Hawk map, and heard his statement that he had also consulted the maps in the United States land office at New Orleans, and so far as we could possibly tell by comparing the maps with the Coast and Geodetic Survey maps it seemed to be perfectly correct. We had only a few minor changes made such as having him to embody the township and range marks to the eastern portion of the islands before the map was accepted practically as made by him, and when same was received in its printed edition, I myself undertook to mark out the Mississippi line in red ink, as stated on pages 14 and 15 of the cross bill of the State of Mississippi. In marking this I began due south of the main land of the State of Mississippi, and south of a point which would be in Harrison county in the State of Mississippi. I measured a line six leagues, or 18 geographical miles from the mainland of Mississippi until such line struck what we term or contended the main land of the State of Louisiana, some distance west of Lake of the Mound; thence drew the line northward along what we contended to be the main land of Louisiana through Nine Mile bayou, and westward, still on the main land of Louisiana, to a point due south of the mouth of Pearl river, and from thence due north entering the middle of the mouth of Pearl river at its eastern junction with Lake Borgne. That line marked in black ink on Exhibit A. was our nearest guess to the contention of Louisiana. This line was drawn on the deep water channel running out of

Pearl river, as shown by the Coast and Geodetic Sur-
897 vey maps above mentioned, and where there were no soundings to show we measured from bayou to bayou along he bayous that are situated in this vicinity. The line due south f the main land of Mississippi and measuring what is commonly alled 18 miles is not measured upon statute miles but upon nauti- al miles, which make 21 and a fraction statute miles. After full vestigation we settled in conclusion that the act of Congress meant autical miles and not statute miles. That is our firm Dodds and riffith. This completed we forwarded the maps to the attorney eneral of the State of Mississippi to be filed as exhibits.

Q. Do you recognize this Exhibit A. to the deposition of Mr. Du- te, mentioned in my question, as the map which your firm had ade?

A. I do, and the lines as being drawn by me.

Counsel for Mississippi now offers and introduces the said map ove referred to as evidence in this case.

Q. Exhibit A. to the answer and cross bill of the State of Missis- pi purports to be precisely the same as the map on which you are w looking. Exhibit A. to Mr. Ducate's testimony above men- ned. I desire to ask you whether or not you have seen and ex- ined Exhibit A. filed with the answer and cross bill to which ur firm name is signed, and whether it is precisely the same as map now before you?

. My best recollection is that I marked twenty five of the maps he outside with the style of the case and Exhibit A. to the an- r and cross bill of the State of Mississippi. My best recollection at the attorney general instructed us that it would be necessary le twenty five maps, or exhibits, with the answer and cross bill, though I am not positive as to the number.

Q. To file them where?

A. In Washington.

With the clerk of the Supreme Court at Washington?

Yes sir. Each and every one of these maps were identical very respect, and the drawings were made by me successively.

What drawings?

The lines. The lines representing the contention of the State ississippi in red ink, and the black lines representing our best ate of what was the exact contention of the State of Louisiana. is marked in black ink.

By Gen. WILLIAMS:

Were these maps and those forwarded to the attorney general State of Mississippi to be filed as an exhibit to the answer and bill, the same, identically the same as Exhibit A., that has been s an exhibit to Mr. Ducate's testimony in this case?

They are identically in every respect without a deviation in anner. I will explain that the way these maps were made.

The first line was drawn and the disputed territory was cut out with a very sharp instrument, and made a pattern which was laid down on all subsequent maps, and a line drawn along the edge of this pattern so that there would be no deviation.

Q. What do you mean by all subsequent maps Mr. Griffith?

A. I had to mark out 60 of these maps, and I mean by all subsequent maps, the 49 following the first one that I made. They were all made at one time and in one day.

Q. You marked out as I understand it twenty five maps or more which were forwarded to the attorney general of the State of Mississippi to be filed together with the answer and cross bill on the part of the State of Mississippi.

1899 A. Yes sir.

Q. And then in addition to that twenty five or twenty six, or whatever number it was. You sent other maps, and subsequently—when you say *say* subsequent maps you mean those that you prepared for that purpose?

A. Yes sir, I sent twenty five maps to be forwarded to the clerk of the United States court at Washington, and I sent twenty five maps to be used by the attorney general for the records of his office and in this case.

Q. Well now who did you send those maps to Mr. Griffith. To whom did you send those maps?

A. I am not positive about the exact address, but my recollection is they were sent to the Hon. William Williams, attorney general of the State of Mississippi at Jackson Mississippi.

Q. Twenty five of which?

A. That marked as exhibits and intended to be filed with the clerk of the Supreme Court at Washington.

Q. As a matter of fact did not you mark on the back of more than twenty five of these maps, exhibits to the answer and cross bill?

A. It might have been just possible. I know that twenty five of them were so marked.

By Gen. McCLURG:

Q. Mr. Griffith, I believe that you have no personal or financial interest in this controversy now?

A. Nothing except as a citizen of Mississippi. No more than any other citizen of Mississippi would.

Q. But you have as you have stated above, given this matter considerable attention?

A. I did up to that time, but it has since passed out of my mind some what, and I am not as familiar with it as I had been.

1900 Q. In other words since the legislature of Mississippi declined to provide for attorneys' fees in the matter you quit the case and have given it no thought since?

A. No sir, I have not given it any more thought.

Q. Now I want to ask you. You reside at Biloxi I believe?

A. Yes sir.

Q. How long have you lived there?

A. Well nearly five years.

Q. And Biloxi is in the county of Harrison?

A. Yes sir.

Q. If you have any personal knowledge or any reliable information of any serious conflict or of any conflict that amounted to a crisis, between the sheriff and other officers of the parish of St. Bernard, Louisiana, and the sheriff and other officers of the county of Harrison I would be glad to have you tell this commission what you may know of it.

A. I have no personal knowledge concerning those matters. Any thing that I would testify to in response to that question would be hearsay.

Q. Have you any hearsay knowledge even of any thing that amounted to an armed conflict between the officers that I have mentioned. Of any serious conflict between officers of the parish and county I have named or between the two States prior to the filing of this case on the 27th of October, 1902?

A. Do you want pure hearsay?

Q. Any reliable information that you may have as to the matters.

A. It would be very difficult to say you have not heard something of almost any thing concerning this dispute. The expressions have been differing and the only action I ever heard of any prospects or propositions concerning an armed conflict was the time when Governor Longino had come to Biloxi, and it was suggested by some of the gentlemen there that they would take the matter into their own hands in some manner or form, which he very promptly sat
1901 down on, as well as the good counsel of other law abiding citizens.

Q. That was subsequent to the filing of the bill in this case?

A. I don't remember whether that was subsequent to the filing of the bill or not. I really don't believe it was a serious suggestion on the part of the gentleman who advocated it. Otherwise than that I have never heard any thing from that part of the country that would suggest that there was any armed conflict, or any danger of a collision out there.

Q. The question had reference purely to the time preceding the 27th, of March 1902?

A. Preceding the time of filing this bill I had never heard this matter discussed very lengthily in any way. Certainly I had never heard of any conflict out there. Armed conflict, and had heard very little about it in other respects, except that there was a dispute and a commission had been appointed to try and arrive at an amicable settlement of the matter.

Cross-examination.

By Mr. Dymond:

Q. Mr. Griffith, I understand that you are the Mr. Griffith
was counsel at one time for the State of Mississippi in this case?
A. Yes sir.

Q. And that necessarily you had ideas as to the defense that
sissippi should put up to the suit that had been instituted by
State of Louisiana to determine the boundaries?

A. Yes sir.

1902 Q. Now will you please look at this map Mississippi
concerning which you have just been testifying, and rea
ing to your mind your remark about the islands, and that you
sired to have this map show the territory sufficiently south to
clude all of the islands, you referred did you not, to your conclu
that this body of land surrounded by water in the Louisia
marshes, or what Louisiana claims to be Louisiana marshes, a
islands?

A. Yes sir.

Q. You don't know whether they are swamp hummocks or not d
you?

A. I will state in reply to that question that in September 1902,
my partner and I went out into these marshes here to examine for
ourselves the nature of that land, so as to see if we could form a
definite conclusion as to what would properly be termed islands
It is true we did not go all over the territory, but we went in Three
Mile bayou, and from our observation of the territory there we con-
cluded that we were safe in determining this territory islands so far
as we saw it all.

Q. Was not that on the theory Mr. Griffith that it was a body of
land entirely surrounded by water?

A. Well of course that was the primary conclusion. An island is
commonly defined as a body of land entirely surrounded by water.

Q. Is it not a fact that it is a low marsh country just about on a
tide level?

A. It is a fact that except at the very edge where the water first
strikes it is low and marshy, and at high tide is to a large extent
covered with water. We found difficulty in walking on it except at
the edge of the water, where the sand had been thrown up against
the sea weed.

Q. When you speak of the edge do you speak of the shore line
from Malheureux point to Isle à Pitre?

A. I mean where the water strikes the sea grass in any of these
islands.

1903 Q. All through the marsh?

A. Yes sir.

Q. Did you ever make a trip at Petit pass, from Malheureux
point to Isle à Pitre?

A. Our trip was from Biloxi to St. Joseph island, and Half Moon

island, and in at Three Mile bayou, and out from there along westward — La Petit Pass island and from there to Pearl river. I have been at Isle à Pitre, but not on this trip or expedition, and consequently did not take as much note of it, but to answer your question I have never been from Isle à Pitre along west to Malheureux point.

Q. You therefore never had the opportunity of knowing the character of the shore line extending between those two points?

A. Not all of it, no sir.

Q. What part of it have you traversed?

A. As I stated, from Three Mile bayou, to the neighborhood of La Petit Pass island.

Q. Along the coast?

A. As the schooner would sail. As near to land as we could sail.

Q. In sight of land?

A. Yes sir.

Q. Did you notice the land continuously as you sailed along?

A. I would say yes, continuously, but I do not mean by that that we did not take our eyes off of the land.

Q. Was not there a well defined coast line between these points?

A. There is a break at Nine Mile bayou.

Q. That is a bayou entering into the marsh?

A. Yes sir.

Q. As shown on this map Exhibit A?

A. Yes sir.

Q. Did you ever endeavor to walk on the shore line from Petit pass to Isle à Pitre?

A. No sir.

1901 Q. Now when you came to the confection of this map, what was it caused you to start out at the mouth of Pearl river, a line west of Malheureux point and back to the eastward and come down Nine Mile bayou?

A. You will find by consulting the answer and cross bill on pages 14 and 15, that this gives a description of the line. I was merely following that description of the line, but however I will say that we did not begin at Pearl river, but we began to the eastward of the map.

Q. How did you happen to determine the main land of Louisiana as set forth with the red line on this map Mississippi A?

A. By an inspection of the map. By looking on the map, to see where the main land was shown there.

Q. Were you influenced by any other information you had on this subject?

A. Any detailed information?

Q. Did you have any other information on the subject at all?

A. I will say that the crew of the schooner who are old and experienced fishermen in that part of the country were plied with a great many questions by us in making our investigations, and there

statements were taken into consideration as well as what was shown on the map.

Q. Now will you please notice this map called sketch No. 2 attached to Document No. 11 of Louisiana and notice whether or not there is any thing on the map suggestive of what is supposed to be the main land of Louisiana in this locality?

A. As to what that map suggests, the mainland would seem to be clearly conceded to be south of Marsh island, but there are other drawings that would seem to indicate that the draughtsman had in mind the main land might be held to extend out towards Cat island.

Q. I don't think you have exactly understood my question Mr. Griffith. Is there any thing on this sketch No. 2 before you to indicate any measurement from the main land?

1905 A. Well I would say this nine nautical miles from main land being a line drawn north and south, not straight, but curved, would indicate it has been drawn from the line I have just spoken of south of Marsh island, as being drawn from main land.

Q. Do you notice any similarity between that line and the line which you have designated as the main land on your map Mississippi A, in a general way?

A. In a general way it is the same direction, but it extends to the eastward, nine nautical miles of an actual line drawn in red on Exhibit Map A. of Mississippi.

Q. I refer to your red ink line on Mississippi Exhibit A. Does it in a general way conform with the outline of the main land as shown on this sketch No. 2?

A. It does.

Q. Did you have before you this sketch No. 2, or a similar sketch at the time you draughted or confected your map Mississippi A.?

A. I did not.

Q. Did you have any knowledge of the existence of this sketch No. 2, or document map No. 11 at the time you made that map Mississippi A.?

A. I never have seen it until today.

Q. Was I correct in understanding you Mr. Griffith to say that you marked a number of maps as Exhibit A. to be attached to the answer and cross bill filed by the State of Mississippi?

A. As I stated before my best recollection is that twenty-five of the maps were forwarded to the attorney general and marked, and as I stated in my direct examination that — the style of the case, and below that the statement Exhibit A. It may be just possible however that instead of marking the map that way, I marked it in lead pencil Sup. Ct. with the idea that the attorney general himself would put the proper marks on the outside. It has been

1906 some time and the matter has gotten out of my mind entirely. I have not attempted to remember. I am not just positive as to which way that was done.

I will say that the same maps that I marked and sent to the at-

torney general. I saw in his office a few days afterwards, when I was there on business, and it may be that instead of marking the maps on the outside as exhibits, the only time I did mark them as exhibits was on the inside when I instructed the printer to print it that way, and it will be found that way. My best recollection now after refreshing my memory is I marked in lead pencil U. S. Supreme Court.

Q. You will notice on page 15 of your answer and cross bill the following language "And your orator will file in due time proper copies thereof now being made as Documents No. 1, 2, 3, and 4, and made parts hereof." Is not that the only reference to that document or map, Mississippi A, concerning which you have testified as made in that answer and cross bill?

A. It is as I remember it. At the time we wrote this cross bill it had not been definitely determined whether we would make only one map or have the four, or whether we would have four, the map being a composite of all the four, or have the four 1, 2, 3, 4, corresponding and 19, 190, 192, and 191. We could not use this Coast and Geodetic Survey maps as exhibits because they were too large and stiff.

Q. As to the accuracy of this map you are not prepared to testify to that in any way. You never have taken a compass and scaled it off to see whether it was correct?

A. Upon the accuracy of that map I will state as I did before we applied to these people who were recommended to us as experts in the work. We had notice furthermore that the maps filed by Louisiana were rough, and not intended to set out absolutely correctly the then contention, with the exception of the Fish Hawk map, and our conclusion was that a map that sufficiently outlined our contention would be required in this exhibit, with out further testimony to be absolutely technically correct, and ould be introduced on the hearing. So that map when I came to xhibit it was compared with the Coast and Geodetic Survey maps st are mentioned here, and we had them to change the names of e or two of those bays, and so far as we could tell by the closest ritiny it was a true and faithful copy of the Government maps specting that territory.

Q. I understood you to say from the data you had prepared by s expert, that it showed that this territory had been surveyed and e township and range and section lines were projected on this data had?

A. Yes sir.

Q. And you had that data eliminated from your map north and t of your red ink lines?

A. Yes sir.

Q. Those township and range lines showed that the lands had been veyed as a part of Louisiana did it not?

A. We did not take the time and trouble to investigate by whom survey had been made. We assumed that it had been made by

Louisiana, but granting the assumption it was a part of our contention that the State of Louisiana had no right to survey it, and therefore it should be eliminated on this map as surplusage, and also had the names of some of the islands eliminated so as to prevent this map from being too full of details and names that would detract from taking a proper view of it.

Q. Your idea was to prepare a special map for this particular case rather than to prepare a map truly representing every thing collected from the sources which you state?

A. Our purpose was simply to have a map that would indicate to the court exactly what our contention was. We wanted a map that would be correct so far as the topography was concerned, and wanted the outlines of the islands to be carefully and correctly shown
1908 so far as possible with a zinc etching. It was not our purpose to go to the expense of having a photograph made. We wanted the scale of miles to be correct, and we wanted the names of the islands and waters that we put in there to be correct and as I stated before I had some of the names changed for that reason, as we did not desire to have a map too much written over with names, and data that could not be of any assistance in this controversy, but that would confuse the court and others in looking over the map.

Q. But you were particularly careful to see that any evidence of the ownership of Louisiana, of that territory shown by the map should be removed, from any part of the map that you were preparing?

A. I don't recollect that there was any evidence of ownership appearing on the map, unless you consider the mark of the township and range on there as being an evidence of ownership. That is the only thing that we had eliminated that could show any thing of that kind and you will notice that on the main land, or that part we concede to be the main land the township and range are still left.

Q. Well Mr. Griffith, you were interrogated a few minutes ago with reference to a dispute or conflict between the two States. Is it not a fact that you know that there have been negotiations pending between the two States in regard to this boundary since January 1901?

A. I know that there have been negotiations certainly.

Q. Now did you ever hear of previous efforts on the part of the State of Louisiana and more particularly the sheriff and officers of the parish of St. Bernard Louisiana, being as far back as 1898 to expel non residents from this particular territory?

A. All of these matters I have heard of since this bill was filed. Previous to that time if I heard any thing about it it made absolutely no impression on me and I don't recollect it.

1909 By Col. ZACHARIE:

Q. Mr. Griffith are you a surveyor or civil engineer?

A. I will say that in my course of mathematics in the University

of Mississippi it was a part of the prescribed course that I should take surveying. As such I did field work there.

Q. You did field work simply at college?

A. Yes sir, that is all.

Q. Are you a cartographer?

A. No sir, I claim no technical knowledge about that map at all. All we did in accepting this map was it seemed so far as we could observe by the naked eye it was a correct transcript of the Coast and Geodetic Survey map. We were not making maps. We were attempting to practice law.

Q. Then you did not make use of the compass, theo*g*olites or any other surveying instruments to determine the correctness or anything on this map?

A. The only thing we did I have just stated. We compared it with the Coast and Geodetic Survey maps that we referred to and it seemed to be correct by them.

Q. And you put upon this map only such data as you thought would illustrate the claims of the two States?

A. The claims of the two States yes sir.

Q. This you did under instructions. Did you not carry out all data which is embraced in the second and third articles of the cross bill of Mississippi printed on up 14 and 15?

A. The third paragraph 14 and 15.

Q. Did you not also take into consideration the whole portion of paragraph of article 2, of the cross bill on page 14?

A. Yes sir.

Q. Then as I understand you Mr. Griffith this map was not prepared as an original map for the purpose of correctly showing
1910 the territory, but was sim-ly a *pro-forma* map gotten up under instructions to show the respective claims of Louisiana and Mississippi in this litigation?

A. Yes sir, we took it for granted that counsel for Louisiana would never insist that the maps zinc etchings filed by them, with the exception of the Fish Hawk map was any thing approaching a correct map. It was a very rough draught made by some print shop in this city, and we thought that we were going a distinct step further when we had as correct a map as that prepared as an exhibit.

Q. In other words you considered the maps that had been filed with Louisiana's bill of complaint as being simply *proforma* maps?

A. Yes sir.

Q. And you proposed on the part of Mississippi only to show the contest between the two States, and prepared this map and submitted it as illustrative of the claims of the two States?

A. Yes sir, we prepared a better map than the one used by Louisiana.

Q. Did you or did you not know that Louisiana had filed as Exhibit E with her bill of complaint an actual facsimile, or copy of the geodetic maps of the United States Coast and Geodetic Survey. Did you or did you not know that?

A. If it was a fact I knew it. I don't recollect now what m knowledge was about that.

Q. Then I don't understand you to say in so far as an origin map to establishh by proof any thing; that this map was ever pr pared for any such purpose?

A. You are correct in that. That map is a copy of the Coast a Geodetic Survey map just as the copy that you have spoken of having been filed with your bill.

Q. But you stated a moment ago that you did not make a copy the Coast and Geodetic Survey maps, because you left out certa details in regard to the townships and ranges and so on. So that is not a copy of these maps?

A. My recollection is, and I think the Coast and Geodet
1911 Survey maps mentioned in our answer will show it, th townships and ranges are not shown on the Coast and Ge detic Survey maps. I don't recollect to have seen it. This mea was taken to make these maps. He procured as he stated to us, procured these townships and ranges from the land office here New Orleans.

Q. Then I understand you to say that this map was not prepar by you that it should be proof of anything further than to show t claims of the two States?

A. To show the claims of the two States, and as one being corre without having a- original map made by measurements.

Q. So that the court might understand the merits of the contr versy?

A. Yes sir, but after having the map made, we were much i pressed both from our observation of the territory itself, and fro our examination of maps that the map was practically correct detail.

Q. Do you know where the idea of including this territory in r lines on this map came from?

A. Our idea is that it came from the Congress in 1817.

Q. Do you know who first suggested this delineation or how it w suggested?

A. Why the act of Congress in 1817 suggests that delineation.

Q. Was that the only way in which the suggestion was made?

A. Why I could not state as to that.

Q. Had you seen the report and accompanying documents of M Hodgkins of the Coast and Geodetic Survey when you prepared th map?

A. I had not. I had not heard of it. And my first informati concerning this matter was when I read it in the daily papers New Orleans at the time Louisiana was taking her testimony chief. That is as to the report. As to the map, I have seen it he this morning for the first time.

1912 Q. You may have stated it in your testimony and it caped me. Under whose instructions did you prepare th map, and everything generally?

A. As I stated in my direct examination, the attorney general for Mississippi requested us to have a map made as an exhibit to the cross bill of Mississippi so as to show the contention of Mississippi, and that matter was left to the judgement of the firm of Dodds and Griffith, and we had that map made.

Q. And did his instructions embrace that you were to follow what was laid down in the second and third articles of Mississippi's cross bill?

A. No specific instructions were given us on that point. That was work that we did from our own best judgement.

Q. Did you follow the instructions; the second and third articles in the cross bill, in preparing this map?

A. We followed the articles both in the cross bill and articles inclusive.

Redirect examination.

By Gen. McCLURG:

Q. Were there any specific instructions given you at all. Was it not rather a request. You took the matter of map making in hand and did it as you thought best?

A. My recollection is that after the answer and cross bill were prepared at Jackson, Mississippi, that it was agreed that we would have a map made, and following that agreement we received a letter from the attorney general of the State of Mississippi requesting us to have a map made and authorizing us to use our best judgement in the matter, and without suggestion stated that he and associate counsel would abide by whatever we had done about it, so that the attorney general and associate counsel Mr. McClurg had nothing to do with the construction of that map.

1913 By Gen. WILLIAMS:

Q. The only instructions you had Mr. Griffith were to go ahead and prepare a map, and let the man who made it draw on the attorney general for the amount?

A. That is correct.

By Gen. McCLURG

Q. It may be somewhat in repetition, but as we understand this map Exhibit A to Mississippi's answer and cross bill, and Exhibit A to Mr. Ducates' cross-examination on the part of Mississippi in that case, it was intended to give a succinct idea of the claims of the States as to the territory in dispute?

A. Yes sir.

Q. And the scale that is on this map corresponds with the scale on the map from which it was made?

A. Yes sir.

Q. And that map was an official map of the Coast and Geodetic Survey of the United States.

A. It was. That scale being one in correspondence with a scale of statute miles. So in drawing that line 18 nautical miles, we had to refer to fraction and make it a scale corresponding to the geographical miles. That is statute miles and it should have been geographical miles.

Q. And this red line that is drawn across this map that is filed with the clerk of the Supreme Court of the United States at Washington is Exhibit A to the original bill indicates that it is 18 geographical miles from the shore of Mississippi due south?

A. Yes sir, about 21 and a fraction statute miles.

By Mr. DYMOND: Objected to by counsel for Louisiana on the ground that the question is leading and suggestive.

1914 Q. You were asked on cross examination Mr. Griffith—?

A. I want to state this. I was asked awhile ago if that map was made on actual measurements. After that map was made this engineer who made it subsequently came to us as a private arrangement and stated that he was going on a cruise out there on these islands, and he thought we ought to pay him so much——

By Mr. DYMOND: Objected to on the part of the State of Louisiana on the ground that it is hearsay evidence, and the engineer is the only competent witness to testify to it, and that counsel for the State of Louisiana is entitled to the opportunity to know the witness's name, and having him summoned in order that he may be cross examined.

A. If we would pay him so much he would make actual measurements of all the outlines on the map, and mark out by miles the distance from point to point.

By Mr. DYMOND: It is understood that the same objection on the part of the State of Louisiana is made to this statement and all similar questions and answers propounded by the counsel for the State of Mississippi.

A. And that he would mark the map in blue and otherwise complete and execute the map in detail, and we paid him a certain sum to do this work, and we now have and had six months ago a copy of this map in our office.

By Col. ZACHARIE: The State of Louisiana by her counsel objects to all of the testimony of this witness in regard to the preparation of this map, except so far as his communicating to the engineer instructions as to how to prepare the map. That as to the preparation of the map, the only evidence admissible as to its preparation would be the person who prepared the map, and the testimony is
1915 therefore excepted to, and the fact as to the preparation of the map by a third party has only been developed on the cross examination of the counsel for the State of Louisiana.

By Gen. McCLURG:

Q. Mr. Griffith, counsel for Mississippi has called your attention to map No. 7, introduced in evidence in this case on the part of the State of Louisiana, and especially with reference to the marking on said map the red and blue lines; asking you to note the outside or northeastern circular blue line marked Nine nautical miles from Isle à Pitre, and the broken circular line marked Nine statute miles, and the next line Nine nautical miles from Grand pass, and the broken line near the Nine statute miles, and third, Nine nautical miles from the body of the marshes, and Nine statute miles. Your attention is called to that to examine you with reference to the question asked you by counsel for Louisiana as to the main land of the State of Louisiana. Now please state whether the red line marked by you on Exhibit A, to the answer and cross bill, and Exhibit A, to the cross-examination *to* Mr. Ducate, indicating the main land on said exhibit is the same as indicated on this map No. 7, as being the nine nautical miles from the body of the marsh land?

A. It is the same except in one particular in which the detail of this map differs from the map on which the line is marked. At a point about two leagues north of the most southern point on the red line, this map is drafted on such a small scale that the details of some of the outlines are lost.

Q. The exact point to which I desire to call your attention
1916 is whether there is any substantial difference between what Mississippi calls the main land, of Louisiana in her cross bill and answer in her map Exhibit A, and what Louisiana on this map now before you denominates the main body of the marshes?

A. There is no substantial difference. But this nine nautical miles from the present main body of marsh land, and nine statute miles from the same are measured from the same thing that our line going north runs along with.

Q. And I understand you to say that our line; that is the line called in our cross bill and answer as the high tide mark, or the main land of Louisiana as indicated on this map introduced by Louisiana is the main body of the present marshes?

A. Yes sir.

Q. So then there is no difference between us on the proposition as you understand it. There is no material difference?

A. No material difference.

Q. I wish you would please tell me what you understand by these measurements indicated on this map by the circular blue line. This map No. 7, introduced by Louisiana?

A. I understand that the first line to the right marked Nine statute miles, and the second marked Nine nautical miles present main body of marsh islands to be a calculation as to where the Louisiana line would run, conceding the marsh territory to be islands, and therefore this main land would run from Nine Mile bayou south as indicated in our answer and cross bill, and the next nine statute miles

and nine nautical miles from Grand pass would be what Louisiana would contend to be, the State line in case it should be held that the main land extends as far as Grand pass. The nine statute
1917 miles and the nine nautical miles from Isle à Pitre running out to Ship island would be what Louisiana would claim as the line in case that Isle à Pitre should be held a part of Louisiana main land.

Q. What do you understand by the 18 statute miles and the 18 nautical miles marked there running east and west?

A. I understand that the 18 statute miles is measured south from the main land of Mississippi, and would be the extreme of Mississippi's contention in that direction in case the court should hold that Congress meant statute miles, and 18 nautical miles would be the extreme southern line of Mississippi's contention in case the court should hold that the intention of Congress was to speak of nautical miles.

Recross-examination.

By Mr. DYMOND:

Q. Mr. Griffith will you please look at map No. 7, concerning which you have just been testifying, and state whether you do not recognize the blue and red lines thereon to be the exact lines projected by Mr. W. D. Hodgkins of the United States Coast and Geodetic Survey as shown on Document 11, and sketches 1, 2, and 3, attached thereto?

A. I have testified to the reports of Mr. Hodgkins that I have never seen the maps until today.

Q. You will please look at it now and state, after examining the notes that appear on the map, and on the sketches which are pointed out to you, and state whether or not you do not recognize the lines on maps 7, to be the identical lines as shown on sketches 1
1918 and 2, Document No. 11 prepared by Mr. Hodgkins?

A. So far as the eye could detect by a casual examination I would say that they do.

Q. I will state for your information Mr. Griffith that we have had a witness on the stand who testified that he made these lines and made them from the Hodgkins survey actually. Now you have testified as to what was the intention of Louisiana to be shown by these various lines that appear on map second, and you have stated that such conclusion would result if Isle à Pitre was held to be a part of the main land of Louisiana. Will you please state where you got your authority for any idea that the main land figures in this matter in any manner whatsoever.

A. I will state that any statement I will make concerning this will be opinion. Just my opinion after studying the case.

Q. Are you not familiar with the act of Congress creating the State of Louisiana?

A. Very familiar.

Q. Do you not know in place of using the word main land it uses the word coast?

A. Yes sir, coast in Louisiana and shore in Mississippi.

Q. Have you ever examined the authorities to ascertain what the word coast means?

A. I have.

Q. Have you found any reference to any main land in the legal definition of the word coast?

A. Yes sir, I have a brief that states all of the authorities.

Q. Can you find any of them now?

A. You will find an authority in the text book called Careless on Sewers that goes so far as to hold that the coast is always a part of the dry land.

1919 Q. That is your authority?

A. No sir, not the only authority.

Q. Do you know of any other authority?

A. A decision by Judge Field while he was on the bench in California is another.

Q. What case?

A. I don't remember the cases. I have it in a brief.

Q. A brief prepared in this case?

A. Yes sir.

Q. Your brief has never been filed has it?

A. No sir, we have not gotten to the filing point yet. I suppose we will some day.

The commission met at 2 o'clock pursuant to the recess for the noon hour, and there were present the same as this morning.

Governor JAMES K. VARDEMAN, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows, to-wit:—

By Gen. MCCLURG:

Q. Governor Vardeman, in order that you may get at least a chronological idea of this suit by the State of Louisiana against the State of Mississippi; about January 1901 there was some thing in the nature of a mass meeting held in the city of New Orleans looking to the location of the boundary between the State of Louisiana and the State of Mississippi in the waters of the Gulf.

At that meeting as stated in the bill of complaint and generally stated to you now, a boundary commission on the part of Louisiana composed of five gentlemen was appointed, and resolutions were adopted requesting the governor of Louisiana to ask the gov-

1920 ernor of Mississippi (at that time Governor A. H. Longino), to appoint five gentlemen from that State to determine an easy location and marking of the boundary that I have mentioned. Governor Heard acting for Louisiana appointed five gentlemen, and he notified Governor Longino of Mississippi, who also appointed

five gentlemen some time in February, and on the 26th of March following these ten gentlemen met in the city of New Orleans, but failed to agree to make any recommendation. The Louisiana commissioners submitted to the Mississippi commissioners their suggestion as to where the boundary was. The Mississippi commissioners asked time to consider the matter. And afterwards on the 20th of July 1901, the gentlemen appointed by Governor Longino addressed a letter to the chairman of the joint commission that had met in Louisiana on the 26th of March, stating that they could not agree to the claims of Louisiana, and suggested a friendly suit between the two States in the Supreme Court of the United States to fix the line. No authoritative action was taken so far as the record shows until the legislature of Mississippi met of the 1st, Monday of January 1902, when Governor Longino called the attention of the legislature to what had transpired and recommended such action as the legislature of 1902 might deem proper. The legislature took no action in the matter, and so far as the counsel for Mississippi is informed the legislature of Louisiana, which met in May 1902, took no action in the matter.

About the 27th of September 1902 the oyster commission of the two States met in Louisiana, and it seems in expectation of the suit that Louisiana was to bring against the State of Mississippi in the Supreme Court of the United States, agreed upon what they called a neutral line, or zone. Which marked certain lines which they expected the citizens of the two States to respect. A line
1921 which run from Malheureux point to Grand pass, following the north shore of what we call the marshes, to the westward side of Grand pass, southward of Sun Down island and into Cat Island channel, thence into the Gulf proper. South of that line was considered exclusively Louisiana territory.

The next line north of the one that I have described followed the deep water sailing line out of the most eastern mouth of Pearl river to a point in the neighborhood of the western end of Cat island, and turning thence to a line at the north mouth of Grand pass that I have before mentioned. Between this deep water sailing line and the north shore of the marsh was left open for both sides, and the territory north and east of the line last above described was exclusively in the State of Mississippi. On the 27th of October, after this meeting about the 27th of September 1902, the bill of complaint in this case was filed in the Supreme Court of the United States and soon thereafter process was duly served upon the governor and the attorney general of the State of Mississippi.

About the 17th of November 1902 Governor Longino, and the attorney general of Mississippi, met Governor Heard and the attorney general of Louisiana in New Orleans in a joint meeting with the oyster commissions of the two States for the purpose of considering either the abrogation of the neutral line, or the modification of the neutral line which had been created by the oyster commissions in September, which meeting adjourned without any action. It has

been my opinion and the counsel for the State of Mississippi that this neutral zone line agreed to by the oyster commissions of the two States in September was oppressive to Mississippians interested in the oyster business, and it is upon this proposition that you have been called to testify in this case.

This statement has been made to you that you may catch
922 the general drift of the case up to this time. I wish you would please tell the commission Governor when you were inaugurated governor of the State of Mississippi?

A. I was inaugurated on the 19th of January 1904.

Q. How long had you lived in the State of Mississippi prior to your inauguration?

A. Since 1868.

Q. Nearly all of your life?

A. Very nearly all of my life.

Q. What positions have you held in your State?

A. I was a member of the legislature in 1890, 1892 and 1894. I was speaker of the house in 1894.

Q. You have held some military offices have you?

A. Yes sir, I was first a captain and afterwards major in the Fifth United States Volunteers, and served about 10 months in Cuba in 1898 and 1899.

Q. If you have any knowledge or information Governor as to the effect upon the people of Mississippi, and especially those interested in the oyster business along the coast that this neutral zone line had or is having at this time, we would be glad to have you to tell the commission in your own way what you know about it?

A. I know very little about the oyster business in Mississippi. Since this suit was instituted and this boundary line has been discussed, I have heard a good deal talk about it. I have had a great many people since I was inaugurated governor to talk to me about the injustice done to the oyster men resident in Mississippi by the line which Louisiana has established. In fact at a meeting of the oyster commission and the citizens of Biloxi last summer the matter was discussed at length. It was urged that Louisiana had arbitrarily established a line and ordered the people of Mississippi to stay out from within these lines. I was told by these oyster dealers that it was very hurtful to their business.

923 Q. Can you say whether the people of this State, and especially those of the coast counties have been or are now satisfied with this line agreed to by the oyster commissions?

A. They are very much dissatisfied. They think that the oyster commission had no authority to establish this line, and they also think, and have so expressed themselves to me, that since the courts have been appealed to, the territory in dispute should in justice to both parties be thrown open to citizens of both States.

By Gen. WILLIAMS:

Q. As governor of the State of Mississippi would you attempt to agree to the proposition above agreed to as the neutral line between the two States?

A. I suppose you mean that as governor of Mississippi would I agree to the line established by the Oyster Commission of Louisiana, or the line agreed to by the two commissions?

Q. The two commissions?

A. Most assuredly I would not. I don't think they have any authority to do that. I don't think the legislature of either State has any authority to fix the line.

Q. Outside of legislative authority would you as governor agree to that. Would you as governor of the State attempt to establish that line?

A. I would not.

Q. Without any legislative authority?

A. I would not. Of course not. I would not undertake to do a vain thing.

By Gen. McCLURG:

Q. If the governor of the State had any thing to do with establishing that line have you any knowledge of it?

1924 A. I have not. It was done during the incumbency of Governor Longino, and I know nothing save that which I have gathered from the newspapers, and heard other people say. I can not speak of my own knowledge.

Q. Had the governor of the State of Mississippi in 1902 any authority that you know of to appoint a commission to settle the boundary between the two States?

A. I don't think there was ever any law enacted by the legislature that authorized him to do so. I have no information on that subject.

Q. Have you any information as to any statute or authority conferred upon the Oyster Commission of Mississippi to settle the neutral zone line that we have been speaking about that was binding upon either side?

A. I know of no such law. I never heard of it.

Cross-examination.

By Mr. DYMOND:

Q. Now Governor as a matter of course as the chief executive of the great State of Mississippi, you necessarily have keenly at heart the welfare of the people of your State?

A. That is very true sir.

Q. At the same time you have been asked to express your opinion and to state what you would do under certain conditions. As a matter of fact would not you before coming to any conclusion in-

estigate for yourself carefully the existing facts, at the time any
.ing would come up before you for settlement?
A. Certainly I would.
Q. And you would be very largely influenced by the equities as
ey appeared to you from a presentation of the facts then
made?
925 A. I would endeavor to do that which was right.
Q. Now have you ever sufficiently studied the facts as they
isted in September 1902 to tell whether the Oyster Commission of
lississippi fully considered the equities of both sides of this con-
oversy at the time they reached the agreement with the Oyster
ommission of Louisiana?

By Gen. McCLURG: This question is objected to because public
ficials are not governed by equities in any sense. They are con-
olled by the letter of the law, and not by equities or any condi-
ons as they may appear to them, and the question should be re-
ricted to what the law was controlling the governor and the oyster
ommission and the public officials.

A. Well now answering your question the oyster commission
ould have no right to act in this matter, and could do nothing
xcept that which the law authorized them to do.
Q. Governor pardon me, I am not asking you for an opinion as
the rights of the oyster commission from a legal point of view.
you will have the question read back to you I think you will
nderstand it better. (The question is here read to the governor as
llows:)—Now have you ever sufficiently studied the facts as they
isted in September 1902 to tell whether the Oyster Commission
Mississippi fully considered the equities of both sides of this con-
oversy at the time they reached the agreement with the Oyster
ommission of Louisiana?
A. Well as I stated a moment ago, to the time I was inaug-rated
had given very little thought and consideration to this oyster
uestion, and I am not familiar with the history of this controversy.
have though been impressed with the almost universal condem-
nation of the people living along the coast of the action
926 taken, along the coast of Mississippi, of the action taken by
the oyster commission in establishing this neutral zone,
aintaining as they have as I stated almost universally, the rights
the people of Mississippi had not been protected in the settlement
the matter.
Q. Now Governor you are a lawyer if I am not mistaken are you
t?
A. Yes sir.
Q. Are you familiar with the decisions of the Supreme Court of
e United States which recognize the rights on the part of each
ate in her sovereign capacity to control the oyster waters within
r borders and to legislate in regard thereto?
A. I have not given very much thought to the matter.

Q. Well assuming that the Supreme Court of the United States in the case of McReady *vs.* Virginia held that each State was entitled to absolutely control the oyster producing waters within her borders, to the extent of excluding if it chose to do so, upon residents therefrom. Then under these circumstances if there was a dispute as to the territorial limits between the two States, and there were valuable oyster properties and oyster waters in the disputed area, would not it be natural to suppose that there was a reason and a cause for the adjustment and determination of this dispute?

A. Yes sir, there would be cause for an adjustment.

Q. That being the case is it not a fact that the legislature of the State of Mississippi in 1902 becoming aware of the growing importance of its oyster industry, provided for and appointed a special commission whose duty it would be to care for and preserve and protect the oyster industry of the State of Mississippi?

A. Yes sir, but that commission did not have the authority to establish boundary lines.

1927 Q. I am not asking you that Governor. I am asking you the simple fact as to whether or not there was not a commission provided for by the act of 1902?

A. I have forgotten that. I don't know that there was any legislative action at all. I am not sure about that year. I told you in the beginning up to the date of my inauguration I had given it very little thought or consideration; that is of this matter. And if any thing was done in 1902 I can not recollect it now.

Q. Then you were not aware of the fact that acting under that legislative act of 1902, that Governor A. H. Longino of Mississippi appointed an oyster commission for Mississippi?

A. I don't think I can say positively, but I don't think there was ever a law enacted by the legislature authorizing Governor Longino to appoint a commission to determine the boundary line between the State of Mississippi and Louisiana.

Q. I recognize that fully other than the original boundary commission, amicable boundary commission appointed by Governor Longino, but what I am referring to now is whether or not this oyster commission authorized by the act of 1902 of Mississippi was not appointed by Governor Longino?

A. I don't remember.

Q. Was not it the commission that met in conference with a similar oyster commission provided for under the act of the Louisiana legislature of 1902 appointed by Governor Heard of Louisiana in 1902, which met with the Mississippi commission on the 27th of September 1902 and fixed this neutral zone?

A. My opinion is that these commissions were appointed without any authority of law whatever. I am talking about these commissions to determine the boundary line.

Q. I am talking about the oyster commissions Governor which actually did agree to the neutral zone?

A. Well I don't know when they were appointed. I could not say now.

1928 Q. Now then as I understand it, while you were not originally well posted naturally on the points in this case, you have since then endeavored to post yourself as well as you could have you not?

A. Well I have given some thought to it yes sir.

Q. As a matter of fact however, you have heard mostly one side of the case. That is the Mississippi side?

A. I have only discussed the matter with Mississippi people.

Q. Well now you are aware if I am not mistaken that the Mississippi contention is based on the theory that she is entitled to all islands within six leagues or 18 miles of her shore, because words to that effect are found in the act of Congress creating the State of Mississippi. Now are you aware Governor that in the act of Congress creating the State of Louisiana that that State was given all islands within three leagues or nine miles of her coast. Are you aware of that fact?

A. Yes sir, I have heard that.

Q. Well now taking that to be the case and looking at this map No. 7, and taking the projections which are shown here in blue lines, if Louisiana was given all waters, we may say, within nine miles of her coast, and if the eastern extremity of Isle à Pitre be taken as the eastern extremity of the Louisiana coast, I would ask that you please notice the water area north of the dotted black line, and compare it with the superficial area south of the northern shore line of the marshes, and north of the red line indicated on this map, and state how in superficial area these two compare?

A. My information regarding this matter, as I stated a moment ago has been derived exclusively from the Mississippi side of the question. Now admitting, as I am perfectly willing to admit, that there are facts on both sides which justify this contention, if there was not this suit, of course, would not be in progress to day. And

1929 the idea that while the question is to be determined as to where this line is, the line dividing the State of Mississippi from the State of Louisiana, the people of Mississippi maintain that pending the consideration that equal rights should be given in the disputed territory to the people of Mississippi with the people of Louisiana.

Q. Well admitting that to be the fact Governor, is there not another alternative, or would there not be another alternative way of settling that by closing up the territory of both States until the matter was settled?

A. That would be, it occurs to me, infinitely more just than to permit one party to the controversy to use that portion of the territory to the exclusion of the other.

Q. But if we have given Mississippi the exclusive right to an equal portion of the disputed territory compared to what we have received the exclusive right to them would there be any injustice

or inequality in this amicable agreement between the two commissions?

A. My opinion whether correct or not, that you may determine,—my opinion is that you have given Mississippi a very small portion of the territory, and in this neutral zone, you are claiming, if I am correctly informed, equal rights in that zone, while at the same time claiming the exclusive right to all the balance of the territory in dispute. Is not that so?

Q. Yes sir. Now you will notice that the neutral zone, that is to be determined on this southern limit by the shore line extending from Isle à Pitre to Malheureux point, which is also shown on this map Mississippi A. now before you, and you will notice that there are a few openings in this coast. And you are informed that the Mississippians for numbers of years passed had regardless of any boundary limit been accustomed to fish all down through
1930 the State of Louisiana, in fact way beyond the 18 mile limit now claimed. And that Louisiana had been authorized to maintain a patrol boat to enforce the Louisiana law, and the Oyster Commission of Louisiana urged that it would be infinitely more difficult, in fact, if not practically impossible, to patrol and control these vessels of Mississippi, unless they came south of this shore line into the Louisiana marshes. Now would that fact have influenced you at all in your conclusions had you been present at the joint conference of these oyster commissions?

A. Well Mr. Dymond, it seems to me if this territory here is in dispute, the territory lying south of the shore line and north of the red line,—if that was in dispute. If there was a question about the title to this territory certainly, pending the suit. Each party to the suit should have equal rights to that in dispute. It is a little like it seems to me two men quarrelling over a corn field. One says to the other "I have possession, and, he says "If you don't like this why then go into court and secure your rights, but while this suit is pending I am going to occupy the corn field and live off of it." The other fellow comes along and says "No, you can not do that. You can not live on it pending this suit. Let's both stay out or both occupy it jointly." He says "No, I am not going to do that but I am going to continue to live on it. After the suit is decided if there is any thing left you may have it if the court gives it to you.

Q. You are figuring out a corn field with a fence around it. While this map shows very nicely marked this 18 mile limit, have you any idea that there is anything in the Louisiana marshes to indicate where this 18 mile limit is?

A. It seems to me that that is a matter susceptible of determination without any tronble.

1931 Q. Have you any idea what it would cost to define that 18 mile limit through the Louisiana marshes?

A. That does not affect the rights of these Mississippians in this controversy. You have gone into the court, and pending this suit certainly Mississippians have got some rights here. Are you going

ep them out and say to them "This matter may go on for years
rears, and we are going to occupy and use this property, this
ory that is in dispute and if perchance the court should decide
you, then, you can go in and get what is remaining." It seems
that it is a very reckless disregard of the rights of one party.
ie rights of Mississippians in this controversy.

But, if we think Governor, that the only thing that prompted
ssippi to lay claim to this territory was when Louisiana en-
ored to exclude her from it?

As a matter of fact I see no necessity for Mississiapi laying
is to that which Mississippi was enjoying. It was never neces-
for her to assert any right until you told her to get off.

You know that the rights that they desired to exercise are in
ater and not on the land don't you?

I understand, but it belongs to Mississippi.

Well they have never pretended to exercise any rights over the
?

Well that is a matter you know I am not prepared to discuss
you now, but I am prepared to say that you have asked the
d States Supreme Court to determine this line.

But when you reach these conclusions Governor, are you aware
e fact that Louisiana is contending, and contended at this con-
ce, that she had been exercising sovereignty over the lands in
erritory, and that it was approved to her 40 or 50 years ago,
ad been levying and collecting taxes thereon, having sold them
ivate people, and no one had ever even whispered a suggestion
of a claim of title?

A. I understand that is one of the evidences of your own-
ership. It is also contended, if I am correctly informed, that
ssippi has been exercising authority over this territory. And
uestion of abstract justice, it occurs to me, that addresses itself
e sense of right of every man, is that pending this controversy,
pending this suit that the interests of both parties to the suit
d be protected equally. It does look like to me when I see
ct of your legislature giving you a patrol boat, that you are ex-
ng the authority of fixing this line. It may be your right.
and may be your own, but it is a matter yet to be determined,
nderstand, but the legislature of Louisiana has gone along and
ded this patrol boat, and the people of Mississippi have been
d off the territory they have claimed, and the State of Mis-
pi has been exercising authority over for the last fifty or
ty five, or nearly 100 years.

So that is what leads you to the conclusions you have ex-
d on your direct examination. That if you had had a hand
e making of this agreement at the time you would not have
it?

Most assuredly I would not. I want to say another thing in
onnection. It is in line with what I have already said. That
ghts of Mississippians in my judgment in this matter have

been violated, and I still think they have as much right to go here and fish as they ever had.

By Gen. WILLIAMS:

Q. On what authority Governor?

A. On the authority that the land belongs to Mississippi.

1933 By Mr. DYMOND:

Q. On the other hand Governor if a man was to enter your house and was to say "This is my house. Get out of it." You would be prepared to resist his encroachment would you not, unless you thought he had some color of right?

A. Certainly.

Q. If you thought he did not have any color of right, if you would say "The best I can do is to let you have half of the house. That is about as far as I can go"?

A. Yes sir.

Q. You don't know from your own point of view how Louisiana felt about this matter. As you have stated the most of your information came from those that are interested in Mississippi's side?

A. That is true, but do you deny a settlement of all controversies in our courts of law. When a matter is before the court for adjustment and adjudication, where property rights are involved, pending a determination of that the court always either party to the suit, but it seems to me the way the matter is being run now the people of Mississippi have been driven off this territory, and the people of Louisiana are enjoying it, but if Mississippi should win this suit, this territory which you are exercising and enjoying exclusive privileges in would go to Mississippi, yet Mississippi would have no recourse to recover from Louisiana the damage that might have been done to this property of hers. The property in dispute.

Q. Well now what recourse have they to recover from Mississippi the two cent tax on that great quantity of oysters that have been taken from the neutral territory Governor?

A. The neutral territory? Mississippi has as much right
1934 to that territory today as you have.

Q. I say, suppose it is decided that the line is the deep water channel?

A. I don't know that you have any recourse whatever.

Q. Would not we be in the exact position that Mississippi would be in?

A. Certainly, but if I am correctly informed Louisiana enjoys all of the privileges of this territory in dispute, that Mississippi has been accustomed to fish in, and in addition thereto you have the exclusive right below the shore line and north or the red line as indicated on that map.

Q. But you seem to forget if I am not mistaken; at least I would be glad to know whether you are also considering the fact that

isiana has given to Mississippi for her exclusive use, an equal or territory within nine miles of Louisiana's coast?

. You mean that north of the coast?

North of the channel?

y Gen. McCLURG: Counsel for Mississippi notices that the nsel for Louisiana speaks of Louisiana giving Mississippi certain ts, and has reference of course to this neutral zone agreed upon. nsel for Mississippi presumes that the counsel for Louisiana mes, that Louisiana owns it and gives it to Mississippi tem-rily, and if counsel for Louisiana has no objection counsel for issippi would be glad for him to state whether he believes as a er that these oyster commissions of the two States had a right tablish this neutral line and to bind either State or both States to it.

By Mr. DYMOND: In answer to which counsel for Louisiana states that he is not on the witness stand and therefore thinks the question is out of order, but he must necessarily reply that isiana contends that in this agreement, and under the circum-ces it was entirely within the province of the two commissions ch were authorized by law to take such action as might be ssary to best subserve the oyster interests of the two States.

Were you aware Governor, that after this agreement was made ernor Longino, aware of the discontent it had caused amongst people of Mississippi, got Governor Heard to call another joint ing of the two commissions at which extensive argument on part of both Mississippi and Louisiana was had, and that the commissions met subsequently in joint session, and the Missis-commission concluded it had no desire to retreat from its origi-greement made with the commission of Louisiana?

I understand there was some thing of that kind. Of my own wledge I don't know what it was. I understand that there was eting, but I don't know what was done.

By Col. ZACHARIE:

Governor, you are aware that under section 4 of the constitu-of the State of Mississippi adopted in 1890, that it is provided the legislature shall have the power to settle disputed boundary een the State of Mississippi and its coterminous States whenever dispute arises. Now suppose the question were to arise tomorrow een the State of Alabama and the State of Mississippi as to her ndary. Would not you consider that you would have the power ppoint a commission to examine into the facts and make a re-in order that you might transmit it to the legislature for their action?

A. There is no question about the authority of the governor to appoint a commission to do anything that he wanted done at character, but the report of this commission should have no

binding effect upon the people of Mississippi or upon the governor himself. It would not have any binding effect upon any body.

Q. Now Governor, this neutral zone was established by this commission in 1902, September 27th, 1902. Governor Longino recognizing that action requested a modification—how many meetings of your legislature, that is of the legislature of Mississippi have been held since 1902, September 27th, 1902?

A. Only one since 1902.

Q. Was there any step taken in that legislature, or any action whatsoever repudiating this action of the Mississippi Oyster Commission or the boundary commission?

A. I don't remember any thing that was done, but I have never seen yet any man, woman or child who regarded the action of this commission in fixing the line as having any legal, binding force upon any thing or any body whatever. I don't think there is any body; I don't think there is a man in the State of Mississippi that thinks so.

Q. Did not Governor Longino so regard it when he asked for a modification of it?

A. I have no idea what he regarded.

Q. Would it not strike you that way, under that statement of fact, if he asked for a modification of the agreement?

A. Evidently he thought it was hardly just to the people of Mississippi, in the agreement that was made, and probably Governor Longino thought it would be better if he could get—if any body was to observe this agreement—it would be better if he could get a more just distribution of the privileges and opportunities in this disputed territory by a modification. I have no doubt but that is
1937 what he thought.

Q. Does not it strike you that asking for a modification of the existing agreement was an acknowledgement of the binding force of the agreement?

A. As a matter of course you know very well as a lawyer that the governor of Mississippi with the authority of law bind the people of Mississippi.

By Gen. McCLURG: The counsel for Mississippi must object that the question only calls for the opinion and surmise of the present governor as to what induced the former governor to act, and to give his opinion as to what the former governor did, which is a very difficult thing for the present governor to do.

By Col. ZACHARIE:

Q. I only asked that question because you said that you supposed that there was not a man, woman or child in the State of Mississippi who regarded that agreement as having any binding effect?

A. I said legal binding effect. I will state in this connection that that has been my observation.

Q. Now Governor in regard to the instance you cited in regard to the corn field. Suppose a man brings a suit claiming that he is in

ession of certain property, and that other persons are trespassing
n that property. Would not the person bringing the suit and
ning the possession be upheld in the possession of this property
ng the pendency of the suit subject to the return of rents and
nues in case that his opponent the defendant, should succeed
ld not the plaintiff remain on the premises and draw from it
rents and revenues until the adverse decision was made against
?

Well that is true, but if he were permitted to do that he
ld be required to give some surety to the other party to the
controversy, that in the event he should lose his case he
could return to this person, the other party to the suit, his
interest in the matter. He would therefore have some pro-
on. In this case if I am correctly informed, Louisiana is en-
ng the exclusive privilege of fishing upon a certain part of this
tory. She is reaping the revenues from it and in the event
issippi should win the case, I know of no recourse that Missis-
would have upon Louisiana to recover that, and in the mean-
Mississippians with equal rights because we must presume that
the court determines the question, are deprived of the privilege
hing upon that disputed territory.

Could not Mississippi if she won this suit, immediately insti-
a suit in the Supreme Court of the United States to recover the
ages which she has sustained by the wrongful act?

I don't know about that, but she ought not to be put to that
ble.

The damages she has sustained by the wrongful action of
siana being Mississippi's contention? If that is sustained, I

Well unless Mississippi should make every effort to protect her
interests in this I don't know that she could.

Redirect examination.

By Mr. McCLURG:

Governor, you stated in your cross examination that you were
ctly willing to admit that there were facts on both sides of this
which justified this controversy, otherwise it would not now be
ing in the court. We are not to understand by that as I take
What you are perfectly familiar with all of the facts of this case
ou?

By Mr. DYMOND: Objected to on the part of the State of Louisiana as leading and suggestive of the answer desired.

I think if you will refer to the question asked there you will
at I used the word "presume." I intended to. The fact is, as
ed in my original examination, that I am not familiar with all
e facts in the case. What I intended to say was I presume there

are facts on both sides which justified this controversy or it would not be in the courts.

Q. The point that I want to call your attention to is, it is denied on the part of Mississippi that there is any such controversy between these two States within the contemplation of the Constitution of the United States, giving to the Supreme Court of the United States jurisdiction. I wanted to ask you whether you were sufficiently acquainted with the facts in the case to say that there is such controversy as the Constitution of the United States contemplated or not?

By Mr. DYMOND: To the question the counsel for the State of Louisiana specifically objects and excepts and protests, as being especially suggestive of the answer desired, and being put with the purpose of trying to correct an admission made by the governor of the State of Mississippi.

A. That is a question of law. What I said in answer to the question above was, that the facts on both sides of this question between the parties to the controversy justified it, I presume they thought so, or the suit would not be prosecuted.

Q. Counsel for Louisiana asked you whether you knew of any act of legislature of the State of Mississippi repudiating what Governor Longino had done in appointing this boundary commission. I will ask you whether you know of any act of legislature, a joint or concurrent resolution of that body ratifying what Governor Longino had done in this matter?

1940 A. I do not.

Q. Do you know of any act or resolution of the legislature of the State passed and adopted respecting this matter whatever?

A. I don't recollect one at this time. I don't think there was any such act or resolution passed by the legislature.

Mr. E. M. BARBER, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows:—

By Gen. MCCLURG:

Q. Mr. Barber where do you reside?

A. In Biloxi, Mississippi.

Q. How long have you lived in Mississippi?

A. Since 1868.

Q. When were you born?

A. In 1858.

Q. So you have lived there all your life except the first ten years?

A. Yes sir.

Q. Have you ever held any office in the State of Mississippi and if so what?

A. I represented Claiborne county in the legislature in 1890. I was presidential elector on the Democratic ticket for the then ser-

enth district in Mississippi in 1900. I now represent the county of Harrison in the legislature of Mississippi.

Q. Where is your present place of residence?

A. Biloxi, Harrison county, Mississippi.

Q. How long have you lived there?

A. Nine years.

Q. I believe you have taken some interest in this suit between Louisiana and Mississippi since its institution Mr. Barber haven't you?

1941 A. I think a little.

Q. You have some information of the neutral line being adopted by the Oyster Commission of Mississippi and the Oyster Commission of Louisiana in September 1902?

A. I have no knowledge as to where that line is located, but I have some knowledge of there having been a line adopted by the joint commissions of Mississippi and Louisiana. The oyster commissions as I understand it.

Q. In September 1902?

A. I think it was in September 1902.

Q. Can you state what effect that had upon the people of your State interested in the oyster industry?

A. Well do you mean financially?

Q. Yes sir.

A. I think it had considerable effect upon the coast of Mississippi. The people living along the coast. As to their financial interests their sources of living etc.

Q. Do you know of any action taken by the people of Harrison county on that subject?

A. I remember that shortly after the boundary commission as it was termed, that was appointed by the governor of Mississippi, and that of Louisiana having failed to agree as to where the line between the two States was, that the oyster commissions of the States, assuming I suppose, that they had the authority to do what they afterwards did, agreed upon what has been considered as the neutral territory. As I have said before I don't know where that neutral ground is. I know nothing about that, but I think that that agreement was made by this oyster commission some time in September 1902. I know a few days afterwards that the feeling run so high along the coast of Mississippi as to what the oyster commissions had done that there was a mass meeting held in the Fireman's hall in the city of Biloxi to protest against this action on

1942 the part of the commissions, at which meeting there was a committee appointed to confer with the board of mayor and aldermen of the city of Biloxi and enlist their assistance, or their aid, in trying to get the governor to take a hand in the controversy and if possible to get a modification or entire repeal or disregard of that agreement made by the oyster commission. At that meeting I was appointed along with two other gentlemen, Mr. E. C. Joullian and Mr. J. D. McKie to go before the board of mayor and aldermen

at their meeting, the following night, I think a regular meeting, and present this matter to the board. Mr. Joullian and myself went before the board of mayor and aldermen. Mr. McKie had to leave the next morning I believe for New Orleans and Jackson and could not be with us that night. Mr. Joullian and myself went before the board and stated to them the object of our visit. The board then took the matter up and appointed a committee of three from the board to confer with this committee composed of Messrs. Joullian, McKie and myself to prepare a letter to the governor and lay the matter before him, and to do what these two committees thought ought to be done in the premises. We held a meeting I think the next day, and prepared a letter to the governor, and transmitted to him a copy of the resolutions passed by the mayor and board of aldermen, with such comments as we thought were proper to make thereon. That letter was very promptly replied to by Governor Longino, and there was then a meeting held shortly afterwards in the rooms of the Commercial club, and Governor Longino was there,
and was apparently doing what he could to bring about a
1943 better state of affairs than then existed, and after that I believe there was a meeting held in New Orleans, a joint meeting.

Q. You were present were you not?

A. Yes sir I was present at that meeting. Only one man I remember to have seen since was at that meeting, that is, I mean for Louisiana, and that was Mr. Dymond. I had the pleasure of meeting him again today. I remember him for his work that day. However I don't think there was any thing come of that meeting would assist Mississippi in righting what she conceived to be wrongs perpetrated on her.

Q. What State officers were here if any on that day?

A. Governor Longino was here, and Gen. McClurg. Gen. McClurg was then attorney general. I don't remember any of the other State officers of Mississippi.

Q. Any State officers of the State of Louisiana?

A. All I remember is Governor Heard. He was there.

Q. Do you remember whether the attorney general, General Guion was there?

A. I don't remember to have seen him. If he was there I did not locate him.

Q. I have here Mr. Barber, a document dated Biloxi, Mississippi November 5th, 1902. By his excellency A. H. Longino, governor of Mississippi, signed by E. M. Barber, E. C. Joullian, committee on the part of the citizens' meeting, T. J. Rossell, J. B. Charin, E. Glennon, committee on the part of the mayor and board of aldermen and also thereto attached copy from pages 130, 131, 132, Minute Book No. 5, of the mayor and board of aldermen of the city of Biloxi, certified to by A. G. Sweatman, clerk of the mayor and board of aldermen of the city of Biloxi on the 24th, day of August
1904, and which document is now in connection with your
1944 testimony produced for identification and offered in evidence as Mississippi Document No. —, copies of which will be

led to the counsel for Louisiana. I wish you would say if
resolutions have reference to the meeting of which you have
en?

They do. The letter, of which a copy you have just given the
sel for Louisiana, is the letter written by this committee, which
ve just mentioned as being appointed by the citizens' meeting,
the mayor and board of aldermen, to the governor of Missis-
, bearing upon this question of the boundary dispute. I think
s written on the fifth of November 1902. That is a copy of
etter press copy which is in my letter book. I have forgotten
umber of the page. I think it is No. 7 or 8, and page 450.

You mean of the letter addressed to Governor Longino?

Yes sir, and that the communication addressed by this com-
e appointed by the citizens' meeting to the mayor and board of
men of the city of Biloxi, and their resolutions authorizing and
inting a committee to confer with the citizens' committee and
ss a letter to the governor of Mississippi. I believe that is all
e documents there.

What have you to say Mr. Barber as to the effect that this
al line adopted by the oyster commissions of the two States
the citizens of Mississippi and especially those on this Gulf
?

Well I only know from hearsay of course. I am not an oyster
r either raw or canned.

I mean from the men affected by it. What is the effect on
?

I understand from the packers as well as the oyster dealers
that it has been very detrimental to their interests.

Q. How about the raw oyster dealers?

A. They have been badly hurt from what they have told
Numbers of times they have not gotten sufficient numbers of
s, and they all think that that territory from which Louisiana
riven them is territory belonging to the State of Mississippi
hey ought to be allowed to go on there.

You are an attorney, practicing I believe at Biloxi, Mr.
r?

Yes sir, and I for one think very strongly that they ought to
owed to go there. I think it very strongly, and I thought it
ongly in the meeting that was held over there, after this, what
ceived to be an arbitrary ruling by these two commissions. I
never been drawn to a soldier's life, but I was willing to go
there with them then and see the boys had their rights.

That is after they drew this line?

Yes sir, Governor Longino and cooler heads prevailed, but I
ht that they ought to go down there.

That is after the filing of the suit in this case?

Yes sir.

The suit was filed on October 27th, 1902?

Yes, sir.

Q. And your resolutions were in November?
A. Yes sir, it was immediately after that.
Q. Then do you know of any threat of violence, or threa
armed conflict between the officers of the parish of St. Bernard
the officers of Harrison county prior to the institution of this
A. No sir, I don't know of my own knowledge of any armed
flict at all.
1946 Q. Do you know of any serious trouble between the
States before this suit was filed?
A. No sir.

Gen. MONROE MCCLURG, a witness on behalf of the State of
sissippi, being duly sworn, testified as follows:

By Gen. WILLIAMS:

Q. Mr. McClurg, you were once attorney general of the St
Mississippi were you?
A. Yes sir.
Q. You were attorney general at the time the suit betwee
State of Louisiana and the State of Mississippi was instituted
not you?
A. Yes sir.
Q. You were attorney general of the State of Mississippi a
time there were some meetings held between the governor o
State of Mississippi and the governor of the State of Louisiana
the attorney generals of the two States, and the oyster commis
of the two States, relative to settling the controversy at the tim
isting between the State of Mississippi and of Louisiana?
A. Yes sir.
Q. Please state to the commission every thing you know rel
to that controversy?
A. To the best of my recollection the first time my attention
called to this while attorney general of the State of Mississippi—
time in October 1902. The process was mailed to Governor Lo
and myself by the clerk of the Supreme Court of the U
States, asking us to accept service which we did. That
1947 my first official act in the matter. The next action take
me as attorney general was to accept the invitation or req
of the governor of Mississippi to go with him to New Orleans
meet the governor of Louisiana, W. W. Heard, the attorney ge
Judge Walter Guion, and the Oyster Commission of Mississippi
the Oyster Commission of Louisiana, to deal in some way with
neutral zone line which had been previously agreed to by the o
commissions of the two States. We met those officials here
went into a discussion of the matter in an informal and general
Mr. Breaux who has testified in this case twice, presided. Gove
Longino insisted that the people of Mississippi were not sati
with the arrangements made by the oyster commission, and so

to have it materially modified, if not to have it abolished. I am not sure, I am rather inclined to think the object was to modify it. My own views then as the official representative of the State, as expressed by me in the meeting was that there was no controversy within the contemplation of the constitution between the two States, and that there was no authority for this neutral zone, and while it was expedient to have the line fixed, I felt precisely as the Boundary Commission of Louisiana felt, and expressed itself to the Boundary Commission of Mississippi, that it was a matter with which the legislatures of the two States should deal. The officers, governors, attorney generals of the two States were requested by some body to retire and leave it to the commissions to further discuss. My opinion is that later we did nothing. My opinion was, as long as I was attorney general, and since, was to the effect that the neutral line worked harmfully to the people of Mississippi interested in
1948 the oyster business, and especially so those interested in the raw oyster business because the lines agreed upon by the two commissions in September 1902 delivered over the marsh territory to Louisiana, and in that territory was found the best oysters for the raw trade. It must be that I had heard some thing of the meeting in January 1901, but I have no recollection of any official action taken by the attorney general until the service of the process upon him some time after the 27th, of October 1902.

Q. General McClurg when were you elected attorney general of the State of Mississippi?

A. I was elected in 1899, and inducted into office January 15th, 1900.

Q. How long had you been in office before you were informed about the controversy between the State of Mississippi and the State of Louisiana relative to the boundary line between the two States?

A. As I stated a moment ago, I must have had some information about the meeting held here in January 1901, but I have no distinct recollection of any action taken by me until November 1902.

Q. By you as what?

A. Attorney general of the State of Mississippi.

Q. You have been engaged with this case on the part of Mississippi since it was instituted on the part of Louisiana?

A. Up to the 4th of February 1903 I looked after it as an official duty, but after I had resigned the office of attorney general and went to Greenwood, some time, I don't remember how long after Governor Longino wrote to me in substance that the duties of the office of the attorney general were so great, and the interests of the State involved in this suit were of such magnitude as to require assistance for the attorney general, and because of my familiarity with it he de-
1949 sired to retain me to aid the attorney general in this suit with the understanding that I look to the legislature for compensation, and I accepted the employment.

Q. Since which time as I understand it you have been regarded as the leading counsel in the case?

A. Well I have followed the case more closely in taking the testimony than any other attorneys in it on our side.

Cross-examination.

By Col. ZACHARIE:

Q. General, you had resigned the office of attorney general before any sort of intimation of your connection in this case as assistant counsel with the attorney general had you not?

A. Why Judge, I would have resigned the attorney general's office a year before I did except for a little pride, and the fact that I would have necessitated under our laws an election to fill the office. I notified the governor and several of my intimate friends that when he got within the time that he could appoint I would quit the office and this case had no more reference to my quitting the office; this case had no reference at all to my quitting the attorney general's office, or any other business consideration outside of the desire to return to a better paying private practice.

Q. Well you say General that the first connection that you had with any of these matters here was an acceptance of the service of the bill of complaint of Louisiana?

A. That is my recollection.

Q. Then when you came to New Orleans with Governor Longino and you found that the Louisiana Oyster Commission was
1950 not willing to modify the pre-existing agreement, was not the concensus on both sides that that should remain as a sort of *modus-vivendi* temporarily, that is to prevent any trouble between the people of the two States?

A. I could not tell you. I don't feel so. I suppose it must have been between the two commissions, but I want to say in this connection that I as an official of the State of Mississippi, and as a citizen of that State, I have been absolutely opposed to that ever since I found out that that agreement had been made. I think it was not only without authority of law, but detrimental to our side of the question.

Q. Was not Governor Longino of the impression that it had better remain as a *modus vivendi* between the two States rather than to risk bringing on some sort of trouble. There was no further effort was there to declare the agreement null and void?

A. My recollection is that I made this suggestion in that meeting Mr. Dymond was there, and perhaps he will remember it as I do. That we have here the governor of Mississippi, and the attorney general of the State of Mississippi, and we have the Oyster Commission of Mississippi. We have here the governor of Louisiana and the attorney general of Louisiana and the Oyster Commission of Louisiana. Let these officials recommend to the legislature of the two States to take this matter up and provide for its adjustment. That it has got to be settled by commissioners after all, whether they are appointed by the Federal court or the United States Se-

se Court, or by the legislature. I thought it would be cheaper
more satisfactory, and I remember Governor Heard stating that
they were not willing to withdraw it from the court. To let
it go along, and so whether Governor Longino and the others
thought it was better to leave it alone, there was no other
rnative left them than to make the fight.
Q. Governor Longino sent in a message, did not he to the legis-
re of 1904 before he went out of office?
A. Yes sir, I introduced it in evidence here today.
Q. Does he mention in there anything about this oyster business?
A. Well the message speaks for itself, but my recollection is that
informed the legislature that at the request of the governor of
isiana he had appointed these boundary commissioners to take
e consideration the determination and the easy method of settling
e question, and recommended the legislature to take such action
t saw proper, but there was no action taken by the legislature of
2 at all.
Q. Did you furnish the Louisiana counsel with a copy of that
sage?
A. Yes sir.
Q. Will did he deliver a message in 1904?
A. Yes sir.
Q. Have you got a copy of this message?
A. Not with me, no sir. We can furnish you a copy and we will
glad to do so.

It is agreed between the counsel for the State of Louisiana and for
State of Mississippi that this session is now adjourned until
nday September 5th, at 11 a. m. at the office of the United States
trict court, at this place, at which time Commissioner William D.
llard will be requested to preside unless there be some agreement
to the contrary, at which time the testimony of Louisiana in
2 rebuttal will be resumed, and should anything in the mean-
time prevent the meeting on that date, another date shall be
ed by counsel for meeting, by agreement both counsel waiving
ten days in this record by previous agreement, at which time the
nsel for the State of Mississippi will be permitted to introduce in
idence any maps or any documentary evidence which may be at
t time in his possession.
The commission here adjourned until Sept. 5th, 1904.

53 In the Supreme Court of the United States.

STATE OF LOUISIANA } October Term, 1904. Original
vs. } Bill Number 11.
STATE OF MISSISSIPPI. }

I, Frank H. Mortimer, commissioner, appointed by the honorable
Supreme Court of the United States in the above entitled and
mbered proceeding, do hereby certify that, under agreement be-

tween counsel for the respective parties therein, of record testimony on behalf of the State of Mississippi was taken before me, at the city of New Orleans, State of Louisiana, on the 27th day of August, A. D. 1904, and that a transcript thereof is contained in the record of testimony for the State of Mississippi, in volume No. 5, beginning at page # 1297 and ending at page # 1387, both inclusive; said testimony being transmitted herewith;

I further certify that the several exhibits offered in connection with said testimony so taken before me, and enumerated and set out therein, each identified by my signature, are also transmitted herewith.

In witness whereof, I have signed these presents at the city of New Orleans, State of Louisiana, this ninth day of February, A. D. 1905.

FRANK H. MORTIMER,
Commissioner.

1954 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
v.
THE STATE OF MISSISSIPPI. } Original Cause No. 11.

I, Frank M. Peyton, certify that in the above styled cause I was appointed and sworn as official stenographer on the part of the State of Mississippi; that the oral testimony on the part of said State was taken down by me in short hand before Hon. William D. Bullard, commissioner for said State, and Hon. Frank H. Mortimer, commissioner for the State of Louisiana, and by me extended in typewriting as shown by the accompanying volumes, to-wit:

Vol. 1 from page 1 to page 303 inclusive.
Vol. 2 from page 303 to page 610 inclusive.
Vol. 3 from page 610 to page 923 inclusive.
Vol. 4 from page 923 to page 1144 inclusive.
Vol. 5 from page 1144 to page 1387 inclusive.
Vol. 6 from page 1387 to page 1496 inclusive.

I certify that said six volumes, in triplicate, the original and one for each State, contains a true and correct report of all the testimony and of the proceedings had in said cause before said commissioners taken down by me and by me extended in typewriting as aforesaid, on the part of the State of Mississippi in said cause.

Witness my signature this November 1, 1904.

FRANK M. PEYTON,
Official Stenographer.

1955 United States Supreme Court.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI.

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" " 107, 108, 109..... 1494
" " 110, 111..... 1495
" " 112..... 1496
Conclusion of taking testimony..... 1496

1957 JACKSON, MISSISSIPPI, September 22nd, 1904.

Pursuant to adjournment at New Orleans, September 16th, the commission met at Jackson Mississippi this 22nd day of September 1904, the notice being waived and this meeting being held by consent of counsel.

Present: Hon. William D. Bullard, commissioner for the State of Mississippi. William Williams, attorney general, and J. N. Flowers,

assistant attorney general, and Gen. Monroe McClurg, associate counsel for the State of Mississippi. Col. F. C. Zacharie and Mr. John Dymond Jr., associate counsel representing the State of Louisiana.

In accordance with the agreement of counsel entered into by counsel at New Orleans September 16th, 1904, the State of Louisiana now offers, produces and files in evidence the following documents.

Document No. 103 being a copy of act 65 of 1884 of the legislature of the State of Louisiana authorizing and empowering the attorney general to institute and prosecute suits on the part of said State, a copy of which said document is now tendered to counsel for the State of Mississippi.

And also Document No. 104 being a chronological compilation of the acts of Congress, constitutions, codes and laws and extracts therefrom concerning the State of Mississippi, and boundaries thereof and of certain counties forming the southern coast of said State, a copy of which is furnished counsel for the State of Mississippi.

1958 And also Document No. 105, being a chronological presentation of extracts of acts of Congress, the constitution of Louisiana, laws of the State and boundaries of St. Bernard and Plaquemines parishes in said State, a copy of which is to be furnished to the counsel for the State of Mississippi.

And also the official map of the State of Mississippi compiled by T. S. Hardee and published in 1869 to be known as map No. —.

A photographic copy thereof to be furnished to counsel for the State of Mississippi, if counsel for the State of Louisiana are able to photograph it.

By Gen. McCLURG: Counsel for the State of Mississippi now offer and introduce in evidence on the part of said State the following documents. Mississippi Document No. 81, being that part of the biennial message in pamphlet form of Gov. A. H. Longino to the legislature of the State of Mississippi Wednesday, January 6th, 1904, under the heading "State boundary controversy," being on pages 17 and 18 of said message. A copy of which is now handed to the counsel for the State of Louisiana.

Counsel for Mississippi now offers in evidence Mississippi Document No. 82, being that portion of the report of the U. S. Commission of Fish and Fisheries on the oyster beds of Louisiana by H. F. Moore, dated Washington, Government Printing Office 1899, from page 47 inclusive down to the heading "The natural oyster beds of Plaquemines parish on page 68, and to include the map made of the recognizance of the U. S. Fish Commission steamer Fish Hawk, Lieutenant Franklin Swift U. S. N. commander, February

1959 18th, 1898, a copy of which counsel for Louisiana waives.

Counsel for the State of Mississippi introduces in evidence Mississippi Document No. 83, being portions of the first annual report of the oyster commission of Louisiana, to the governor and General Assembly of that State from August 11th, 1902, to January 31st,

04, dated New Orleans, La. Made 1904, and being those portions said report from pages 5 to 18 inclusive of both, and from pages to 29 inclusive of both. And the communication of Mr. J. B. aylor from pages 73 to 81 inclusive of both, and "The oyster in ouisiana, by John Dymond Jr., attorney Oyster Commission of ouisiana," from pages 83 to 107 inclusive of both, a copy of which cument in all of its parts is waived by the State of Louisiana.

And counsel for the State of Mississippi introduces in evidence as ississippi Document No. 84, which is short and will here be read to the record, as follows:

"Chapter 20 of the Laws of the State of Mississippi of 1842."

An Act Giving Consent of This State to the United States to Purchase a Site on St. Josephs or Half Moon Island for the Purpose of Erecting a Light House Thereon."

"SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the consent of this State be, and the same is hereby ven to the United States, to purchase a site on St. Josephs or Half oon island for the purpose of erecting a light house thereon. Approved February 17th, A. D. 1842."

60 Judge J. A. P. CAMPBELL, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as fol-ws:—

By Gen. MCCLURG:

Q. We have had in this case Judge a good deal of testimony of a cumentary nature, and one of the purposes for calling you on the nd is knowing that you are one of the oldest citizens in the State d perhaps one of its best informed as to her history, we want to k you what you may remember of Eugene W. Hilgard, who was one time State geologist, and who made a geological survey of e State, and also what recollection you may have of Professor L. arper, who made a geological report and map in 1857, and also at you may know of B. L. C. Wailes, who was State geologist, d made a survey, report and map and also what you may know Col. T. S Hardee, who was State engineer. Extracts from the orts of these officials and maps made by them have been introced, and will be introduced in evidence in this case, and we would e to hear from you what you may know of Wailes, Harper, and lgard and Hardee. Please give us such statements about the aracter, qualifications of these men as you may have in memory?

A. I have no recollection of Harper at all. I don't recollect him. an recollect nothing about Harper. I knew Hilgard. I knew him, and I knew of Wailes. I knew very little of Wailes. lgard was a professor in the university and was a man of learn-g. Reputed to be. He went to California, and I am not certain t what he is living in California now. I think he was in the

university in California afterwards, but I don't recollect Harper at all. I do recollect Hilgard and Wailes, but if I knew Harper or any thing of him it has slipped my memory entirely. I think
1961 Wailes and Hilgard were men of reputation; men of character and learning. I knew Hardee. Captain Hardee. I knew him in the army. He was a nephew of General Hardee I think, and he was on his staff I think. I used to see him in Jackson, and he made a map of the State. That is all that I knew about it. I recollect Hardee's map, but nothing more do I recollect about it whatever.

Q. Please examine this book which I now hand you entitled "A Preliminary Report of the Geology and Agriculture of the State of Mississippi by L. Harper L. L. D." ?

A. I have totally forgotten Harper if I ever knew anything about him at all.

Q. And see whether your memory will be refreshed by that book?

A. I don't remember any thing about it. I had been a member of the legislature prior to that, and was after that, but I was not a member of the legislature in 1857. I don't recollect any thing about Harper. I suppose at that time I knew something about him, but he has totally escaped my memory. I recollect nothing whatever about Harper or about his report. I was not a member of the legislature then.

Q. I want you to tell the commission Judge how old you are and what positions you have held in this State. How long have you lived here. A little short biography that the court may know who is talking to them?

A. I was born on the second of March 1830. Admitted to the bar on the 12th of June 1847, when I was seventeen years and two months old, or three months; elected to the legislature at the first election at which I *cloud* vote. I was subsequently elected to the legislature in 1859 when I was absent from home, and was speaker of the house of representatives during two years. Then I was elected one of the seven delegates to represent the Commonwealth of Mississippi to form a southern confederacy, and served in that until the expiration of the provisional government, and after that I was a soldier. I do not suppose you want me to give my military career.

1962 Q. Yes sir, we want it all.

A. Well I was a captain in the army. Lieutenant colonel and colonel, and then after the war I was elected circuit judge of the fifth judicial district and then I was re-elected circuit judge, and then I retired and went to the bar, and on the people of Mississippi coming to the possession of their own I was made supreme judge by Governor Stone and the senate, and at the expiration of my nine years' term I was again made judge by the appointment of Governor Lowry and the confirmation of the senate, and each time I might add without solicitation on my part at all. I did not seek the place either time. I served 18 years and then quit. Governor Stone

wanted to continue me, but I told him that I was tired and wanted to quit.

Q. You codified the laws of this State?

A. Yes sir, I was a code commissioner in 1870 and 1871, one of the commission, and then I was a single codifier by virtue of invitation of the legislature of 1878, and prepared the Code of 1880, and submitted it to the legislature of 1880. I was elected law professor of the university but declined it.

Q. In the answer which has been filed on the part of the State of Mississippi in this case we have referred to the codification of 1880 with reference to the boundaries of Hancock, Harrison, and Jackson counties?

A. Yes sir.

Q. Those sections that we refer to in this answer were prepared by you and adopted by the legislature of the State?

A. Yes sir.

Q. I wish you would please tell the commission Judge, in preparing that codification what you mean by the southern boundaries of these coast counties?

By Mr. DYMOND: To which counsel for the State of Louisi-
1963 ana objects and excepts on the ground that the code is itself the best evidence, and it is not proper to explain it by any verbal testimony.

A. I just followed the Code of 1857. The Code of 1857 was prepared by Sharkey, Ellett and William L. Harris, three very learned and distinguished men, who gave considerable attention to the subject and made considerable report to the legislature. It is set forth in full in the Code of 1857. I adopted that assuming it to be correct and followed it. I knew nothing in the world about the coast country at all. I never paid any attention to it. I supposed then, as I suppose now, that the southern boundary of Mississippi would be determined by the ascertainment of what is 18 miles from the shore. The act of Congress gives the boundaries of the State, and runs from the southeastern point westwardly. That is I suppose intended to vary from the line as the shore varies. I suppose that the southern boundary was 18 miles or six leagues from the Mississippi shore, and that is determinable I suppose as a matter of fact, but I followed in the codification of 1880 on that subject the Code of 1857.

Q. If you have read the act of Congress admitting the State of Louisiana you will notice that she is given three leagues from her coast?

A. Yes sir, I have noticed that.

Q. There is apparent conflict according to the contention of Louisiana between the three leagues of Louisiana to her eastward in Lake Borgne or Mississippi sound and the six league limit to Mississippi's south. What do you think of that proposition?

A. I can not say that I have any opinion on that subject at all.

I am not familiar enough with it to form an opinion that would be worth any thing or that would be satisfactory to me even. It is a subject to which I have never given any attention at all, as to the conflict between the two States.

1964 Q. It is insisted in our answer that Congress had in view a frontage for each State, and that it was not intended Louisiana should reach out in front of Mississippi's territory which was to her east after 1812 when she was admitted into the Union?

A. Well I would think the Supreme Court of the United States would not have the slightest regard to my opinion or any one else's in an investigation of that question. They would determine it from a consideration of the various acts of Congress, and reconcile the real or apparent conflicts between them. I really have no opinion on that subject, but if I had I should not think it would be of any value.

Q. I will ask you to please look at map No. 7. introduced on the part of Louisiana and notice the blue lines indicating the three league limit of Louisiana from different points, and the red line indicating the six league limit of Mississippi from her shore, showing the apparent conflict contended for by Louisiana, and tell us what you have to say about the solution of this question?

A. Nothing. I would not attempt to solve it.

Cross-examination.

By Mr. DYMOND:

Q. Judge Campbell, it has been pointed out to you according to map No. 7. by Mr. McClurg that if Louisiana was given all of the water territory and islands within nine miles of her coast by the act of Congress, and Mississippi was given all islands and water within 18 miles of her coast by the act of Congress, and that brought about an over-lapping of the two as is shown by map No. 7. which act of Congress would be given force and effect in your opinion in the event that there was no possibility of reconciling the two?

1965 A. I should suppose that the earlier act would be operative. It is a subject that Congress had the power to deal with, and I suppose that it could not take back after it made a gift or grant.

Q. Without the consent of the State to whom the land had been given?

A. Well of course. I am assuming that there was no consent about it. I suppose that a grant by Congress is like a grant by any one else. Irrevocable.

Q. You don't pretend to be familiar with the acts of Congress creating the two States in their relation to this disputed territory of it?

A. No sir.

By Col. ZACHARIE:

). You have been examined in regard to Prof. Hilgard. Was he a professor of geology, and had he any reputation as a geogra-r or cartographer?

. I don't know about that. I am not prepared to say. He was rofessor in the university and regarded as a man of learning and lity and good character, but as to his particular specialty and t he was expert in I don't know about that. It has been a long e since I knew him.

). Have you ever heard the correctness of Hardee's map called uestion at all until the inception of this litigation?

.. I don't remember to have heard anything about it good or . Favorable or unfavorable.

). You have stated that in preparing the Code of 1880 you fol-ed the Code of 1857. Do you know or not whether that Code of 7 was the first act of law of the State of Mississippi which claimed sdiction over the islands south of Hancock and Harrison nties?

.. I never examined that subject. I never went behind the Code 857. I accepted that as correct and followed it in the codifica-tion of 1880 without question.

6 Q. The Code of 1857 which I can read to you here was the first code that spoke of the islands south of Harrison and Han-k counties being within the jurisdiction of Mississippi. Now there another code adopted in 1871?

. Yes sir, I was one of the commissioners.

. That code mentioned—, I will read you what that code says: ancock county (established December 14th, 1812,) is bounded by beginning at that point on Pearl river where the line between nships two and three, south intersect said river; thence east on township lines, to the line between ranges 13 and 14 west; nce south on said range line, to the boundary of the State, on the f of Mexico; thence westwardly, on said boundary to the eastern ction of Pearl river with Lake Borgne; thence up Pearl river to beginning." So this mentions nothing about the islands, but s to the southern boundary of the State on the gulf of Mexico. t was the existing law at the time when you prepared the Code 880 was it not?

. Yes sir.

. And the Code of 1871?

. Yes sir.

. It does not mention anything about these islands. Now do remember this section of the acts adopting your Code of 1880, on 98. "The foregoing sections are intended to define the bound-s of counties as heretofore established by law; and if the bound-s, as defined in said sections, are not the same as heretofore es-ished by law, the former law on that subject shall not be held to epealed or affected thereby, but shall remain in force as to said ndaries, notwithstanding the passage of this act."

1967 A. I remember that section very well. I wrote it as a safeguard against possible error that might have been committed in description.

Q. Therefore the act of 1871 being in force prior to the Code of 1880, and the Code of 1871 not saying or mentioning anything about these islands, the Code of 1880 did not repeal the section or those sections of the Code of 1871 which was the then existing law?

A. I suppose not. That section was put in there simply to guard against possible errors in the details of boundaries and things of that sort.

Q. Then in preparing the Code of 1880 you skipped over the Code of 1871, and went back to the Code of 1857?

A. Yes sir, I took that as my guide and model.

Q. And the Code of 1880 differed from the Code of 1857 in fixing the boundaries of these two counties?

A. I don't remember about that.

Q. I just read to you the provisions of the Code of 1871 showing that that did not provide any jurisdiction over these islands?

A. That might not have mentioned these islands, but these islands might have been embraced in that distance. I don't remember about that. I don't suppose it would be necessary to mention the islands. They might cover it by space or distance. So many miles. 18 miles.

Q. Judge, which army of the Confederacy did you serve in?

A. In the western army.

Redirect examination.

By Mr. McCLURG:

Q. You have been questioned Judge about the saving clause that you put in the Code of 1880 respecting the detail of the bound-
1968 aries of all counties. According to the Code of 1880, and the Code of 1871, and the Code of 1857, and the act of Congress admitting Mississippi as a State into the Union, and saying that the southern boundary shall be the shore, including all islands within 18 miles. What was the lawful exercise of sovereignty and jurisdiction of the State of Mississippi in that 18 mile limit, or six league limit under either of these laws?

A. I don't know that I comprehend the full force of that question. The purpose of the provision was to guard against possible error in running the boundary lines of the counties. It was a matter of very great nicety and that was done to avoid error—giving the ranges and townships and sections and subdivisions of a section; it was a very difficult matter and that was done to avoid error, and the purpose of that was to guard against any possible error in the description of the counties in these details, and it was most unfortunate that the codifiers of 1882 did not embrace it, and Governor Stone expressed regret that they had not done so, because it was found that there were various errors in the details of the boundaries. Now that pro-

ision of mine in 1880 was simply intended to guard against possi-
le errors. There were matters that were very prolix of detail, and
iat was the whole purpose of it. Now as to what its effect was——
Q. That is what I wanted to ask you?
A. That is a legal question. I would like to have a concrete
ase; as to its legal effect—I can only state the purpose that I had.
Q. I mean to ask you this. Whether the different statements in
those laws had effect upon the jurisdiction of the State of
969 Mississippi over her six league limit in the waters of the
Gulf?
A. Unless there was some inconsistency between the latter law and
he former law which would operate as a repeal it would have no
ffect. Some times you know repeals take place without any actual
ntent on the part of the legislature, as a necessary effect of the lan-
uage employed. There was no purpose of that sort in the framer
f it, in the writer of it who was myself, but as to what the legal
ffect has been I would have to have a concrete case.
Q. Let's take the act of Congress admitting Mississippi into the
Inion. I will refer you to it as copied in the bill of complaint?
A. The purpose was to preserve the *status quo*.
Q. I understand the purpose, but here is what I want to know.
Whether any of these laws robbed the State of her jurisdiction six
eagues from her shore line in the Mississippi sound or the gulf of
Iexico?
A. I would not think so. I should not think it affected the sov-
reignty of the State where-ever it extended rightfully by law.
Q. In the act of Congress admitting Mississippi into the Union do
ou think she had sovereignty and jurisdiction six leagues from her
iore?
A. I should think so. My idea of the act of Congress as I under-
and it is just this. In using the term westerly it was intended to
ake all the variation from the due western line so as to meet the
tting of the shore, and give the State of Mississippi 18 miles from
hereever should be its shore in a general westerly direction. Tak-
ing all the variation from the true western line. I suppose
970 that is the reason that the word westerly was employed. That
is what I suppose, and then the question I learn is w-ether or
ot Louisiana had not on its eastern shore by virtue of the grant of
ongress a boundary that extended much further east than Missis-
ppi was willing to concede. That is the question as I under-
and it.
Apart from the conflict real or supposed between the acts of Con-
ress I should think there would not be the slightest difficulty in
ttling the matter. Ascertain where the shore line is at any point
nd reach 18 miles south, embracing everything within that I sup-
ose. That is what I would suppose to be the meaning of it, but
hen the question arises as to the prior act of Congress conferring
ghts on Louisiana, that raises a question to be settled by the court

as to which was prevailing. That produces difficulty I should suppose.

Recross-examination.

By Col. ZACHARIE:

Q. Counsel for the State of Mississippi seems to misunderstand the effect of the testimony that we are seeking to bring out. We are now on this point. Laying aside the question of the construction of the act admitting Louisiana in 1812, and the act admitting Mississippi in 1817, and as if the reconciling of whether one act shall prevail over the other or not. We are now on this principle that has been decided by the Supreme Court of the United States. Where there has been a continuous claim and control over territory, whether there would be a species of prescription attached to that which is claiming and exercising jurisdiction over it, no
1971 certain number of years. But in the Long Island case they decided as Connecticut had exercised jurisdiction for a number of years over Goose island. They thought that feature was of great importance in that case. Now we are seeking to prove by the changes in these codes that there was but one period during the whole existence of the State of Mississippi, or Territory of Mississippi in which she claimed any jurisdiction over these islands say from 1857 to 1871, and that in 1871 she abandoned that claim in following the Code of 1857 about these islands. And that when you prepared the Code of 1880, you stated that the boundaries as then existing in the Code of 1871 should still remain as they were. The point in question upon which our examination or cross examination is to show the relinquishment from 1871 up to 1884, because in 1880 you state that you did not then disturb the existing boundaries. Now in your opinion, and we are only asking opinions here would not that be considered as a relinquishment of Mississippi's claim to these islands when it was stricken out in the Code of 1871, which had appeared in 1857 so prominently as claiming for these particular counties?

A. I have no idea that there was any purpose to relinquish anything at all. Whatever might have been done was done ignorantly or stupidly or carelessly I suppose. I don't remember the exact provisions of the Code of 1857 on the subject.

Q. It mentions these two particular counties and says the islands lying south of the shore?

A. What does the Code of 1871 say?

Q. The Code of 1871 left out all about the islands, and went on defining the boundaries just as it existed up to 1857?

A. What was the necessity of mentioning the islands if they are embraced in the limits of the 18 miles?

1972 Q. The question is whether she continued her claim?

A. The acts speak for themselves. I suppose there was no intention of relinquishing any thing. Whatever was done on this

ject was done ignorantly or stupidly or carelessly or some thing that sort, but I suppose you have to make what you can out of phraseology of the text. I have no idea that there was any intion of relinquishing any thing. Of course you are entitled to im what you can from the phraseology of the text, the language the sections. The omission in the Code of 1871 to specify the ls might have been in the idea there was no necessity for it if y were embraced in the limits. It was not necessary to specify mention the islands as to the subject of jurisdiction.

By Mr. DYMOND:

. Might not it also have been due to the fact that the people n compiling the code knew that they were within the area; that se islands were within the area belonging to Louisiana?

. Well I was one of the commission and I did not know any ng about it I am sure. I do not think any of the others did.

. You were not one of the commissioners in 1871?

. Yes sir, I was. Yes sir, I was appointed by Alcorn while I at a distant point, arguing a case. Alcorn wanted to compose commission of one Democrat, one Whig and a carpet bagger. as the favorite among the Democrats, and Judge Johnston among Whigs.

By Gen. MCCLURG:

Q. You did not mention the other one?

A. Judge Lovering was the carpet bagger.

Q. He did not stay long?

. He was a Massachusetts man and he did not know any thing ut Mississippi and its boundaries. Neither Johnston or I knew thing about the boundaries down there I am sure. and whatever done in that respect was a mere inadvertence and not done with purpose to rob Louisiana or to relinquish any claim of Mississi. Of course the thing has to stand as it is written.

. You knew nothing about the character of this country down re?

. Oh no sir, nothing at all. Nothing at all.

he commission here took an adjournment until nine o'clock torrow morning, to meet in the attorney general's office in the cap- at Jackson Mississippi.

JACKSON, MISSISSIPPI, September 23rd, 1904.

ursuant to the adjournment of yesterday afternoon the commis- met this morning in the attorney general's office at Jackson issippi.

here were present Hon. William D. Bullard, commissioner on part of the State of Mississippi. William Williams attorney eral, and J. N. Flowers assistant attorney general, and Hon.

Monroe McClurg, counsel on the part of the State of Mississippi Hon. F. C. Zacharie, and Hon. John Dymond, Jr. associate counsel on the part of the State of Louisiana.

Col. CHARLES C. HOOKER, being recalled on the part of the State of Mississippi, testified as follows:—

By Gen. McCLURG:

Q. In this suit Colonel, extracts from the reports made by State geologists B. L. C. Wailes, printed in 1854, and by L. Harper, printed in 1857, and by Eugene Hilgard about the year 1855, and maps taken from those reports will also be introduced in evidence. I want you to tell the commission what you may know of the competency of these distinguished gentlemen and what their reputation was with reference to their professions?

A. I knew Mr. Wailes very well. He was one of the earliest of our officials in the capacity of geologist. A very able man and very capable. Quite so. A man of high character both professionally and personally. I knew Mr. Harper not so well. It so happened that I did not come in contact much with him, but I think his reputation was good in this capacity as geologist. But Professor Hilgard I was intimately acquainted with. He was always my guest at my house when he came here, and I was his guest at Oxford when I went there. I remember spending a week with him once at one of the commencements. He was a man of the highest character both personally and professionally. His report was a very able one. About the maps I could not say, but anything that either of these gentlemen would append to their reports in the way of a map verifying the report I would say was entitled to entire credit anywhere and everywhere.

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Cross-examination.

By Col. ZACHARIE:

Q. Professor Hilgard was a professor in the University of Mississippi was not he?

A. Yes sir, he was.

Q. His peculiar profession was geologist was it not?

A. He was a geological professor when I was there and spent a week in company with my wife. He had just married a very accomplished Spanish lady, and we had some delightful music, and Hilgard was regarded as a scientific man upon any topic that he took any interest in.

Q. Did he ever make any special profession of geography or as a cartographer, or was not it confined to the science of geology?

A. Well I would say Col. Zacharie, that he was a man of very universal information, and I would say further that if there was a man in the State that understood geography of the State of Mississippi it was Hilgard.

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Q. How was it with Mr. Wailes?
A. I think that Mr. Wailes was also capable in that regard, though do not know him as well as I did Hilgard.
Q. And Mr. Harper?
A. I can not speak about Mr. Harper so well.
Q. Is it not a fact that as far as these books are concerned. Is it ot a fact for instance that this report of Harper was simply one nade as State geologist of Mississippi. I see the title in preliminary report on geology and agriculture of the State of Mississippi y L. Harper L. L. D., correspondent to the Imperial Museum for he Natural Science, France, etc., State geologist of Mississippi. light not it appear from that work this was simply a report of he geology of the State and agriculture?
A. I would take it so yes sir.
Q. Mr. Harper was not a lawyer was he?
A. I am not aware whether he was or not.
Q. There is nothing in this report which would show that he rer entered into any scientific investigation of the boundaries of he State?
A. I am not aware except that he would not have been appointed o the State geologist's position unless he was a man that had a very ood knowledge of the State of Mississippi, both as to its geology nd as to its geography.
Q. Well now with regard to the report of Mr. Wailes. This reort is a report of the agriculture and geology of Mississippi, embracing a sketch of the social and natural history of the State, by . L. C. Wailes, geologist of Mississippi. Would that report cover ny thing else than the geology and agriculture of the State?
A. I take it not. The report itself covers those grounds 977 as stated in the preface to it.
Q. Then in so far as the question, the legal question in gard to the boundaries of the State, would you consider either one f these gentlemen as an authority on the subject?
A. I would think they would be sir.
Q. You think they would be?
A. Yes sir.

By Mr. DYMOND:

Q. Colonel, do you remember who was the first geologist of these hree gentlemen?
A. I think Mr. Wailes sir. That is my remembrance.
Q. Do you remember when his report was published?
A. I do not sir.
Q. It would appear that Mr. Wailes has attached to his report no nap of Mississippi showing its geology, and no map at all other han the map of the country comprised in the State of Mississippi known in the years 1704 by Eman Bowem, geographer. The State f Mississippi was not a State in 1704 was it?
A. No sir, it was not admitted until 1817.

Q. Now I direct your attention Colonel, to the map entitled Geological Chart of Mississippi of L. Harper, State geologist attached to his report dated 1857, and also to the map entitled Geological Map of Mississippi, by Eugene W. Hilgard, State geologist, entered according to the act of Congress by J. H. Colton & Co. in the clerk's office of the district — of the United States for the southern district of New York in the year 1855, and I direct your attention to the territory lying west of the eastern mouth or branch of Pearl river which on the map of Harper is distinct in the same color as the
1978 territory of Louisiana lying to the westward And on the map of Hilgard as distinct by the same color as the State of Mississippi lying to the eastward, and I ask you which of these two maps correctly delineat-s by color of that territory?

A. Well I don't know. I don't know that I could tell you who is entitled to it.

Q. Do you know what branch of Pearl river it is that determines the boundary between the States of Louisiana and Mississippi?

A. I would say that it is the main branch.

Q. Do you know what the law says?

A. No sir, I don't know.

Q. Could you tell which is the most eastern branch of Pearl river?

A. Do you mean the mouth?

Q. Yes sir?

A. Well this is it right here (witness shows).

Q. That is to the right hand?

A. Yes sir, to the right hand.

Q. Immediately close to the yellow color?

A. Yes sir, right here.

Q. You are now looking at the map of Mr. Harper?

A. Yes sir.

Q. Well now please look at the other map of Mr. Hilgard and state whether that same territory is given to Louisiana on the Hilgard map as it is on the Harper map by color?

A. Yes sir.

Q. Does not the Hilgard map give that territory to Mississippi. That is the territory that is lying east of Pearl river and south of that branch that goes into the Rigolets?

A. You mean that color?

Q. Yes sir?

A. I would say yes sir, I think it does.

1979 Q. The Hilgard map gives it to Mississippi and the Harper map gives it to Louisiana so far as the color is concerned?

A. Yes sir. I think that Hilgard was a man very superior on scientific subjects to either Harper or Wailes?

Q. And if we could show by the organic law creating the States of Mississippi and Louisiana, that is the acts of the United States Congress, that the eastern branch of Pearl river was the boundary

between the States would it then affect your opinion of Mr. Hilgard when it was shown that he had made a mistake?

A. Well I would doubt very much whether Hilgard could make a mistake.

Q. Even though it appeared to your eyes right there?

A. Yes sir.

Redirect examination.

By Gen. McCLURG:

Q. Counsel for the State of Louisiana have attempted to have you say because of this coloring that Hilgard has given to Mississippi a part of the land that belongs to Louisiana. I call your attention to the reference on this map which will show that Hilgard intended this coloring to represent the geological formation along the Gulf coast?

A. Yes sir.

Q. And not to mark the boundaries of the State?

A. Yes sir.

Q. You will notice that coloring which shows that that line was colored whether in that point of Louisiana or Mississippi as eliocene?

A. That is the color mark.

Q. That is the geological color and not the boundary color?

1980 A. Yes sir.

Recross-examination.

By Mr. DYMOND:

Q. Do you not find the same index of colors on the Harper map at its left hand corner?

A. Yes sir.

Q. A similar index?

A. Yes sir. Now gentlemen, I wish to make a statement of my own motion if you will allow me. I don't know that I can refer to any thing to enlighten you gentlemen in your investigation and to reach a correct conclusion about this matter as to the true boundary between the State of Louisiana and the State of Mississippi, under the respective acts of Congress of 1812 and 1817, and which admitted Louisiana and Mississippi, except to say to you that the first speeches made in the Congress of the United States on the subject of the surveys of the coast, the coast surveys, as it is generally termed; the first speeches that were made of note on the Coast and Geodetic Surveys in the Congress of the United States were made by Jefferson Davis of Mississippi; that was while he was a member of the House and a member of the Senate, and before he became so distinguished in the subsequent history of the country. He had made a great reputation as a scientific man and was no doubt the father, in

my judgment of the establishment of the Coast Survey of the United States, throughout its whole limits from New England to Galveston, and even down to the last portion of the United States. I say that because I am aware of the fact that he has made these speeches. They are now quoted whenever speeches are made on this subject by virtue of their being the true origin of our Coast Survey system, and I think the commission will find from the reports in Miles' register the reports of Congress, in reading these speeches much information on the subject of the true boundary. As I said, when I had the honor to be summoned before the commission in Louisiana, as I said in the remarks that I submitted in New Orleans, that is a question that must depend largely upon the terms of the act in admitting Louisiana in 1812, and the act admitting Mississippi in 1817. It must depend largely upon that. I said in the remarks that I made in New Orleans that I had been of the impression that the line between the two States, the eastern boundary to the end of the main land should project into the ocean and constitute the boundary between the two States on the water. I want to correct that statement to this extent and say, that when the boundary between the two States reaches the terminus of the main land between the States and enters upon the waters of the gulf of Mexico, or Mississippi sound, it must be governed largely by the maps which have been made by scientific engineers who made the Coast and Geodetic Surveys of Louisiana and Mississippi. I say this in explanation of the remarks that I made there.

1981

I remember that Mr. Jefferson Davis resigned his position in the House of Representatives and accepted a position as colonel of the First Mississippi Rifles in the Mexican war. That would put it in 1846 because the Mexican war began in 1846. Subsequent to that time when Mr. Davis came back he was elected to the Senate, and these speeches were made during his incumbency as Representative of Mississippi. There were two representatives at large, Mr. Davis being the one from the South. He being the delegate from the South.

Q. You use the word delegate?

A. I mean Representative. Because the representation in Congress was then two men, Davis being one of them. These speeches on the Coast Survey question were made while he was in the House and possibly continued while he was in the Senate after he returned from Mexico.

1982

Governor A. H. LONGINO, a witness introduced on behalf of the State of Mississippi, being duly sworn, testified as follows to-wit:—

By Gen. MCCLURG:

Q. You are a native of Mississippi and reside in the city of Jackson?

A. Yes sir.

Q. I wish you would please tell the commission your age, and

our profession is and what position you have held in the
Mississippi?
am fifty years old. I am a lawyer by profession and was the
ernor of the State, holding that position from January 1900
ary 1904.
ou have held other positions have you not?
ou mean official positions.
es?
es sir.
lease state what they were?
the outset of my young manhood I was the clerk of the
in Lawrence county, where I — then living. I was elected
at office to the State senate. Afterwards became United
district attorney by the appointment of President Cleveland,
ently chancellor of the Delta district, first by appointment
rnor McLauren, and resigned the chancellorship in the early
1889, and was that year elected governor of the State for the
ginning in January 1900. Since that time I have held no
ficial place.
his suit, you know Governor, is a suit by the State of Lou-
siana against the State of Mississippi respecting the bounda-
ies in the waters of the Gulf, and as much of the matter
nder investigation transpired during your administration
rnor of the State, for the purpose of refreshing your memory
me dates and transactions respecting it, that you may get the
d trend of the present inquiry I will make a cursory review
pertinent facts about which I propose to question you, and
e substantially as follows:—
nuary 1901, it appears there was a kind of mass meeting in
of New Orleans over which Governor Heard of that State
l, and among other actions of that meeting was a request
e governor of Louisiana appoint five gentlemen, and that he
the governor of Mississippi to appoint a like number to ar-
ne easy location of the water boundary between these States.
t Governor Heard acting upon that resolution appointed
d requested you to do likewise, and I have no doubt that
initely remember that you appointed these gentlemen some
February 1901, and on the 26th of March 1901 the ten gen-
met in the city of New Orleans, and entered upon a consid-
of the matters entrusted to them and failed to come to an
ent. It appears that our friends in Louisiana were prepared
ed with their briefs and maps, while the Mississippians had
en the matter so much attention, and asked time for further
ration. About the 20th of July 1901, the Mississippians ap-
by you addressed a letter to the chairman of the joint meet-
March 26th, stating that they could not agree to the lines
by the five gentlemen from Louisiana and suggested a
riendly lawsuit in the Supreme Court of the United States,
nd about that date those gentlemen whom you appointed
nade a similar report to you. So far as the written history

of the transaction shows nothing more was done until the mee
of the legislature on the 1st Monday of January 1902, to which l
lature in your message you reported the transaction that I
mentioned and recommended such action as the legislature m
deem proper to take, and it appears that that legislature too
action in the matter at all.

The next fact is that on the 27th of October 1902 the State
Louisiana files her bill of complaint in this case in the Supre
Court of the United States and as you will remember Mr. McK
ney, clerk of the court, forwarded the process directly to you
the attorney general, requesting that we acknowledge service
return it, as that was the custom in cases of such dignity, and
cess was accordingly acknowledged and process thereof waived.

There was another transaction in the mean time to which
opinion is that you were not a party, and about which I want
ask you during this inquiry, and that is about the 27th, Septem
1892, which is a month before the complaint was filed, it seems t
the Oyster Commission of Mississippi met the Oyster Commiss
of Louisiana and entered into an agreement that a neutral
should be drawn to govern the fishermen during what must h
been then the contemplated litigation between the two States
specting the boundaries.

That line was drawn by the two commissions out of the mo
of Pearl river, following what is known on the Coast and Geode
Survey maps as the deep water sailing line between St. Josep
island, Grand island, as it was formerly known, lat-erly called H

Moon island, thence eastward and southward between Cat isla
1985 and the northeastern point of Isle à Pitre out into the G
proper. North and east of the deep water sailing line
agreed to be exclusively Mississippi territory. From the mouth
Pearl river directly to the northern point of Malheureux point
lowing the coast line of the marshes to Grand pass and then turni
southward from the western boundary of Grand pass to Sun Do
island, thence northeasterly to the deep water sailing channel abo
mentioned, constituted according to that agreement the neutral zon
which both States were to have equal and unrestricted privileges.
south of these lines it was agree- to be exclusively Louisiana territo
and as to this agreement as I will mention further along it appea
and I have no doubt that you well remember, the fishermen of M
sissippi, and those engaged in the raw oyster trade especially, w
very much dissatisfied because they claimed that the best oysters
their trade came from that territory which the Mississippi comm
sion had ceded to Louisiana.

The last record to which I call your attention, and to which y
are a party, had reference to the acknowledgment of process, so
where we will say about the 1st, of November 1902. The transa
tions about which I have just called your attention transpired
September before. The next matter was about the 5th of Nove
ber 1902, a mass meeting of some kind was held in the city

Biloxi, and strong resolutions adopted condemning the agreement made by the oyster commission above referred to, and my recollection is that you were invited to come to Biloxi, and that you did so when another meeting was held, and pursuant to resolutions passed there at the time of your visit, you requested the
1986 governor of Louisiana to name a day, when he and his attorney general and the oyster commission of that State could meet you and your attorney general and the oyster commission of your State in New Orleans to take some action with reference to this line, which the oyster commissions of the two States had agreed to, and that about the 17th, of November 1902, you and the attorney general of Mississippi and the Oyster Commission of Mississippi met Governor Heard and the attorney general of Louisiana and the Oyster Commission of Louisiana in New Orleans. That you insisted on a modification or an abolishing entirely of this agreement which had been entered into and as I remember wholly without effect. Thereupon under your direction the attorney general of Mississippi proceeded with the defense of your State against the bill filed by the State of Louisiana seeking to establish this deep water sailing line which I have mentioned as the true boundary between the two States, and by answer and cross bill finally setting up on the part of the State of Mississippi that the true boundary between the two States was as stated in our answer and cross bill; a line running due south out of the mouth of Pearl river to the main land of Louisiana, on the southeastern shore of Lake Borgne, and thence following said main land eastward and southward and southwestward to a point six leagues or 18 miles from the Mississippi shore; thence to run eastward parallel with the meanderings of the shore line to the Alabama line. Upon these pleadings all issues have been joined and we have been some time taking testimony in this case.

I wish you would state to the commissioner Governor what connection if any you had with the agreement which I have
1987 mentioned and that was entered into between the oyster commissions of the two States respecting this temporary line made in anticipation of the suit, and which the two States were expected to recognize until the final decree had been rendered by the Supreme Court of the United States in this matter?

A. I suppose I could answer that statement of the case as presented by you affirmatively throughout, though much of it is of record and contained in reports. There are many details and particulars of which I would not now undertake to state from memory to be just as has been stated by you, though I assume that in as much as they are of record that you have properly stated them. I had nothing whatever to do with the agreement entered into between the oyster commissions of the two States in agreeing upon the boundary which is termed the neutral territory, and knew nothing of it until after such agreement had been entered into. After this reputed agreement as to the neutral territory complaints came to me as governor from interested citizens of Mississippi living on the

Gulf that the agreement as entered into was interfering and working a great injustice to those engaged in the oyster enterprise in Mississippi and I was called on to do something to change the then status as agreed upon by the commission. My recollection is that I was furnished with copies of resolutions passed by certain parties at a meeting held in Biloxi wherein vigorous protest was made against the authorities of the State of Louisiana who were seeking to restrain parties in Mississippi from taking oysters in the disputed territory. In my desire to bring about any amicable and just arrangement that would secure to the citizens of Mississippi use of the territory in question, and at the same time
1988 be amicable and fair to both sides, I appointed a time when I would go to Biloxi in person, and desired a conference with representative parties there on the subject. I accordingly went to Biloxi, conferred with numerous representative citizens' of that city including the members *if* the city council. A citizens' meeting was called and largely attended at which maps were exhibited and a general discussion of the disputed territory was entered into. There was insistence on the part of some, that as the chief executive of the State of Mississippi that I should defend the territory *vi et armis* if need be so as to give to the interested parties their fishing rights in the disputed territory. I explained to them personally the full situation as I understood it. That it was a legal question about which there was an honest difference of opinion between the people and authorities of the respective States, and which presented a controversy which could only be settled in the courts of the country where both had a right to go, and that such a proposition as getting up a hostile or a military controversy between the friendly States was not for one moment to be considered. That a suit had been filed in pursuance of the recommendation of the committees appointed by the governors of the respective States, which suit would be carried to as speedy a determination as possible in the Supreme Court of the United States, and until such determination could be had, nothing could be done except through operation of the laws of the respective States and by means of friendly agreements between the officials of the two States whereby possibly all action might be stayed and all the territory left as neutral until the case could be settled by the Supreme Court of the United
1989 States. Looking to that end I promised those at that meeting to take the subject up with Governor Heard, and see if we could not agree to some amicable arrangement and have the two oyster commissions, the respective oyster commissions of the States concur therein, so as to have no further friction at all until the case was duly disposed of by the United States Supreme Court. In furtherance of that promise I took the subject up with Governor Heard, and as a result such meeting was held in the city of New Orleans between the governor and Oyster Commission of Louisiana and the same officials of Mississippi, and at which the two law officers of the States, to wit; the attorney generals, the respective attorney generals

present. At that meeting I proposed for Mississippi with the urrence of the oyster commission and the attorney general of State to abrogate all of the agreements made by the oyster com- ions theretofore, defining the neutral territory, and to allow States the free use of the territory until the decision of the case pending, which proposition was declined by the Louisiana ials. I want to say in this connection that as a result of the con- nce which I had with the citizens of Biloxi at the time above ed the plan proposed seemed to be entirely satisfactory, and lutions were adopted by that meeting fully endorsing the plan osed by me, and the part which I had taken to protect the Mis- ppi oyster interests in this controversy. When this meeting— last named meeting between the governors and officials of the States failed to materialize in the results which I had hoped to mplish, the bill filed by the State of Louisiana was duly an- swered and the case is now brought to an issue.

Q. I have in my hand Governor Longino, a document fur- nished me on the 5th, of September 1904 while taking the mony of Mr. E. M. Barber in the city of New Orleans, and I k it has been made a part of the record already, but lest I should istaken about it I desire you to look at it and file it now as ument No. 85. It is dated Biloxi, Mississippi November 5th, 2, and purports to be a letter addressed to you as governor and ed by E. M. Barber, E. C. Joullian, committee on the part of the ens' meeting and T. J. Rossell, J. B. Chinn and E. Glennan, mittee on the part of the mayor and board of aldermen, and ac- panying this copy which I have just mentioned is a document ch purports to be a copy from pages 130 to 131, Minute Book 5 of the mayor and board of aldermen of the city of Biloxi, and esume represents the resolutions of the meeting which called to Biloxi. Please examine it and let it be filed now, or again has been already filed as a part of the record in this case.

he resolutions and the letter referred to above are here offered iatroduced in evidence by counsel for the State of Mississippi, marked Mississippi Document No. 85.

. At your request let it be filed as such exhibit. And I may say his connection that it was in response to said communications that ent to Biloxi at the time above mentioned and had the conversa- tions, and took action with reference to calling the Louisiana l and Mississippi officials together as enumerated. At said Biloxi meeting it was insisted as I have above stated that e thing should be done to protect the rights of Mississippians to e oysters from the disputed territory, and it was insisted that the itory in dispute belonged to Mississippi and that Louisiana was passing there on. They were advised by me that if the Louisi- ns were violating the law as was insisted that the courts of the ntry were open and that the people there should take such legal s as necessary to prevent trespassing by the Louisiana people,

and that if the Louisiana officials were exceeding the law in forbidding our people, or Mississippians, from using the disputed territory, that matter could only be prevented by appealing to the courts of the country, and that the governor of the State was powerless to do more than to suggest to them the employment of the rights which the law gave them and to interpose his friendly offices with the authorities of Louisiana to bring about an agreement by which all the territory should become neutral and remain so until the rights of the respective sides should be fully determined by the Supreme Court of the United States.

Q. In the brief review that I made Governor to refresh your memory as to the history of this matter I made mention of an advisory commission appointed by yourself and Governor Heard upon the request of the mass meeting held in New Orleans in January 1901, to take into consideration the easy determination and location of the boundary between these States. I wish you would state to the commission whether in the appointment of the commission on the part of this State you had any idea that these commis-
1992 sioners had any power or authority to fix and settle a binding boundary between the two States?

A. I knew that such committees had no such authority as indicated by you. They were simply appointed by me upon the request of Governor Heard and their duties were to meet with a like committee of Louisiana and if possible agree upon a correct boundary between the two States; collecting such proof as was necessary, and applying that proof to the law governing the boundary question, and after agreement to so mark the boundary by buoys and other means so that the citizens of the respective States might know their limits. At that time I did not know or comprehend the extent and difficulty of the controversy, but presumed that the facts might be obtained as above stated by this committee of intelligent citizens of the two States who might agree upon it with such certainty as that the two States would ratify their position, and the boundary as established by them might thereafter by proper legislation if need be become an established one between the States.

In selecting a committee I took men whom I believed to be disinterested, men of probity, and fairness and of ability whose decision would carry weight and give confidence to all concerned in the proceedings. Said commissioners were E. J. Bowers and J. H. Kellar of Bay St. Louis. W. A. White and Harry Howard of Biloxi, and J. I. Ford of Scranton, all living on the gulf of Mexico, three of whom are lawyers. After the meeting held in New Orleans with the governor and oyster commission and attorney general, with similar officials from this State, when it was apparent that nothing could be done other than to allow the suit to come to a final determination, that the interests of the State of Mississippi might be properly represented in the suit, upon the advice of
1993 the attorney general, I employed additional counsel to assist him, offering the employment first to W. A. White

and J. I. Ford, who declined it. It was then offered to Bowers and McDonald, who also declined it, and I finally employed a firm at Biloxi, to wit: Messrs. Dodds and Griffith, and when the Hon. Monroe McClurg, then attorney general, resigned such office in Mississippi, owing to his great familiarity with the case and his known ability as a lawyer I retained him also as special counsel to assist in said cause.

Q. The commissioners, or the committee men, which you appointed to undertake the settlement of this matter with the like commissioners or committee men from Louisiana, made a report to you which has already been incorporated in this record?

A. Said committee made written report wherein it was stated that no agreement could be reached, and a friendly suit to determine the matter was recommended by it. Said report was by me transmitted to the legislature of Mississippi at its sitting in 1902, with the request that such action as the wisdom of the legislature approved be taken, and as stated by the counsel for the defense, said body took no action.

Q. I will ask you to state to the commissioner Governor whether prior to the meeting held in New Orleans in January 1901, supposing you had some information of that meeting, you had any information of any kind of any controversy between the people of Louisiana and the people of Mississippi respecting the boundaries between the two States in the waters of the Gulf?

A. I could not state positively as to that, but presume that I had heard rumors of such disagreement. I refer of course to the meeting composed exclusively of Louisiana people.

1904 Q. It is alleged in the bill of complaint in this case that the condition of affairs with reference to the location of the boundary at the time of the filing of the bill had reached a crisis in that there was a threatened armed conflict between the sheriff and other officers of the parish of St. Bernard Louisiana and the sheriff and other officers of the county of Harrison in the State of Mississippi. If you had any information sustaining that charge previous to the filing of this bill on the 27th of October 1902 I would be glad to have you to state to the commission what it was?

A. I had no such information.

Cross-examination.

By Mr. DYMOND:

Q. You were governor in January 1901 when you received from Governor W. W. Heard of Louisiana his letter requesting the appointment by you of this commission, or committee on boundary were you not?

A. Yes sir.

Q. At that time as the governor of the State of Mississippi did you not consider you had the authority to appoint such a commis-

sion in order to gather such evidence, data, and information as you in your position as chief executive of the State of Mississippi thought it would be well to gather on that particular subject?

A. I knew that there was no such commission authorized by law, but as above stated I acted in the matter simply in the effort to bring about an amicable agreement, which the officials and citizens of the two States would accept and which might be ratified by law thereafter if necessary.

1995 Q. Suppose it had been on any other subject Governor, would you not have had the power as the chief executive of this State to have gathered the information necessary through the appointment of a commission, on any subject that would come up of moment to the welfare of the State?

A. I will say that while there was no law that I know of on the subject, I take it that it would be an unwritten law that the chief executive of the State would have authority to gather testimony and to do it in such manner as would most expedite the work, and would give the most confidence in the results, and which might bring about the best results.

Q. Would not it have been necessary for such a committee to have filed data in order that the legislatures of the respective States to have been able subsequently to take intelligent action on such recommendation as that committee might unanimously agree to make in the event it was able to reach an unanimous conclusion?

A. If the legislature accepted the work of the commission as the proper solution of the situation doubtless that body would have required the presentation of the facts which proved the expediency and the justness of their finding.

Q. That would presumably include such a report as the committee would make, in the event that they reached an amicable agreement?

A. Presumably, yes sir.

Q. Would not then such action by the legislature of necessity have to be approved by the act of Congress before any agreement between the two States as to the boundaries would have become effective?

By Mr. McCLURG: I presume that you have reference to
1996 the law which requires that the legislature of both States with the act of Congress, before any part of one State can be eliminated or added to the other.

By Mr. DYMOND: No sir, I refer to that provision of the Constitution which says that no agreement between two States shall be effective until it has the consent of Congress.

A. I did not consider at the time that legislation by either State would be absolutely necessary. On the contrary I had the idea that the facts might be gleaned by this committee by which the boundaries between the States could be marked, and buoyed by them as fixed by the acts of Congress already. The acts of Congress fix the

boundary between the two States, and I suppose that these boundaries simply needed to be marked and the law properly understood by this commission and the facts applied to the law which fixes the boundary, and that this commission might thus buoy the boundary; then if the legislatures of the two States were prepared to accept that as the boundary as fixed by the Congress so as to eliminate controversies between the citizens of the respective States it might do so.

Q. That answer Governor is not responsive to the questions as asked. I will ask the stenographer to read over the question to you so that you may understand it? "Would not then such action of the legislature of necessity have to be approved by the act of Congress before any agreement between the two States as to the boundaries would have become effective?"

A. I understand that before the two States could by any agreement or legislation of said States change the boundary fixed by the Federal law, that the Federal Congress would have to assent thereto, but where the boundary has already been defined by the Federal law I did not understand that the Federal Congress would have to give its assent to the States to mark or buoy the boundary. And in my report to the legislature on the subject I stated as follows: "On February 9th, 1901, I appointed the following named gentlemen as commissioners to confer with a like committee appointed by the governor of Louisiana to consider the water boundary line between the two States, and to arrange for the easy location and identification of the same by a proper buoy system. My idea was that the commission would simply search out the mark of the real boundary between the States as fixed by the acts of Congress.

Q. Now in the appointment of that committee as I understand it you endeavored to get men who were more or less familiar with the locality in question?

A. Yes sir, that was one of the objects.

Q. Did you have any conference with these gentlemen or get any reports from them prior to the final report which was signed by all the committee on the part of the State of Mississippi?

A. As a committee I did not. It is not improbable that I had conversations with some individual members thereof, and about which I do not now recollect.

Q. Do you know a gentlemen by the name of I. Heidenheim?

A. Yes sir, I do.

Q. Do you know a gentleman by the name of F. A. McLean, a member of Congress from the State of Mississippi?

A. I do.

Q. Do you know what became of a report which was made by C. S. Hodgkins, assistant of the United States Coast and Geodetic Survey, made at the request of Mr. Heidenheim through Mr. McLean, a member of Congress from Mississippi?

A. I do not.

1908 Q. Do you know whether that report ever came to the knowledge of this amicable boundary committee appointed by you prior to their making of their report in the month of July, 1901, or to the knowledge of any individual members of it?

A. I do not now remember that I ever heard of such a report prior to this time.

Q. Are you aware of the contents of that report?

A. I am not.

Q. Do you remember, or are you prepared to state what the attitude of the various members of this Mississippi Boundary Committee was on this proposition individually?

By Mr. McCLURG: The question is objected to on the part of the State of Mississippi as irrelevant, and because it is immaterial to the issue joined in this case as to what the individual opinion of these committeemen or commissioners might have been as to the location of the boundary.

A. I have no recollection now of ever having heard any member of the commission express his individual views with reference to the rights of either State in the controversy.

Q. Were you aware that the committee appointed by Governor Heard on this boundary matter had submitted to the Mississippi commission a map composed of the United States Coast and Geodetic Survey charts on which they had delineated Louisiana's claim which map is known in this record as Exhibit E, and is now hanging on the wall there in front of you?

A. I never had any information at all as to what the facts were before those committees, or upon what facts the Mississippi committee predicated its report which was referred by me to the legislature as aforesaid.

Q. Do you not know Governor that there was a disagreement amongst themselves on the part of the Mississippi Boundary Commission and it was only at the last moment that they got together and sent a report declining to negotiate further with Louis-
1909 iana and suggested a suit in the Supreme Court of the United States?

A. I think I had knowledge of that; that there was a disagreement and their report shows such disagreement.

Q. I mean to say, if you understand me, I mean if there was not a disagreement amongst the five members of the Mississippi committee?

A. Yes sir.

Q. Do you know what was the cause of this disagreement?

A. Of my own knowledge, nor from anything I have heard from any members of the committee I do not.

Q. Did not you understand that some of the Mississippi committee were of the opinion that the claim of Louisiana was correct?

By Gen. McCLURG: The counsel for the State of Mississippi re-

now the objection of the said State to this inquiry as to the personal belief, opinion and inclinations of individual members of the committee, for the reasons that it is irrelevant and incompetent, and impertinent to the issue of this case, and for the further reason that the records not only of the appointments of that commission, but also the action of the commission embodied into the original bill of complaint in this case, and the reports of the governor of the State of Mississippi have also been made a matter of record. These official records speak for themselves, and it must be that inquiry into the bias, prejudice, and opinions of individual commissioners in arriving at the conclusions which they did, and which they officially reported is not pertinent to this inquiry.

Q. Did you not understand that some of the Mississippi committee were of the opinion that the claim of Louisiana was correct?

A. I did not understand that from any member of said committee but I did hear it charged by outside parties in Biloxi that notably one member of the committee, to-wit Mr. Harry Howard, was more interested in Louisiana than he was in Mississippi, having larger interests in that State than in this, and it was insisted by some of those who were displeased that Mr. Howard was an improper person to appoint on said committee, and it may be that I heard from such party that his opinion on the committee was biased. These are matters of hearsay and about which I did not charge my memory closely and can not be positive as to the general details with reference thereto.

Q. Personally you knew Mr. Howard to be a multi-millionaire did you not?

A. I knew Mr. Howard was reputed to be a rich man.

Q. You knew that he owned a yacht on the Gulf coast? A steam yacht?

A. I did not know that. I knew that he owned a nap-tha launch and I know that he has a house boat.

Q. Was not he really more familiar with the whole territory by reason of his more frequently going through it than any other member appointed by you on that committee?

A. I could not say of course definitely as to that, but when I appointed Mr. Howard it was with the belief that he was quite familiar with the territory in question, but I did not know how his acquaintance there compared with the other members of the commission.

Q. This committee reported in July 1901. The legislature of Mississippi of 1902 passed an oyster law providing for the first time in the history of Mississippi's control of the oyster industries, for the appointment by the governor of an oyster commission. Is that not correct?

A. That is.

Q. Did you not as governor of Mississippi exercising the powers given in that oyster law appoint an oyster commission?

A. I did.

Q. Was not the oyster commission empowered to take such
2001 action as was necessary to conserve the best intereste of the State of Mississippi in relation to the oyster industry?

A. I so understood it and so understand it now, but I would rather the law would speak for itself on that point.

By Gen. McCLURG:

Q. The law required did it not Governor that you should appoint on that commission men that were not interested in the oyster industry, or oyster business in any way?

A. Well yes sir, that is my recollection.

Q. And you observed the law in making the appointment of the commission?

A. Yes sir, but as I say again, the law speaks for itself. I would not want to put my memory up to speak for all that was in any long oyster law.

By Mr. DYMOND:

Q. How did you become aware that the State of Louisiana following the example of the State of Mississippi, had in the month of July 1902 itself adopted a new oyster law, which for the first time in the history of that State provided for the formation of an oyster commission?

A. I learned that from you Mr. Dymond in a conversation this morning, but I do not now recollect that at the time of the passage of the Mississippi Oyster Commission law that I was aware that Louisiana did or did not have such a law.

Q. Now Governor, when you appointed your oyster commission under the Mississippi law of 1902, the gentlemen whom you appointed had your full confidence and approval did not they as evidenced by your appointment?

A. Yes sir, else I would not have appointed them.

Q. Have you any reason to believe that they did not have at heart the best interests of the State of Mississippi in any arrangements they were making concerning her oyster industry?

2002 A. None whatever.

Q. Well you became aware that in the month of September 1902 that the Oyster Commission of Mississippi and Louisiana met in joint conference to consider the adoption of a *modus vivendi* that would obviate any difficulty resulting from this confusion as to boundary. You were aware of this fact were you not?

A. I became aware subsequent to their making the agreement that such had been done.

Q. Have you any reason to believe that in any negotiations that your committee would have had with the Louisiana committee, your committee would not have done its very best under all of the facts and circumstances as presented to it to have obtained the best conditions for Mississippi that it could?

A. I have no reason to believe to the contrary.

Q. Now do not you as a matter of fact know Governor that after
ou made most earnest effort on the part of your State to get the
eutral ground agreement abrogated, that the two commissions
gain met in joint session and that the Oyster Commission of Missis-
ppi refused to recede from the original agreement that it had made
ith the State of Louisiana through its oyster commission, main-
ining that it had done the best that could be done under the cir-
mstances?

A. I have heard, however, not from the oyster commission or any
ember thereof as I now recollect, that such a meeting was held as is
ferred to in your interrogatory, and that the Oyster Commission of
ississippi then refused to recede from the agreement because the
ster Commission of Louisiana wanted it abrogated to claim other
ritory in dispute, and the Mississippi commission proposed to
ld what it had under the neutral agreement until the suit could
disposed of. Now then I want to say that was a mere matter of
nor which came to me as I now recollect it, and I could not state
m whom I got such information, but I assume that the Missis-
sippi commission, acting for the best interests of Mississippi
3 as indicated by you above thought it was better to take a
part of a loaf than no loaf at all, and so insisted on holding
he former agreement whether right or wrong.

. Now as I understand it Governor, you indicated in your testi-
ny a moment ago that immediately upon finding that no alteration
brogation could be secured in the agreement between the two
er commissions, that the bill of complaint was promptly an-
ed. Are you correct so far as your memory serves you in that
ment?

It may be that the bill was answered anterior to this meeting
een the officials of the two States in New Orleans, where it was
l at my instance to try and get the agreement abrogated and to
of the territory in dispute to become neutral. I am not sure
the bill was answered, but it is my recollection that it was
vard.

Don't you know that the State of Mississippi was allowed sixty
to demur or answer, and that the bill was only filed in the
of October, and the meeting that you refer to was held in the
of November?

Gen. McCLURG: Counsel for Mississippi calls the attention of
unsel for Louisiana to the fact that the pleadings and the rec-
eak for themselves.

Those matters are of record and speak for themselves, but my
ction is that the facts inquired about by you are as indicated
r inquiry.

ow Governor is it not a fact then that in place of meeting our
th an answer, the suit invited by the State of Mississippi, that
matter of fact that it was met with a demurrer, alleging

that there was no dispute between the two States as to the bound
or any thing else that justified the suit?

A. There was a demurrer first interposed.

2004 Q. Was not the demurrer of the character that I h
just stated so far as you are able to recollect?

A. Yes sir, as I recollect it.

Q. Now is it not a fact Governor that this agreement made by t
two oyster commissions, after your futile efforts to have it abrogat
and amended, was recognized and enforced by the oyster comm
sion of the respective States since it has been entered into?

A. I have heard nothing to the contrary.

Q. Now Governor, as I understand it as executive of this Sta
you necessarily acquainted your legislature from time to time whe
it was in session with whatever you did in connection with thi
matter?

A. I did not acquaint the legislature with this meeting held i
New Orleans from which nothing came.

Q. Well did not your legislature know that there was this dis
pute on between the two States as to the boundary?

A. When?

Q. Since this session of 1902?

A. Why doubtless it did.

Q. As I understand it it took no action on the report that you
made at its session of 1902 in which the question of the suit was
suggested by the Mississippi Boundary Commission?

A. Yes sir, no action was taken.

Q. Was not that on the supposition that suit would be filed, and
the matter would have to be met in the ordinary course in the courts
as suggested by yourself?

A. I could not say really what was the motive or idea that moved
the legislature in the premises. I know that there was a report
made and that there was no action taken by the legislature, but I
never heard any legislative opinion about it.

Q. Was it not accepted by you as chief executive of this State
that the invitation of your boundary commission would be complied
with and the suit would be filed to determine this dispute?

2005 A. I hoped that result would follow, and this report was
made with a view to that being done if it met the legislative
approval.

Q. Was it not known to the legislature of 1904 that this suit had
been filed by the State of Louisiana and that there had been an
agreement made between the oyster commissions of the two States
establishing a *modus vivendi*?

A. It was known to the legislature of 1904, in the message which
I had the honor of communicating to that body that such suit was
pending, which message thereon made by me is as follows: "I had
the honor to bring to the attention of the legislature at its session of
1902 the question of disputed boundary between Mississippi and
Louisiana, wherein each State is claiming ownership of and jurisdic-

tion over certain islands in the gulf of Mexico. The legislature having taken no action looking to a settlement thereof, I took the matter up in person and tried in vain to affect an adjustment of said controversy, with my ideas of the rights and merits of Mississippi's claim, and interests in the premises, and I have now to say that since then the State of Louisiana acting through its governor and attorney general have filed a bill against this State in the Supreme Court of the United States, styled The State of Louisiana, complainant, *vs.* The State of Mississippi defendant, wherein the complainant seeks to have the disputed territory adjudged to be the property of that State, and under the executive jurisdiction of its laws. The effect of such decree in favor of complainant would under the operation of the laws of Louisiana prohibit the citizens of Mississippi from taking fish and oysters from the waters in dispute. And said oyster reefs are to a very large extent the dependence for the supply of fish and oysters to the people of Mississippi living on the southern border of the State who are engaged in that particular line of industry. The property in controversy is of great value extending perhaps
2006 into the millions of dollars." Reference is also made to the records of the attorney general's office.

Q. Is it not a fact to your personal knowledge as a citizen of the State of Mississippi that the house of representatives of your legislature appointed a special committee in its session of 1904 to investigate this whole subject matter. That this committee reported to the house of representatives and that notwithstanding that fact no action was had in this whole subject matter by the legislature of Mississippi of the year 1904, although the suit was pending?

By Gen. McCLURG: Counsel for the State of Mississippi objects and excepts to this question because it has reference to matters of official record.

A. No action was taken on the subject prior to my retirement from the office of governor on January 19th, 1904. As to what was subsequently done by that body I am not fully advised and must therefore refer you to the proceedings of the legislature on that subject.

Q. Are you prepared from your general knowledge of the current comment in the community to state whether or not the existence of this *modus vivendi* was or was not known to the legislature of 1904?

A. I presume it was. I think it was. I don't know from any definit- action taken by the legislature or any legislative pronunciament- on the subject that this *modus vivendi* was known to that body, but there were members of the legislature from the counties most interested in the controversy and who were familiar with the proceedings up to this time, and I naturally assume that the matter was discussed and became known to many members of the legislature, but of this I can not speak of my own knowledge.

Q. Are you prepared to state from your knowledge as a
2007 citizen of Mississippi whether there was or was not any action taken by the legislature of 1904 in the line of repudiating the

action of the Oyster Commissions of Mississippi and Louisiana in pr
viding for this neutral territory and *modus vivendi* pending the se
tlement of the controversy by a decree of the Supreme Court of th
United States?

A. I have no knowledge that any such action was taken by the legislature, and am advised and believed that no such action was taken.

Q. Now Governor, you were the executive of this State at the time that this matter was in its initial stages between the States of Louisiana and Mississippi. Are you the same A. H. Longino, who was appointed a commissioner on the part of the State of Mississippi to take the testimony and evidence of Mississippi in this case?

A. I am.

Q. How is it then that you are not acting in that capacity as commissioner now for the State of Mississippi?

By Gen. McCLURG: The question is objected to because it is irrelevant to the issue.

A. I was not an applicant for the appointment and had nothing to do with it, and when appointed by the Supreme Court of the United States to take the testimony I declined to accept the appointment by letter to the Chief Justice of the Supreme Court of the United States.

2008 Redirect examination.

By Gen. McCLURG:

Q. I believe you stated Governor, in answer to the counsel for Louisiana and in answer to the question interjected by me, that the laws of our State require that in appointing an oyster commission of this State, that persons should be appointed who are familiar with the oyster industry and all of its branches, but no person should be appointed who was interested in the business, oyster business, and you said that in making appointments of oyster commissions for this State you respected that statute. That is true is it not?

A. Yes sir.

Q. And you have been interrogated by counsel for Louisiana in this case with reference to the appointment of Mr. Howard and others largely interested in the State of Louisiana. I want to ask you whether or not in making the appointment of these five commissioners, which you were requested by Governor Heard to appoint, whether or not you undertook to appoint and did knowingly appoint gentlemen who are prejudiced and interested in favor of Mississippi?

A. I undertook to appoint men of known probity and competency for the place, and who I then believed and still believe would do, and did do their full duty in the premises as they saw it. I appointed them simply with reference to what I conceived to be their

general fitness for the position, looking only to a right adjustment of the points of difference between the two States.

Q. And as I understood you with a view to ascertain and find the fixed boundary rather than establish a new boundary?

A. Yes sir, and as my report to the legislature shows it was
2009 for the purpose of establishing the real boundary as fixed by the laws of the United States, and when that boundary was found by them to so mark it with buoys so that the citizens in interest in the respective States would know their limits.

Q. You were also questioned about a letter written by Mr. I. Heidenham of Biloxi to Congressman F. A. McLean, and as the record in this case shows it was referred by Mr. McLean to the Coast and Geodetic Survey, and to inform you what has already been disclosed in the progress of this trial by that letter of Mr. Heidenheim, he asked Mr. McLean to have the proper authorities to forward him records pertaining to the boundary in controversy. The Coast and Geodetic Survey it seems had a high subaltern in that department, one Mr. Hodgkins, to take the matter up, and instead of furnishing Mr. McLean, and Mr. Heidenheim through Mr. McLean the records pertaining to this, Mr. Hodgkins turned lawyer and gave a very elaborate opinion as to his views of the boundaries and the possessions of the respective States. That is the letter that counsel have asked you about, and the one that Heidenheim says he had never seen and never heard of until this Mr. Hodgkins took the stand and testified about this matter. You say that that letter was never made a part of the official records of this State and of your office?

A. Not that I have any recollection of whatever. None whatever. If I ever saw it I don't recollect it now, and I don't think I ever saw it. I can say, however that I got numerous letters from Mr. Heidenheim, and if he received it it is not improbable that he sent it to me, and if he did I sent it back to him and don't recollect any thing about it.

Q. Counsel for Louisiana also asked you as to what action
2010 the legislature took with reference to your message to that body during the session of 1904. I hand you a document which I will ask the commissioner to file as Document No. 86, in this case, a copy of which I now hand to the counsel for the State of Louisiana it being a report of special committee appointed to investigate the subject matter of a bill to provide for defraying the expenses of the State of Mississippi in the case of The State of Louisiana *vs.* The State of Mississippi, now pending in the Supreme Court of the United States, wherein the boundary lines of said State are in dispute." Please look at this document and hand it to the commissioner that he may file it as I have requested?

A. I accordingly hand it to the commissioner to be filed.

The report above referred to is here introduced in evidence by the counsel for the State of Mississippi, filed with the commissioner and marked Mississippi Document No. 86.

Q. As to the causes and reasons that led the legislature of 1
to decline to make the appropriation to which the docu ment I ha
just handed you refers, I understand that you are not informed?
A. I am not informed.
Q. If there is anything else that you desire to state about th
matter Governor, I would be glad for you to do so now?
A. As above stated I know personally very little of the facts i
volved, other than those contained in the law and in the record
that have been introduced.

2011 Recross-examination.

By Col. ZACHARIE:

Q. Governor after the knowledge came to you of this agreement
between the oyster commissions of these two States in regard to the
establishment of a neutral zone, did you as executive of the Stat
take any steps to repudiate that agreement?
A. I did not.
Q. Do you know whether the legislature of the State of Missi
sippi ever took any steps?
A. I don't think it did.
Q. The only thing as I understand it is at a subsequent meeting
between Governor Heard and yourself and the oyster commissions
you endeavored to have that zone which had been established en
larged?
A. Yes sir, that is I endeavored to have all of the lines wiped out
and leave the territory as it had been enjoyed by the two States for
many years prior to that time pending the litigation.
Q. Further than that there was no attempt on the part of the ex
ecutive of Mississippi or of the legislature of Mississippi to disturb
or destroy this agreement in regard to the neutral zone which had
been formerly entered into.
A. There was no such attempted disturbance so far as I was con
cerned acting as governor. I understood that that agreement was
to be only temporary and to hold until the real boundary could be
settled by the court, and that this agreement was only to avert any
further friction and to prevent possible hardships to the citizens of
either State.

Q. Was it not also for the purpose of preventing any vio-
2012 lence or armed clash whether between the citizens of the two
States or of the authorities of the two States?
A. Well as above stated I heard random talk about armed inter
vention, and the request or inquiry was made of me if I did not have
the authority to intervene with the militia and patrol these waters
and if it was not my duty. To that I very promptly replied in the
negative. That it was a legal question that must be settled in a
legal and decorous way in the courts of the country but I hoped
that an arrangement might be entered into in the mean time that

would give satisfaction to the people and preserve substantially their business interests during the period of the pendency of the suit.

Q. Then as I understand it you understood that this agreement as to the neutral zone was a sort of *modus vivendi* during the pendency of the suit?

A. Yes sir.

Q. In order to prevent any clash or trouble between the States?

A. Not only to prevent any clash. I do not think I had in my mind any clash, Colonel, in the sense of violence, but there was conflict of interests and bad feeling, and perhaps legal controversies would intervene. Certainly as the executive of the State I never contemplated any clash of arms between the authorities of the two States on the subject. I knew in fact that nothing of this sort would come. I had confidence in the official force of these counties bordering on the coast to believe that the officers would not do anything of a revolutionary nature. But whatever clash might come would be in the courts in the way of injunctions and arrests for trespass on one side of the other.

Q. And resistence to arrest and so on?

A. Possibly. I don't know that I had that in contemplation at that time. I will say that as governor I never contemplated any clash, any violence. As to what might have been in the minds of individuals I don't know.

2013

Redirect examination.

By Mr. McCLURG:

Q. Counsel has asked you about the reasons and purposes of this *modus vivendi* line, and since you have stated that you were no party to the making of it What you have to say as to the reasons for making it are hearsay from what you have gathered since?

A. That is all.

Q. And this confusion and conflict; a knowledge of all of that came to you after a filing of this bill?

A. Well to what conflict do you refer?

Q. To which you have just testified a moment ago. Following that agreement as to this neutral zone territory. You went to Biloxi some time in the early part of November 1902?

A. Yes sir.

Q. Is that the beginning?

A. It was early in November. It was soon after the receipt of a letter marked Document 85, that I went to Biloxi.

Q. That letter is November 5th, 1902. Prior to that time you had heard of no serious disturbance over the State line between the two States?

By Mr. DYMOND: Objected to by the counsel for the State of Louisiana as leading.

Q. State to the commission whether or not prior to that meeti
at Biloxi that we have just mentioned, whether you h
2014 ever heard of any serious disturbance between the officials
the two States over the boundaries in the waters of the Gul

A. I don't think I ever heard of any serious disturbance betwe
the officials of the two States at all. There was considerable di
satisfaction and excitement on the part of individuals in Mississip
living on the coast.

Q. When?

A. In November and possibly before. I could not state exactl
which or when. Doubtless I had heard of complaints before thi
meeting which I had with the citizens in November. But I heard i
emphasized when I went there as it was in these resolutions that were
passed by the mayor and board of aldermen, and citizens of Biloxi,
but I never heard any violence contemplated between the citizens
of the respective States at all, only as suggested by some parties as
enumerated here in my testimony before, and that I regarded as
mere idle rumor.

Governor A. J. McLAURIN, being duly sworn, testified as follows
on behalf of the State of Mississippi.

By Gen. McCLURG:

Q. Governor, you are a native Mississippian and live at Brandon?

A. Yes sir.

Q. I wish you would tell the commissioner how old you are and
what official political positions you have held in the State of Mis-
sissippi?

A. I was 56 years old on the 26th of last March. I have held
several official positions. I have been district attorney for four
years. I was a member of the house of representatives in the
legislature of the State of Mississippi one term. I was presidential
elector for the State at large in 1888.
2015 I was elected to the United States Senate in February 1894.
I was elected governor in 1895, and served as governor from
the 21st of January 1896 to the 16th, of January 1900 was again
elected to the United States Senate, again elected to the United
States Senate in 1904. I believe that covers the official positions
that I held.

Q. And above all of this you helped to write the constitution of
Mississippi?

A. Yes sir, I was a member of the constitutional convention. I
had forgotten that, and I was once alderman of the town of Brandon,
and mayor *pro-tem.* for about ten days.

Q. It is alleged in this bill of complaint Governor, which is an
alleged controversy over the boundary between Louisiana and Mis-
sissippi in the waters of the gulf of Mexico, that at the time of the
filing of the bill on the 27th, of October 1902, the dispute over the

boundary which I have mentioned had become a crisis, so much so that there was a threatened armed conflict between the sheriff and other officers of St. Bernard parish in the State of Louisiana and the sheriff and other officers in the county of Harrison and State of Mississippi, and I have concluded to ask you if at any time during your administration of the governor's office, or any of the other offices which you have mentioned or as a citizen of the State you have had any information of such a condition of affairs?

A. I never had any information of any controversy or dispute between the State of Louisiana and the State of Mississippi or either of the States as to the boundary line between the States during the time I was governor. I never heard of any controversy until after my term of office had expired as governor, and I don't know what I did hear now.

Q. After the expiration of my term of office as governor, I never heard of any alarming conditions there that I recollect.

Q. Did you have any information of any kind, whether you obtained it as an officer or as a private citizen with reference to any serious disturbance between these two States respecting that boundary prior to the institution of this suit on the 27th, of October 1902, and if so I will be pleased to have you state it to the commission?

2016

A. I have had no such information.

It is admitted and agreed by counsel for the State of Mississippi and for the State of Louisiana that if WILEY N. NASH were present he would testify as follows:—

That he was attorney general of the State of Mississippi from about the 1st, of January 1896 to the 15th of January 1900, and that he had no official knowledge and had no personal knowledge or information of any sort of a controversy or dispute between any officer of Louisiana and any officers of Mississippi, or any of the citizens of the two States over the boundary in the waters of the Gulf in dispute in this suit.

It is also admitted that if present, the Hon. FRANK JOHNSTON would state as follows:—

I was attorney general of Mississippi from January 21st, or 23rd, 1893 until the termination of Governor John M. Stone's second administration. During that period I heard nothing of any controversy between the respective authorities of the States of Louisiana and Mississippi in respect to the boundary lines of the two States in the gulf of Mexico. In fact during that period there was no such controversy.

Until the present controversy arose I supposed that the entire boundary lines between the two States were all ascertained and acquiesced in by all concerned.

I have never investigated the question as to how far out in the Gulf the territorial jurisdiction of the State of Mississippi extended,

but I always supposed that it extended about 16 or 18 miles out, so as to embrace all the outlying islands.

I will state further that I am not familiar with the details and particulars of the present boundary controversy between the
2017 two States.

N. L. WINGO, a witness introduced in behalf of the State of Mississippi, being duly sworn, testified as follows:

By Gen. MCCLUNG:

Q. Mr. Wingo, please tell the commission your age, place of residence and occupation?

A. I am forty years old and live in Jackson Mississippi, and I am a professional photographer.

Q. I show you Mr. Wingo, an orignal copy of Carey's General Atlas, perfected and enlarged, being a collection of the maps of the world and quarters, their principal empires, kingdoms, etc., and on page 23 of this atlas I will ask you to look, and ask you if you have seen this book before and the map marked Mississippi territory, Miles, on page 23 of this collection of atlases, and tell the commission if you have ever seen this Mississippi Territory map before, and if so where you got it, what you were requested to do and by whom you were requested and what you did do?

A. Yes sir, I have seen this map before. It was brought to me by Mr. J. N. Flowers, assistant attorney general of the State of Mississippi with the request to make a photographic copy of the same, which I did of map on page 23.

Q. I show you now what purports to be a photographic copy of Mississippi territory by Miles and ask you whether this is the photograph you made of this map at which you have just looked?

A. Yes sir, this is a photographic reproduction of the same map.

Q. I will ask you to compare this photographic copy with the map on page 23 and tell the commission whether that is a true, correct and exact copy?

A. Yes, sir, that is a true and correct copy.

2018 Counsel for the State of Mississippi here introduces and offers in evidence in this case the photographic copy of said map made by Mr. Wingo, marked as Mississippi Map Document No. 87, and here tenders to the counsel for the State of Louisiana a true copy of the same.

Q. Mr. Wingo, I now show you a map which is marked "Geographical map of Mississippi" by Eug. W. Hilgard, State geologist, prepared by J. H. Colton No. 172 William street New York. I will ask you to say whether you ever saw this map before, and if so when and where, and if you were requested to do any thing with it so state as well as what you did?

A. This map I have seen before and it was brought to me by Mr.

James N. Flowers, assistant attorney general of the State of Mississippi, with the request to make a photographic copy of the same which I did.

Q. I will ask you to look at what purports to be a photographic copy of this map, and request you to compare it with the original now before you, and to say whether it is a true accurate and correct representation of that map?

A. Yes sir, it is. It is a true and correct photographic representation.

The Hon. MONROE MCCLUNG, who has been sworn as a witness in this case now states that the map by Hilgard to which the witness has just testified was by him taken from the Hilgard report of his geological report, and handed to the assistant attorney general for the purpose of having it photographed by Mr. Wingo.

The said original map made by Hilgard is now offered and introduced in evidence on the part of the State of Mississippi as Mississippi Document No. 88 and a copy thereof photographed by Mr. Wingo as above stated is now handed to the counsel for the State of Louisiana.

2019 Q. Mr. Wingo, I will ask you to look at the map which I now take from the Report of agriculture and geology of Mississippi, ubracing a sketch of social and natural history of the State by B. . C. Wailes, member of the American Association for the Promoion of Science, corresponding member of the National Instiute, and of the Boston Society of Natural History etc., published y order of the legislature, E. Barksdale, State printer 1854, and ask ou to examine this map and state to the commission whether you ave ever seen it before, and if so how it came to your observation d what if any thing you were requested to do with it?

A. This map was handed to me by Mr. James N. Flowers, assistt attorney general of the State of Mississippi, with the request o to make a photographic copy of the same which I proceeded slo.

Q. Please examine said map and compare it with the photoaphic copy, which I now hand you and say whether your photoaphic copy is a true, correct and accurate reproduction of said p?

A. It is.

said map is now introduced and offered in evidence on the part he State of Mississippi as Mississippi Map Document No. 89, a y of which is now handed to the counsel for the State of Lou-na.

Mr. Wingo, I will now ask you to look at the map here shown which has upon its face, "Geological chart of Mississippi, by arper, State geologist, 1857" and ask you to say whether you ever seen this map before, and which you now see me take

from "A preliminary report on the geology and agriculture of the State of Mississippi by L. Harper, L. L. D., correspondent of the Imperial Museum and Natural Science for France etc., State geologist of Mississippi by order of the legislature, E. Barksdale, State printer, Jackson, 1857, and tell the commission whether you have seen this map before, if so the circumstances and what you were requested if any thing to do with it, and what you did do with it?

2020

A. This map was also brought to me by Mr. James N. Flowers assistant attorney general of the State of Mississippi with the request to make a correct photographic copy of the same which I did.

Q. Please compare your photographic copy which I now hand you with this map and say whether it is a correct, true and exact reproduction of that map.

A. It is a correct copy of that map.

Counsel for the State of Mississippi now introduces and offers in evidence the original of said map as Mississippi Map Document No. 90, and now hands to the counsel for the State of Louisiana a true copy of the same.

Q. In taking photographic copies of these maps Mr. Wingo, which purport to show the geological surveys of the State and reports thereon by these officials, you could not take the coloring of the maps on the photographic copies that you made of them could you?

A. No sir, that would be an impossibility under our present methods.

Q. Have you been able to show by your photographic copies the boundaries and outlines of the State clear and distinct the same as upon the maps from which your photographic copies were made?

A. Yes sir, I have.

2021 Cross-examination.

By Mr. DYMOND:

Q. Now Mr. Wingo, I understand that you are a photographer by profession and that you recognize the inability of photography to reproduce colors except in shades?

A. Yes sir.

Q. You will please notice this map, Mississippi Map Document No. 87 appearing on page 23 of the atlas of N. Carey published in 1816, and I direct your attention to the extreme southwestern point on this map and ask you to indicate that with a red ink cross on this original photograph offered in evidence?

A. (The witness here places the red ink cross mark as requested.)

Q. Now I will next direct your attention to page 26 of this same atlas, giving a map of the State of Louisiana, and I would ask you to notice whether the State of Mississippi does not join the State of Louisiana at or near the neighborhood — the point as designated by the red ink mark?

A. It does.

Q. Now is there any similarity in the topography of these two maps in that particular locality, and I direct your attention first now to the Mississippi map, to the islands designated, and then direct your attention to the Louisiana map showing the same locality, and ask you if there is any similarity in the topography of the two maps?

A. I find that there is a difference.

Q. What difference do you find?

A. I find that the islands marked on the Mississippi map are some different from the islands marked on the Louisiana map.

Q. On the Mississippi Map Document 87 now in your hand as designated by colors to whom would they be shown to belong. To what State?

A. To Mississippi.

3922 Q. Is there anything on the map of Louisiana to show that they belong to Mississippi?

A. Well I would take it that the islands in both maps are intended to belong to Mississippi.

Q. What makes you think so and where are the same islands?

A. The same islands appear to be near the mouth of Pearl river in both maps.

Q. You will notice that according to the map of Mississippi Lake Pontchartrain opens into the gulf of Mexico, except for the islands in the mouth of Lake Pontchartrain. Do you notice that to be a fact?

A. I do. I notice also that Lake Pontchartrain seems to join with the mouth of the Pearl.

Q. The mouth of Pearl river?

A. Yes sir, according to the map.

Q. Now you will please look at this map of Louisiana and you will find a lake called Lake Borgne, in addition to the lake called Lake Pontchartrain. Is there any such lake as Lake Borgne shown on the Mississippi map No. 87?

A. There is not. It is marked gulf of Mexico.

Q. Now directing your attention to Mississippi Map Document No. 88, being a geological map of Mississippi by Eugene W. Hilgard, and I will call your attention to a small portion of territory forming the extreme southwestern portion of the State of Mississippi which lies between the east mouth of Pearl river, and the water which is south of it, and I wish you would designate the spot by putting a red ink cross at the point designated?

A. (The witness marks the cross on the map as requested.)

Q. Now will you please tell me according to the color scheme of the map marked Mississippi Document No. 88 to what State that territory south of the eastern mouth of Pearl river is given?

A. To Mississippi.

3923 Q. I now ask you to look at the Mississippi map, marked Mississippi Document No. 90, being a geological chart of

Mississippi by L. Harper State geologist, and ask you to designate by a red ink cross the locality which you have just designated on map No. 88, which territory lies south of the eastern branch of Pearl river, after you have designated that point with the red ink cross to state to what State according to the color scheme of this chart the territory in question is given?

A. To Louisiana.

Q. Therefore according to the geological map of Hilgard that particular spot that you have marked is given to Mississippi and by the geological map of Harper that same identical territory is given to Louisiana?

A. According to the color scheme yes sir.

Q. Now your photograph of map No. 87 is not on the same scale as the original is it?

A. No sir, it is reduced.

Q. And the color that appears on the original is lacking from the copy?

A. Yes sir, the coloring is lacking.

Redirect examination.

By Gen. McCLURG:

Q. Counsel for the State of Louisiana have asked you, and had you to make some red cross marks on these original maps, taken from the reports to the legislature of the State of Mississippi by Hilgard and Harper, Mississippi Map Documents No. 88, and 90, and counsel for Louisiana has called your attention to certain colorings. Counsel for Mississippi thinks that your opinion as to whether the coloring gives the territory to one State or the other is incompetent and irrelevant, for the reason that the maps speak for themselves and the Supreme Court will judge for themselves regardless
2024 of what you or other witnesses may say about this matter. I nevertheless, in view of this cross examination ask you to say whether colors given at the points which you have marked with red ink are not shown to be, by the legendary on the maps to have reference to the geology, rather than to the geography of the country and regardless of State boundaries?

A. As I understand these maps the coloring is to designate certain geological formations, but in testifying as to which I think the outline plain and I was going by the colors to designate the State line.

Recross-examination.

By Mr. DYMOND:

Q. What right would a map of Mississippi have to show geology in the State of Louisiana?

By Gen. McCLURG: Objected to on the part of the State of Mississippi as irrelevant and incompetent.

A. I don't know that I could answer that question.
Q. What does this map No. 88 purport to be?
A. A geological map of Mississippi.
Q. Does it color any other part of the State of Louisiana except that designated in the neighborhood of the red cross?
A. It does not.

The oral testimony in this case on both sides is now closed. The right being reserved by agreement of both sides that any other documentary evidence may be filed, that either State desires to introduce on the 1st day of October 1904 when the commission will meet in the attorney general's office in the city of Jackson
2025 Mississippi for the purpose of filing said documents and concluding the evidence in this case.

It is further agreed in making up the record in this case for transmittal to Washington that all evidence, including documentary and maps offered by one side and in the possession of the commissions of the other State, shall be transmitted by such commissioner to the commissioner of the State making the offer, so that the evidence of each State may be made up together, in separate reports and without confusion in the evidence offered by the respective States.

The commission is now accordingly adjourned until the 1st day of October 1904.

2026 JACKSON, MISSISSIPPI, October 1st, 1904.

Pursuant to the adjournment had on Friday September 23rd, 1904, the commission met this 1st day of October 1904 at Jackson Mississippi.

Present: Hon. William D. Bullard, commissioner. Hon. J. N. Flowers, assistant attorney general, and Hon. Monroe McClurg, associate counsel for the State of Mississippi.

Hon. Walter Guion, attorney general for the State of Louisiana, Col. F. C. Zacharie, and Hon. John Dymond Jr., associate counsel for the State of Louisiana.

In pursuance of the agreement of counsel previously made in this case, counsel for the State of Louisiana now offers, produces, and filed in evidence a photographic copy of the map of Louisiana and Mississippi by H. S. Tanner, 1819, marked map No. 66, and a photographic copy of the area of said map, representing the disputed territory in this case marked map 66 A.

It is admitted by counsel in this case that the photographic copy Exhibit 66 A has been compared in its coloring with the original and is found correct.

A copy of said map 66 A is herewith tendered to the counsel for the State of Mississippi, and a copy of the map No. 66 is to be furnished counsel for the State of Mississippi, and both of said
2027 maps are tendered to the commissioner for filing.

Counsel for Mississippi now introduces and offers in evidence the following documents to-wit:

Mississippi Document No. 91, being an extract from a report on agriculture and geology of Mississippi embraced in a sketch of the social and natural history of the State by B. L. C. Wailes, geologist of Mississippi, member of the American Association for the Promotion of Science, corresponding member of the Natural Institute, and of the Boston Society of Natural History, etc., etc., published by order of the legislature. E. Barksdale, State printer 1854, a copy of which is now handed to counsel for the State of Louisiana.

Mississippi Document No. 92, being an extract from the preliminary report on the geology and agriculture of the State of Mississippi by L. Harper L. L. D., correspondent for the Imperial Museum for Natural Science of France etc., State geologist of Mississippi. By order of the legislature of Mississippi. E. Barksdale, State printer, Jackson. 1857. Geographical description of the State of Mississippi.

A copy of which is now tendered to the counsel for the State of Louisiana.

Mississippi Document No. 93, being an act of the legislature of the State of Mississippi of 1857 directing a distribution of Harper's report, etc. A copy of which is now given to counsel for the State of Louisiana.

2028 Mississippi Document No. 94, being an act of the legislature of the State of Mississippi of 1857 defining the duties of the harbor master, and giving jurisdiction to justices of the peace along the coast etc., a copy of which is now given to the counsel for the State of Louisiana.

Mississippi Document No. 95, being a copy of sundry acts of Mississippi Territory relating to coast counties. A copy of which is now given to counsel for the State of Louisiana.

Mississippi Document No. 96, being an act of the legislature of the State of Mississippi of 1830 relating to Hancock and Jackson counties. A copy of which is now handed to counsel for the State of Louisiana.

Mississippi Document No. 97, being a part of an act of the legislature of Mississippi of 1842 relating to the county of Harrison, a copy of which is now handed to counsel for the State of Louisiana.

Mississippi Document No. 98, being a memorial of the legislature of the State of Mississippi to the Congress of the United States, January 26th, 1830. A copy of which is here given to counsel for the State of Louisiana.

Mississippi Document No. 99, being an act of the legislature of the State of Mississippi providing for a survey of the Mississippi coast. Approved February 14th, 1839, a copy of which is now

2029 handed to the counsel for the State of Louisiana.

Mississippi Document No. 100, being a joint resolution of the two houses of the Mississippi legislature to Congress for a light

ouse. Approved February 7th, 1840, a copy of which is now nded to counsel for the State of Louisiana.

Mississippi Document No. 101, being a memorial by the legisla- re of the State of Missis ippi to Congress, of February 22nd, 40.

A copy of which is now handed to counsel for the State of Lou- ana.

Mississippi Document No. 102, being a resolution to Congress con- ning the er-ction of a light house on St. Joseph's island. Feb- ry 22nd 1842. A copy of which is now handed to the counsel the State of Louisiana.

lississippi Document No. 103, being the resolutions requesting Congress of the United States to remove the custom house from rlington to Shieldsborough, October 24th, 1844.

copy of which is now handed to the counsel for the State of isiana.

lississippi Document No. 104, being preamble and resolutions ng Congress to erect a light house, establish a mail route on the t of Mississippi etc., February 5th, 1846.

copy of which is now handed to counsel for the State of Mis- sissippi.

Mississippi Document No. 105, being a copy of an act of the legislature of the State of Mississippi to authorize the ing of the first annual report on the agriculture and geological ey of the State, March 1st, 1854.

copy of which is now handed to counsel for the State of Lou- a.

ssissippi Document No. 106, being an act of the legislature of State of Mississippi to enable the United States of America to t the title to St. Joseph's island. November 19th, 1857.

copy of which is now handed to counsel for the State of Lou- .

sissippi Document No. 107, being a copy of a part of an act of ess to establish a separate territorial government for the east- art of Mississippi Territory. Approved March 3rd, 1817 U. S. es at Large, volume 3. page 371.

opy of which is now handed to counsel for the State of Lou-

sissippi Document No. 108, being a part of an act of Congress rizing the erection of certain light houses and for other pur- March 3rd, 1847. Page 175 volume 9. United States Stat- Large.

opy of which is now handed to counsel for the State of Lou-

Mississippi Document No. 109, being a part of an act mak- ing preparations for light houses, light boats, buoys etc., and providing for the erection and the establishment of the same r other purposes. Approved August 18th, 1856, page 95, 11. U. S. *States* Statutes at Large.

A copy of which is now handed to counsel for the State of Louisiana.

Mississippi Document No. 110, being an act of the legislature of the State of Mississippi for the relief of John Quavre, November 24th, 1821.

Laws of Mississippi 1821 page 21.

A copy of which is now handed to counsel for the State of Louisiana.

Mississippi Document No. 111, being the certificate of the circuit clerk of Hancock county as to his search for the records and files, relating to the case of the State of Mississippi against John Baker, and Martin Hagan.

A copy of which will be furnished to counsel for the State of Louisiana.

Mississippi Document No. 112, being copies of the laws and documents, and extracts from the laws and documents taken from the journals of William C. C. Claiborne, and David Holmes, certified by Dunbar Roland director of the department of archives and history of the State of Mississippi.

A copy of which is now given to counsel for the State of Louisiana.

2032 The taking of testimony in this case is now finally concluded by both sides, this being the day fixed by the Supreme Court for the concluding of the testimony on both sides.

The definitive treaty of friendship and peace between His Britannic Majesty, the Most Christian King, and the King of Spain, concluded at Paris, the 10th day of February, 1763; to which the King of Portugal acceded the same day.

In the name of the most holy and undivided Trinity, Father Son and Holy Ghost. So be it.

Be it known to all those to whom it shall, or may, in any manner belong.

It has pleased the Most High to diffuse the spirit of union and concord among the princes, whose divisions had spread troubles in the four parts of the world, and to inspire them with the inclination to cause the comforts of peace to succeed to the misfortunes of a long and bloody war, which, having arisen between England and France, during the reign of the most serene and most potent prince, George the Second, by the grace of God, King of Great Britain, of glorious memory, continued under the most serene and most potent prinse, George the Third, his successor, and, in its progress, communicated itself to Spain and Portugal, consequently, the most serene and most potent prince, George the Third, by the grace of God, King of Great Britain, France, and Ireland, Duke of Brunswick and Lunenbourg, arch-treasurer and elector of the holy Roman Empire; the most serene and most potent prince, Louis the Fifteenth, by the grace of God, Most Christian King; and the most serene and most potent prince, Charles the Third, by the grace of God, King of Spain, and of the Indies; after having laid the foundation of peace in the preliminaries, signed at Fontain-bleau the 3d of November last; and the most serene and most potent prince, Don Joseph the Fifth, by the grace of God, King of Portugal and the Algarves, after having acceded thereto; determined to complete, without delay, this great and important work. For this purpose, the high contracting parties have named and appointed their respective ambassadors extraordinary, and ministers plenipotentiary, viz. His Sacred Majesty, the King of Great Britain, the most illustrious and most excellent lord, John, Duke and Earl of Bedford, Marquis of Tavistock, &c. his minister of state, lieutenant-general of his armies, keeper of his privy seal, knight of the most noble Order of the Garter, and his ambassador extraordinary and minister plenipotentiary to His Most Christian Majesty; His Sacred Majesty the Most Christian King, the most illustrious and most excellent Lord Cæsar Gabriel de Choiseu Duke of Praflin, peer of France, knight of his order, lieutenant general of his armies, and the province of Brittany, counsellor in all his councils, and minister and secretary of state, and of his commands and finance; His Sacred Majesty the Catholic King, the most illustrious and most excellent lord, Don Jerome Grimaldi, Marquis de Grimaldi, knight of the Most Christian King's orders, gentleman of His Catholic

Majesty's bed chamber in employment, and his ambassador extraordinary to His Most Christian Majesty; His Sacred Majesty the Most Faithful King, the most illustrious and most excellent lord, Martin de Mello and Castro, knight professed of the Order of Christ, of His Most Faithful Majesty's council, and his ambassador and minister plenipotentiary to His Most Christian Majesty.

Who after having duly communicated to each other their full powers, in good form, copies whereof are transferred at the end of the present treaty of peace have agreed upon the articles, the tenor of which is as follows: * * *

VII. In order to re-establish peace on solid and durable foundations, and to remove forever all subjects of dispute with regard to the limits of the British and French territories on the continent of America, that for the future, the confines between the dominions of His Britannic Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence by a line drawn along the middle of this river, and the Lake
2034 Maurepas and Pontchartrain, to the sea; and for this purpose the Most Christian King cedes, in full right, and guaranties to His Britannic Majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the River Mississippi, except the town of New Orleans, and the island in which it is situated, which shall remain to France; provided that the River Mississippi shall be equally free, as well as the subjects of Great Britain, as to those of France, in its whole breadth or length from its source to the sea, and expressly that part which is between the said island of New Orleans, and the right bank of that river, as well as the passage both in and out of its mouth. It is further stipulated, that the vessels belonging to the subjects of either nation, shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations, inserted in the IVth article in favor of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article. * * *

XX. In consequence of the restitution stipulated in the preceding article, His Catholic Majesty cedes and guarantees, in full right, to His Britannic Majesty, Florida, with Fort St. Augustine, and the bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east or to the south-east of the River Mississippi; and, in general, everything that depends on the said countries and lands, with the sovereignty, property, possession, and all rights acquired by treaties or otherwise, which the Catholic king, and the Crown of Spain have had, till now, over the said countries, lands, places, and other inhabitants; so that the Catholic king cedes and makes over the whole to the said king, and to the Crown of Great Britain, and that in the most ample manner and form. His Britannic Majesty agrees, on his side, to grant to the inhabitants of the countries, above ceded the liberty of the Catholic

ligion; he will consequently give the most express and the most ffectual orders, that his new Roman Catholic subjects may profess e worship of their religion, according to the rites of the Roman urch, as far as the laws of Great Britain permit; His Britannic ajesty further agrees that the Spanish inhabitants, or others, who ve been subjects of the Catholic king in the said countries, may tire with all safety and freedom wherever they think proper; and y sell their estates, provided it be to His Britannic Majesty's bjects, and bring away their effects, as well as their persons, with- t being restrained in their emigrations, under any pretense what- ver, except that of debts, or criminal prosecutions; the term, ited for this emigration being fixed to the space of eighteen nths, to be computed from the day of the exchange of the ratifi- ion of the present treaty. It is moreover stipulated that His tholic Majesty shall have power to cause all the effects, that may ong to him, to be brought away, whether it be artillery or other ngs.

(Page 233 Annual Register, vol. 5. 1762)

Endorsed:) Original, England and Spain, 1763. Louisiana *vs.* ssissippi. Doc. Miss. 1. Filed June 1st 1904 Wm. D. Bullard, mmissioner. Office Supreme Court U. S. Filed Mar. 13 1905 nes H. McKenney, clerk.

5 MISS. DOCUMENT NO. 2.

Definitive Treaty of Peace and Friendship between His Britannic Majesty and the Most Catholic King, Signed at Versailles the 3d Day of September, 1783.

As Published by Authority.

e it known to all those whom it shall or may in any manner cern. The most serence and most potent prince George the rd, by the grace of God, King of Great Britain, France and Ire- d, Duke of Brunswick and Lunenbourg, arch-treasurer and tor of the Holy Roman Empire, &c. and the most serene and t potent prince Charles the Third, by the grace of God, King of in, and of the Indies &c. being equally desirous to put an end to war, which for several years past afflicted their respective domin- , accepted the offer which Their Majesties the Emperor of the ans, and the Empress of all the Russias, made to them, of their position, and of their mediation: * * *, have agreed upon following articles.

* * * * * * *

rt. V. His Britannic Majesty likewise cedes and guarantees, in right to His Catholic Majesty, East Florida as also West Florida. Catholic Majesty agrees that the British inhabitants, or others

who may have been subjects of the King of Great Britain in the said countries, may retire in full security and liberty, where they shall think proper, and may sell their estates and remove their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except on account of debts or criminal prosecutions; the term limited for their emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty: but if, from the value of the possessions of the English proprietors, they should not be able to dispose of them within the said term, then His Catholic Majesty shall grant them a prolongation proportionate to that end. It is further stipulated, that His Britannic Majesty shall have the power of removing from East Florida all the effects which may belong to him, whether artillery or other matters.

(Endorsed:) England and Spain. 1782. Original. Louisiana *vs.* Mississippi. Miss. Doc. No. 2 Filed June 1st 1904 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney clerk.

2036 MISS. DOCUMENT No. 3.

Chapter 22, Volume 2, United States Statutes at Large.

Chap. XXII.—An act for the disposal of certain tracts of land in the Mississippi territory, claimed under Spanish grants, reported by the land commissioners as antedated, and to confirm the claims of Abraham Ellis and Daniel Harregal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several tracts of land, in the Mississippi territory, the titles to which have been derived under Spanish claims and which have been disallowed by the boards of commissioners east and west of Pearl river, on suspicion of the grants, warrants or orders of survey, on which the claims are grounded, being antedated or otherwise fraudulent, and which are embraced in the report of the said boards of commissioners, laid before Congress, agreeable to the third section of an act, *intitu*led, "An act supplementary to the act *intitled* An act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee," shall be, and the same are hereby directed to be sold, in the same manner, at the same price, and on the same terms and conditions, as have been, or may be by law provided for the sale of the other public lands in the said territory; and any person or persons claiming under a Spanish grant, warrant, or order of survey as aforesaid, shall be entitled to institute, in the highest court of law and equity in

e said territory, his or their suit or action for the recovery of the act or tracts so claimed as aforesaid: Provided: such claimant or aimants shall institute his or their suit or action within the term one year from and after the tract or tracts so claimed shall have en sold by the United States, or in case the same is now inhabited d cultivated, in virtue of a pre-emption right within one year om and after the passing of this act; and if any person or persons, aiming lands as aforesaid, shall fail or neglect to commence or in-tute his or their suit or action, in the manner and within the time scribed by this section, or shall be non-suit or discontinue the ne, his or their right to commence such suit or action, in any art whatsoever, shall be forever barred and foreclosed.

SEC. 2. And be it further enacted, That if the person or persons aiming under such grant, warrant or order of survey, shall make ppear to the satisfaction of the court, before whom such suit or ion shall be pending, that the tract of land therein specified, was ually surveyed prior to the twenty-seventh day of October, one ousand seven hundred and ninety-five, then, and in that case, the e shall be deemed and held to be good and valid, to all intents l purposes, anything in this act to the contrary notwithstanding: t in no case the claimant or claimants shall fail to prove the tract tracts of land so claimed, to have been actually surveyed prior to twenty-seventh day of October, one thousand seven hundred and ety-five, or in case the same shall appear to be otherwise fraud-nt or illegal in the grant, warrant or order of survey, granted by Spanish government, as aforesaid, by virtue of which such tract racts of land may be claimed, shall be, and the same is hereby lared null and void, to all intents and purposes, and shall not be l in evidence against any claim or certificate of preëmption, de-d from the United States.

ECTION 3. And be it further enacted, That it shall be lawful, in trial of such suit or action, for either party to introduce parole dence for the purpose of supporting or invalidating the grant, rant or order of survey as aforesaid; and the judgment, sen-e or decree of the said highest court of law or equity, in the ase aforesaid, shall be final and conclusive between the parties, and may be plead in bar to any subsequent suit or action brought in the same or any other court, for the recov-of the same land or any part thereof.

EC. 4. And be it further enacted, That Abraham Ellis, be and s hereby confirmed in a tract of land granted by the British gov-nent of West Florida to Stephen Jordan, containing the quan-of two hundred acres, lying and being on the waters of Boyd's k, according to the metes and bounds of said tract of land set in the plat thereof made by the surveyor-general of said prov-of West Florida; and that the amount of money which the Ellis may have been compelled to pay to the receiver of public ies west of Pearl river, in the Mississippi territory, for said of land, be refunded to him by the receiver aforesaid.

SEC. 5. And be it further enacted, That Daniel Harregal be and he is hereby confirmed in his title in fee simple to the tract of land whereon he resides, containing the quantity of five hundred and fifty acres, agreeably to a plat thereof filed with the register of the land-office, west of Pearl river, in the Mississippi territory. Approved, February 28, 1809.

(Endorsed:) Original. Act. Feb. 28, 1809. Louisiana *vs.* Mississippi. Miss. Doc. No. 3. Filed June 1st 1904. Wm. D. Ballard commissioner Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

Sections 1 and 2 of Chapter 100, Vol. 3, United States Statutes at Large.

Chap. C.—An Act for Adjusting the Claims to Land and Establishing Land Offices in the Districts East of the Island of New Orleans (*a*).

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all the claims to land, founded on complete grants from the Spanish government, reported to the Secretary of the Treasury, by the commissioners from the districts east and west of Pearl river, appointed under the authority of an act, entitled, "An act for ascertaining the titles and claims to lands in that part of Louisiana which lies east of the River Mississippi and island of New Orleans," which are contained in the several reports of the commissioners, and which are, in the opinion of the commissioners, valid, agreeably to the laws, usages, and customs, of the said government, be, and the same are hereby, recognized as valid and complete titles against any claim on the part of the United States, or right derived from the United States: And that all claims founded on British grants, contained in the said reports, which have been sold and conveyed, according to the provisions of the treaty of peace, between Great Britain and Spain, of the third of September, one thousand seven hundred and eighty-three, by which that part of Louisiana, lying east of the island of Orleans, was ceded to Spain, under the denomination of West Florida, or which were settled and cultivated by the person having the legal title therein, at the date of said treaty, are recognized as valid and complete titles, against any claim on the part of the United States, or right derived from the United States.

SEC. 2. And be it further enacted, That all claims reported as aforesaid, and contained in the several reports of the said commissioners, founded on any order of survey, requette, permission to settle, or any written evidence of claim, derived from the Spanish au-

rities, which ought, in the opinion of the commissioners, to be firmed, and which by the said reports appear to be derived from Spanish government, before the twentieth day of December, one usand eight hundred and three, and the land claimed to have n cultivated and inhabited, on or before that day, shall be con-ed in the same manner as if the title had been completed: Pro-d, That in all such claims, where the plat and certificate of sur-, made prior to the fifteenth day of April, one thousand eight dred and thirteen, under the authority of the Spanish govern-t, in pursuance of such claim, has not been filed with the said missioners, such claim shall not be confirmed to any person for e than twelve hundred and eighty acres; and that for all the r claims to land comprised in the reports aforesaid, and which ht, in the opinion of the commissioners, to be confirmed; the mant to such lands shall be entitled to a grant therefor as a do-on: Provided, That such grant, as a donation, shall not be made ny one person for more than twelve hundred and eighty acres; ch confirmation of the said incomplete titles and grants of dona-s, hereby provided to be made, shall amount only to a relin-hment forever, on the part of the United States, of any claim tever to the tract of land so confirmed or granted:

nd provided, also, That no such claim shall be confirmed to any on to whom the title to any tract of land shall have been recog-d under the preceding provisions.

ndorsed:) Louisiana *vs.* Mississippi Miss. No. 4. Filed June 1st, Wm. D. Bullard, commissioner. Office Supreme Court U. S. Mar. 13, 1905 James H. McKenney, clerk.

Miss. Document No. 5.

ct concerning an act to enable the President of the United States, der certain contingencies, to take possession of the country lying st of the River Perdido and south of the State of Georgia and the ssissippi Territory, and for other purposes, and the declaration companying the same.

it enacted by the Senate and House of Representatives of the ed States of America, in Congress assembled, That this act and ct passed during the present session of Congress, entitled "An enable the President of the United States, under certain con-ncies, to take possession of the country lying east of the River do, and south of the State of Georgia and the Mississippi Terri-and for other purposes," and the declaration accompanying the , be not printed or published, until the end of the next session ngress, unless directed by the President of the United States, aw or usage to the contrary notwithstanding.

proved March 3, 1811.

(Page 472, vol. 3, United States — at Large.)

(Endorsed:) Original act of M'ch 3rd, 1811. Louisiana *vs.* Mississippi. Miss. Doc. 5. Filed June 1, '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2040 MISS. DOCUMENT NO. 6.

An act to enable the President of the United States, under certain contingencies, to take possession of the country lying east of the River Perdido and south of the State of Georgia and the Mississippi Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States, be and he is hereby, authorized to take possession of, and occupy, all or any part of the territory lying east of the River Perdido, and south of the State of Georgia and the Mississippi Territory, in case an arrangement has been, or shall be, made with the local authority of the said Territory, for delivering up the possession of the same, or any part thereof, to the United States, or in the event of an attempt to occupy the said Territory, or any part thereof, by any foreign government; and he may, for the purpose of taking possession, and occupying the Territory aforesaid, and in order to maintain therein the authority of the United States, employ any part of the Army and Navy of the United States which he may deem necessary.

SEC. 2. And be it further enacted, That one hundred thousand dollars be appropriated for defraying such expenses as the President may deem necessary for obtaining possession as aforesaid, and the security of the said territory, to be applied under the direction of the President, out of any moneys in the Treasury not otherwise appropriated.

SEC. 3. And be it further enacted, That in case possession of the Territory aforesaid shall be obtained by the United States, as aforesaid, that until other provision be made by Congress, the President be, and he is hereby authorized to establish, within the Territory aforesaid, a temporary government, and the military, civil and judicial, powers thereof shall be vested in such person and persons, and be exercised in such manner as he may direct, for the protection and maintenance of the inhabitants of the said Territory in the full enjoyment of their liberty, property, and religion. Approved January 15, 1811.

(Page 471 vol. 2, United States Statutes at Large.)

(Endorsed:) (Original.) Act of Jan. 15, 1811. Louisiana *vs.* Mississippi. Miss. Doc. No. 6. Filed June 1, 1904. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

1 MISS. DOCUMENT NO. 7.

olution of the Congress of the United States, Approved January 5, 1811, Relative to the Occupation of the Floridas by the United tates of America.

Resolution.

aking into view the peculiar situation of Spain, and of her Ameri- provinces; and considering the influence which the destiny of territory adjoining the southern border of the United States may e upon their security, tranquil-ity, and commerce:

herefore, resolved by the Senate and House of Representatives he United States of America, in Congress assembled, That the ted States, under the peculiar circumstances of the existing crisis, ot without serious inquietude, see any part of the said territory, into the hands of any foreign power; and that a due regard to r own safety compels them to provide, under certain contingen-, for the temporary occupation of the said territory; they at the e time, declare that the said territory shall, in their hands, remain ject to future negotiation.

pproved January 15, 1811.

Page 471, volume 2, United States Statutes at Large.

Endorsed:) (Original.) Resolution Jan. 15, 1811. Louisiana *vs.* sissippi Miss. Doc. No. 7 Filed June 1st 1904 Wm. D. Bullard missioner. Office Supreme Court U. S. Filed Mar. 13 1905. es H. McKenney, clerk.

2 MISS. DOCUMENT NO. 8.

t Paragraph of Section 1, Ch. 50, of Vol. 2, United States Statutes at Large.

p. L.—An Act for the Admission of the State of Louisiana into e Union and to Extend the Laws of the United States to the id State. (*a*)

Whereas, the representatives of the people of all that part of the itory or country ceded, under the name of "Louisiana," by the ty made at Paris, on the thirtieth day of April, one thousand t hundred and three, between the United States and France, ained within the following limits, that is to say: Beginning at mouth of the River Sabine; thence by a line to be drawn along middle of said river, including all islands to the thirty second ree of latitude; thence, due north, to the northernmost part of thirty-third degree of north latitude; thence, along said parallel atitude, to the River Mississippi; thence, down the said river, to

the River Iberville; and from thence, along the middle of the said river, and Lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence, bounded by the said Gulf, to the place of beginning, including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and State government, and give to the said State the name of the State of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and State government, and for the admission of the said State into the Union, on an equal footing with the original States, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved.

Approved April 8, 1812.

(Endorsed:) (Original) Admitting Louisiana Louisiana *vs.* Mississippi Miss. Doc. No. 8 Filed June 1st 1904 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar 13 1905 James H. McKenney, clerk.

2043 MISS. DOCUMENT No. 9.

Chapter 57 of Volume 2 of United States Statutes at Large.

Chap. LVII.—An Act to Enlarge the Limits of the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case the legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following bounds to wit: Beginning at the junction of the Iberville, with the River Mississippi; thence, along the middle of the Iberville, the River Amite, and of the Lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl river; thence up the eastern branch of Pearl river to the thirty-first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the said State of Louisiana, and be subject to the constitution and laws thereof, in the same manner, and for all intents and purposes as if it had been included within the original boundaries of said State.

SEC. 2. And be it further enacted, That it shall be incumbent upon the legislature of the State of Louisiana, in case they consent to the incirpiration of the territory aforesaid, within their limits, at their first session, to make provision by law for the representation of the said territory in the legislature of the State, upon the principles of the constitution, and for the securing to the people of the said territory, equal rights, privileges, benefits and advantages with those enjoyed by the people of the other parts of the State; which law

ll be liable to revision, modification and amendment by Congress, l also in the manner provided for the amendment of the State stitution, but shall not be liable to change or amendment by the islature of the State.
Approved April 14, 1812.

Endorsed:) (Original.) Enlarging Louisiana. Louisiana *vs.* Mis-ippi. Miss. Doc. No. 9. Filed June 1st 1904. Wm. D. Bullard, mmissioner. Office Supreme Court U. S. Filed Mar. 13 1905, nes H. McKenney, clerk.

4 MISS. DOCUMENT No. 10.

Chapter 84 of Vol. 2, United States Statutes at Large.

p. LXXXIV.—An Act to Enlarge the Boundaries of the Mississippi Territory.

e it enacted by the Senate and House of Representatives of the ted States of America in Congress assembled, That all that por- of territory lying east of Pearl river, west of the Perdido, and h of the thirty-first degree of latitude, be, and the same is hereby exed to the Mississippi Territory; to be governed by the laws in force therein, or which may hereafter be enacted, and the s and ordinances of the United States, relative thereto, in like nner as if the same had originally formed a part of said Territory; until otherwise provided by law, the inhabitants of the said dis- hereby annexed to the Mississippi Territory, shall be entitled to representative in the General Assembly thereof.
pproved, May 14, 1812.

Endorsed:) Original. Act of May 14, 1812. Louisiana *vs.* Mis-ippi. Miss. Doc. No. 10 Filed June 1st, 1904, Wm. D. Bullard, mmissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, es H. McKenney, clerk.

5 MISS. DOCUMENT No. 11.

Act Authorizing the President of the United States to Take Possession of a Tract of Country Lying South of the Mississippi Territory and West of the River Perdido.

e it enacted by the Senate and House of Representatives of the ed States of America, in Congress assembled, That the Presi- be, and he is hereby, authorized to occupy and hold all that of country called West Florida, which lies west of the River ido, not now in possession of the United States.

SEC. 2. And be it further enacted, That, for the purpose of occupying and holding the country aforesaid, and of affording protection to the inhabitants thereof, under the authority of the United States, the President may employ such parts of the military and naval force of the United States as he may deem necessary.

SEC. 3. And be it further enacted, That for defraying the necessary expenses, twenty thousand dollars are hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated, and to be applied for the purposes aforesaid, under the direction of the President.

Approved February 12, 1813.

Page 472, vol. 3, United States Statutes at Large.

(Endorsed:) (Original) Act Feb. 12, 1813. Louisiana *vs.* Mississippi Miss. Doc. No. 11. Filed June 1st /04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

2046 MISS. DOCUMENT No. 12.

Sections 1 and 2 of Chapter 23 of Vol. 3 of United States Statutes at Large.

Chap. XXIII.—An act to enable the people of the western part of the Mississippi territory to form a constitution and State government and for the admission of such State into the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of the western part of the Mississippi territory be, and they hereby are, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.

SEC. 2. And be it further enacted, That the said State shall consist of all the territory included within the following boundaries, to wit: Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the gulf of Mexico, thence westwardly including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence, west along the said degree of latitude to the Mississippi river, thence up the same to the beginning.

(Endorsed:) (Original) Admitting Mississippi. Louisiana *vs.* Mississippi Miss. Doc. 12 Filed June 1/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2047 MISS. DOCUMENT NO. 13.

Resolutions.

I. Resolution for the Admission of the State of Mississippi into the Union.

Whereas, in pursuance of an act of Congress, passed on the first day of March, one thousand eight hundred and seventeen, entitled "An act to enable the people of the western part of the Mississippi territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," the people of the said territory did, on the fifteenth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and State government, which constitution and State government so formed, is republican, and in conformity to the principles of the articles of compact between the original States and the people and States in the territory north-west of the River Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty seven—

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Mississippi shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.

Approved, December 10, 1817.

(Page 473, vol. 2 United States Statutes at Large.)

(Endorsed:) (Original.) Resolution Dec. 10, 1817. Louisiana *vs.* Mississippi Doc. (Miss.) No. 13. Filed June 1st/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

2048 MISS. DOCUMENT NO. 14.

Copy of One of the Spanish Grants Annulled by the Treaty Between the United States and Spain of February, 1819.

Don Antonio Porcel, Knight Pensioner of the Royal and Distinguished Order of Charles 3rd, of the Council of State, and Secretary of State of Dispatch of the Ultramarine Government, &c.

I certify that, under date of the sixth of February, one thousand eight hundred and eighteen, royal letters patent of the same tenor were sent by the late council of the Indies to the governor captain

general of the island of Cuba and its dependencies, to the intendent of the army and royal business of the Havana and its district, and to the governor of the Floridas, that each should do his utmost in his particular department to give effect to the grant made to Brigadier the Count Punonrostro, of various lands situated in West Florida, of the following tenor:

The King.

My governor and captain general of the island of Cuba and its dependencies: The Brigadier Count of Punonrostro submitted to me, on the third of November last what follows: "Sire: The Brigadier Count of Punonrostro, grandee of Spain of the first class, and your gentleman of the bed chamber in actual attendance, &c., &c., throws himself at Your Majesty's royal feet with the most profound respect, and submits to Your Majesty: That, prompted by the desire of promoting, by all possible means, the improvement of the extensive waste and unsettled lands possessed by Your Majesty in the America, which, by their fertility, offer the greatest advantages, not only to your memorialist, but to the State, provided due effect, as is hoped, be given to the noble project formed by Your Majesty's memorialist, of converting a small portion of those deserts into the abode of peaceable Christians and industrious inhabitants, who will increase the population of your kingdoms, promote agriculture and commerce, and thereby add immensely to your royal revenues. This enterprise should be conducted by a person who, with a knowledge of the country, would combine the intelligence necessary for comparing the progress made by other nations in similar situations, and particularly by the United States, which, within a very recent period, have advanced their power to an extraordinary height, and especially in the instance of the Mobile country, adjoining Florida, which, in the last six years, has received such an influx of emigrants, as to be converted from a desert waste into a rich commercial province, highly improved and peopled with more than three hundred thousand souls. A similar change would be effected in Florida within eighteen or twenty years, by the adoption of judicious arrangements, and by those exertions which Your Majesty's memorialist proposes to employ for the promotion of his personal interest, and consequently that of the State. Relying on the merits of the case, and the lively interest felt by Your Majesty in the national prosperity, and in the services and sacrifices of Your Majesty's memorialist, he humbly requests Your Majesty that, taking them into consideration, you would be graciously pleased to grant and cede to him, in full right and property, and the mode and manner required by law, all the waste lands, not heretofore ceded in Florida, lying between the River Periddo, westward of the gulf of Mexico, and the Rivers Amaruja and Saint Johns, from Popa to the point where it empties into the ocean, for the eastern limit; and, for the northern, the boundary line of the United States; and, to the south, by the

alf of Mexico, including the desert islands on the coast. He therere humbly prays, in consideration of the premises, and the unquestionable advantages to be derived by the nation, Your 949 Majesty will be pleased to grant this his petition; and, thereupon, direct the necessary orders to be given to the local aucorities to afford him all due aid and protection, as well in designating the territory referred to, as in giving full effect to the whole nterprise. All which he hopes from the munificence of Your ajesty."

Having taken the premises into consideration, and bearing in ind the distinguished merits of the memorialist, and his signal al for my royal services, as well as the benefits to be derived by e State from an increase of population in the countries, the cession hereof he has solicited, I have judged fit to grant him the same, so far as is conformable to the laws of these my kingdoms, and make it known to my council of the Indies, for its due execution, a royal order of the seventeenth of December, in the year aforeentioned; wherefore, I charge and command you, by this, my yal cedula, with due observance of the laws to such cases pertaing, to give full and due effect to the said cession, taking all requie measures for its accomplishment, without injury to any third rty, and, to the end, that the said Count Punonrostro may forthth carry his plans into execution, in conformity with my benefint desires in favor of the agricultural and commerce of the said rritories, which require a population proportionate to the fertility the soil, and the defence and security of the coasts, he giving gular accounts of his proceedings, for such is my will; and that e note be taken of the present cedula in the office of the acuntant general of the Indies. Dated at the palace, the sixth of bruary, one thousand eight hundred and eighteen.

I, THE KING.

By command of the king our lord:

ESTEVAN VAREA.

And I confirm this exemplification, at Madrid, the fifteenth of tober, one thousand eight hundred and twenty.

(Signed) ANTONIO PORCEL.

(Endorsed:) Original copy of Spanish grant 1819 Louisiana *vs.* ssissippi Miss. Doc. No. 14. Filed June 1/04 Wm. D. Bullard, mmissioner. Office Supreme Court U. S. Filed Mar. 13 1905 mes H. McKenney, clerk.

50 MISS. DOCUMENT NO. 15.

Article II of treaty of 1819 between the United States and Spain itled:

Treaty of amity, settlement, and limits between the United States America and His Catholic Majesty, concluded at Washington,

February 22, 1819; ratification advised by Senate February 24, 1819; ratified by President; ratified by the King of Spain October 24, 1820; ratification again advised by Senate February 19, 1821; ratified by President February 22, 1821; ratifications exchanged at Washington February 22, 1821; proclaimed February 22, 1821.

Treaty of amit*h*, settlement, and limits between the United States of America and His Catholic Majesty.

Article II.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belonged to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them.

Signed at Washington on the 22 day of February, 1819.

JOHN QUINCY ADAMS.
LUIS DE ONIS.

(Endorsed:) (Original) United States and Spain, 1819. Louisiana *vs.* Mississippi. Doc. No. 15. Filed June 1/04. Wm. D. Ballard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2051 Miss. Document No. 16.

Sections 1 and 2 of Chapter 39, Vol. 2, United States Statutes at Large.

Chap. XXXIX.—An act for carrying into execution the treaty between the United States and Spain, concluded at Washington on the twenty-second day of Februaary, one thousand eight hundred and nineteen (*a*).

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States, be, and he is hereby, authorized to take possession of, and occupy, the Territories of East and West Florida, and the appendages and appurtenances thereof: and to remove and transport the officers and soldiers of the King of Spain, being there, to the Havanna, agreeably to the stipulations of the treaty between the United States and Spain, concluded at Washington, on the twenty-second day of February, in the year one thousand eight hun-

red and nineteen, providing for the cession of said Territories to he United States; and he may, for these purposes, and in order to naintain in said Territories the authority of the United States, emloy any part of the Army and Navy of the United States, and the ilitia of any State or Territory, which he may deem necessary.

SEC. 2. And be it further enacted, That until the end of the first ession of the next Congress, unless provision for the temporary govrnment of said Territories be sooner made by Congress, all the ilitary, civil, and judicial, powers exercised by the officers of the xisting government of the same Territories, shall be vested in such erson and persons, and shall be exercised in such manner, as the resident of the United States shall direct, for the maintaining the habitants of said Territories in the free enjoyment of their liberty, roperty, and religion; and the laws of the United States relating the revenue and its collection, subject to the modification stiplated by the fifteenth article of the said treaty, in favour of Spanish essels and their cargoes, and the laws relating to the importation persons of colour, shall be extended to the said Territories. And e President of the United States shall be, and he is hereby, auorized within the term aforesaid, to establish such districts for the llection of the revenue, and during the recess of Congress, to apoint such officers, whose commissions shall expire at the end of the xt session of Congress, to enforce the said laws, as to him shall em expedient.

Approved March 3, 1821.

(Endorsed:) (Original.) Act Mar. 3rd, 1821. Louisiana *vs.* Missippi. Miss. Doc. No. 16. Filed June 1 1904. Wm. D. Bullard, mmissioner. Office Supreme Court U. S. Filed Mar. 13 1905. mes H. McKenney, clerk.

52 MISS. DOCUMENT No. 17.

FOSTER AND ELAM
vs.
DAVID NEILSON.

2nd. Peters, United States Report, Beginning at Page 300.

53 FOSTER AND ELAM
vs.
DAVID NEILSON.

2nd. Peters, United States Report, Beginning at Page 300.

This case presents this very intricate, and at one time very intering question: To whom did the country between Iberville and Perdido rightfully belong, when the title now asserted by the intiffs was acquired.

This question has been repeatedly discussed with great talent and research, by the Government of the United States and that of Spain. The United States have perseveringly and earnestly insisted, that by the treaty of St. Ildefonso, made on the 1st of October in the year 1800, Spain ceded the disputed territory as part of Louisiana to France; and that France, by the treaty of Paris, signed on the 30th of April 1803, and ratified on the 21st of October in the same year, ceded it to the United States. Spain has with equal perseverance and earnestness maintained, that her cession to France comprehended that territory only which was at that time denominated Louisiana, consisting of the island of New Orleans, and the country she received from France west of the Mississippi.

Without tracing the title of France to its origin, we may state with confidence that at the commencement of the war of 1756, she was the undisputed possessor of the province of Louisiana, lying on both sides the Mississippi, and extending eastward beyond the bay of Mobile. Spain was at the same time in possession of Florida; and it is understood that the River Perdido separated the two provinces from each other.

Such was the state of possession and title at the treaty of Paris, concluded between Great Britain, France and Spain, on the 10th day of February 1763. By that treaty France ceded to Great Britain the river and port of Mobile, and all her possessions on the left side of the River Mississippi, except the town of New Orleans and the island on which it is situated; and by the same treaty Spain ceded Florida to Great Britain. The residue of Louisiana was ceded by France to Spain, in a separate and secret treaty between those two powers. The King of Great Britain being thus the acknowledged sovereign of the whole country east of the Mississippi, except the island of New Orleans, divided his late acquisition in the south into two provinces, East and West Florida. The latter comprehended so much of the country ceded by France as lay south of the 31st degree of north latitude, and a part of that ceded by Spain.

By the treaty of peace between Great Britain and Spain, signed at Versailles on the 3d of September 1783, Great Britain ceded East and West Florida to Spain. And those provinces continued to be known and governed by those names, as long as they remained in the possession and under the dominion of His Catholic Majesty.

On the 1st of October in the year 1800, a secret treaty was concluded between France and Spain at St. Ildefonso, the third article of which is in these words: "His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other States."

The treaty of the 30th of April 1803, by which the United States

quired Louisiana, after reciting this article, proceeds to state that
he first consul of the French Republic doth hereby cede to the
United States, in the name of the French Republic, forever and
64 in full sovereignty, the said territory with all its rights and
appurtenances as fully and in the same manner as they have
en acquired by the French Republic, in virtue of the above men-
ned treaty concluded with His Catholic Majesty." The 4th article
pulates that "there shall be sent by the government of France a
mmissary to Louisiana, to the end that he do every act necessary,
well to receive from the officers of His Catholic Majesty the said
untry, and its dependencies, in the name of the French Republic,
it has not been already done, as to transmit it in the name of the
ench Republic to the commissary or agent of the United States."
On the 30th of November 1803, Peter Clement Laussatt, colonial
fect and commissioner of the French Republic, authorized, by full
wers dated the 6th, of June 1803, to receive the surrender of the
ovince of Louisiana, presented those powers to Don Manuel Sal-
lo, governor of Louisiana and West Florida, and to the Marquis
Casa Calvo, commissioners on the part of Spain, together with full
wers to them from His Catholic Majesty to make the surrender.
These full powers were dated at Barcelona the 15th of October
02. The act of surrender declares that in virtue of these full
wers, the Spanish commissioners, Don Manuel Salcedo and the
rquis de Casa Calvo, "put from this moment the said French
mmissioner, the citizen Laussatt, in possession of the colony of
uisiana and of its dependencies, as also of the town and island of
w Orleans, in the same extent that it now has, that it had in the
nds of France when she ceded it to my royal crown, and such as
ught to be after the treaties which have successively taken place
ween my States and those of other powers."
Previous to the arrival of the French commissioner, the governor
the provinces of Louisiana and West Florida, and the Marquis de
a Calvo, had issued their proclamation, dated the 18th of May
03; in which they say, "His Majesty having before his eyes the
igations imposed by the treaties, and desirous of avoiding any
putes that might arise, has designed to resolve that the delivery
the colony and island New Orleans, which is to be made to the
neral of division Victor, or such other officer as may be legally
thorised by the government of the French Republic, shall be ex-
ted on the same terms that France ceded it to His Majesty; in
ue of which, the limits of both shores of the River St. Louis of
sissippi, shall remain as they were irrevocably fixed by the 7th
cle of the definitive treaty of peace, concluded at Paris the 10th of
ruary 1763, according to which the settlements from the River
shac or Iberville, to the line which separates the American ter-
ry from the dominions of the king, remain in possession of Spain
annexed to West Florida."
On the 21st of October 1803, Congress passed an act to enable the
sident to take possession of the territory ceded by France to the

United States: in pursuance of which commissioners were appointed to whom Monsieur Laussatt, the commissioner of the French Republic, surrendered New Orleans and the province of Louisiana on the 20th, of December 1803.

The surrender was made in general terms; but no actual possession was taken of the territory lying east of New Orleans.

The Government of the United States, however, soon manifested the opinion that the whole country originally held by France, and belonging to Spain when the treaty of St. Ildefonso was concluded, was by that treaty retroceded to France.

On the 24th of February 1804, Congress passed an act for laying and collecting duties within the ceded territories, which authorised the President, whenever he should deem it expedient, to erect the shores &c. of the bay and river Mobile, and of the other rivers, creeks &c. emptying into the gulph of Mexico east of the said River
2055 Mobile, and west thereof to the Pascagoula inclusive, into a separate district, and to establish a port of entry and delivery therein. The port established in pursuance of this act was at Fort Stoddert, within the acknowledged jurisdiction of the United States; and this circumstance appears to have been offered as a sufficient answer to the subsequent remonstrances of Spain against the measure. It must be considered, not as acting on the territory, but as indicating the American exposition of the treaty, and exhibiting the claim its Government intended to assert.

In the same session, on the 26th of March 1804, Congress passed an act creating Louisiana into two territories. This declares that the country ceded by France to the United States south of the Mississippi territory, and south of an east and west line, to commence on the Mississippi river at the 33d degree of north latitude and run west to the western boundary of the cession, shall constitute a Territory under the name of the Territory of Orleans. Now the Mississippi territory extended to the 31st degree of north latitude and the country south of that territory was necessarily the country which Spain held as West Florida; but still its constituting a part of the Territory of Orleans depends on the fact that it was a part of the country ceded by France to the United States. No practical application of the laws of the United States to this part of the territory was attempted, nor could be made, while the country remained in the actual possession of the foreign power.

The 14th section enacts "that all grants to lands within the territory ceded by the French Republic to the United States by the treaty of the 30th of April 1803, the title whereof was at the date of the treaty of St. Ildefonso in the crown, government, or nation of Spain, and every act and proceeding subsequent thereto of whatsoever nature towards the obtaining any grant, title or claim to such land, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity." A proviso excepts the titles of actual settlers acquired before the 20th of

December 1803, from the operation of this section it was obviously intended to act on all grants made by Spain after her retrocession of Louisiana to France, and without deciding on the extent of that retrocession to put the titles which might be thus acquired through the whole territory, whatever might be the extent, completely under the control of the American Government.

The President was authorised to appoint registers or recorders of lands acquired under the Spanish and French government, and boards of commissioners who should receive all claims for lands, and hear and determine in a summary way all matters respecting such claims. Their proceedings were to be recorded to the Secretary of the Treasury, to be laid before Congress for the final decision of that body.

Previous to the acquisition of Louisiana, the ministers of the United States had been instructed to endeavor to obtain the Floridas from Spain. After that acquisition, this object was still persued, and the friendly aid of the French government towards this attainment was requested. On the suggestion of Mr. Talle-rand that the time was unfavorable, the design was suspended. The Government of the United States however soon resumed its purpose; and the settlement of the boundaries of Louisiana was blended with the purchase of the Floridas and the adjustment of heavy claims made by the United States for American property, condemned in the courts of Spain during the war which was terminated by the treaty of Amiens.

On his way to Madrid Mr. Monroe, who was empowered in
396 conjunction with Mr. Pinckney, the American minister at the court of His Catholic Majesty to conduct the negotiations passed through Paris; and addressed a letter to the minister of exterior relations, in which he detailed the objects of his mission, and his views respecting the boundaries of Louisiana. In his answer to this letter, dated the 21st of December 1804, Mr. Talle-rand declared, in decided terms, that by the treaty of St. Ildefonso, Spain retroceded to France no part of the territory east of the Iberville which had been held and known as West Florida; and that in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. He added that he was authorized by His Imperial Majesty to say, that at the beginning of the year 1802, General Bournonville had been charged to open a new negotiation with Spain for the acquisition of the Floridas; but his project had not been followed by a treaty.

Had France and Spain agreed upon the boundary of the retroceded territory before Louisiana was acquired by the United States, the agreement would undoubtedly have ascertained its limits. But the declarations of France made after parting with the province can not be admitted as conclusive.

In questions of this character, political considerations have too much influence over the conduct of nations, to permit their declara-

tions to decide the course of an independent government in a matter vitally interesting to itself.

Soon after the arrival of Mr. Monroe at his place of designation the negotiations commenced at Aranjuez. Every word in that article of the treaty of St. Idlefonso which ceded Louisiana to France, was scanned by the ministers on both sides with all the critical acumen which talents and zeal could bring into their service. Every argument drawn from collateral circumstances, connected with the subject, which could be supposed to elucidate it, was exhausted. No advance towards an arrangement was made, and the negotiation terminated, leaving each party firm in his original opinion and purpose. Each persevered in maintaining the construction with which he had commenced. The discussion has since been resumed between the two nations with as much ability and with as little success. The question has been again argued at this bar, with the same talent and research which it has uniformly called forth. Every topic which relates to it has been completely exhausted; and the court by reasoning on the subject could only repeat what is familiar to all.

We shall say only, that the language of the article may admit of either construction, and it is scarcely possible to consider the arguments on either side, without believing that they proceed from a conviction of their truth. The phrase on which the controversy mainly depends, that Spain retrocedes Louisiana with the same extent that it had when France possessed it, might so readily have been expressed in plain language, that it is difficult to resist the persuasion that the ambiguity was intentional. Had Louisiana been retroceded with the same extent that it had when France ceded it to Spain, or with the same extent that it had before the cession of any part of it to England, no controversy respecting its limits could have arisen. Had the parties concurred in their intention, a plain mode of expressing that intention would have presented itself to them. But Spain has always manifested infinite repugnance to the surrender of territory, and was probably unwilling to give back more than she had received. The introduction of ambiguous phrases into the treaty, which power might afterwards construe according to circumstances, was a measure which the strong and politic might not be disinclined to employ.

2057 However this may be, it is, we think, incontestably, the American construction of the article, if not entirely free from question, is supported by arguments of great strength which can not be easily confuted.

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably the right remains with the strongest. The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided; and its duty commonly

o decide upon individual rights, according to those principles
ch the political departments of nations have established. If the
rse of the nation has been a plain one, its courts would hesitate
ronounce it erroneous.

Ve think then, however individual judges might construe the
ty of St. Idelfonso, it is the province of the court to conform its
sions to the will of the legislature, if that will has been clearly
ressed.

he convulsed state of European Spain affected her influence over
colonies; and a degree of disorder prevailed in the Floridas, at
ch the United States could not look with indifference. In Octo-
1810, the President issued his proclamation, directing the gov-
or of the Orleans territory to take possession of the country as far
as the Perdido, and to hold it for the United States. This
sure was avowedly intended as an assertion of the title of the
ted States; but as an assertion, which was rendered necessary in
r to avoid evil which might contravene the wishes of both par-
, and which would still leave the territory "a subject of fair and
ndly negotiation and adjustment."

n April 1812, Congress passed "An act to enlarge the limits of the
te of Louisiana." This act describes lines which comprehend the
l in controversy, and declares that the country included within
m shall become and form a part of the State of Louisiana.

n May of the same year another act was passed, annexing the
due of the country west of the Perdido to the Mississippi terri-
y.

nd in February 1813, the President was authorized to occupy
hold all that tract of country called West Florida, which lies
t of the River Perdido, not now in possession of the United States.

n the third of March 1817, Congress erected that part of Florida
ich had been annexed to the Mississippi territory, into a separate
itory, called Alabama.

he powers of government were extended to, and exercised in
se parts of West Florida which composed a part of Louisiana and
sissippi, respectively; and a separate government was erected in
bama. U. S. L. c. 4, 409.

n March 1819, "Congress passed an act to enable the people of
bama to form a constitution and State government." And in
cember 1819, she was admitted into the Union, and declared one
he United States of America. The treaty of amity, settlement
l limits, between the United States and Spain, was signed at
shington on the 22nd day of February 1819, but it was not rati-
l by Spain till the 24th day of October 1820; nor by the United
tes until the 22d day of February 1821. So that Alabama was
nitted into the Union as an independent State, in virtue of the
e acquired by the United States to her territory under the treaty
April 1803.

After these acts of sovereign power over the territory in
8 dispute, asserting the American construction of the treaty by
which the government claims it, to maintain the opposite

construction in its own courts would certainly be an anomaly in th history and practice of nations. If those departments which ar entrusted with the foreign intercourse of the nation, which asse and maintain its interests against foreign powers, have unequiv cally asserted its rights of dominion over a country of which it is i possession, and which it claims under a treaty; if the legislatu has acted on the construction thus asserted, it is not in its own cour that this construction is to be denied. A question like this respec ing the boundaries of nations, is, as has been truly said, more political than a legal question; and in its discussion, the courts every country must respect the pronounced will of the legislatur Had this suit been instituted immediately after the passage of th act for extending the bounds of Louisiana, could the Spanish co struction of the treaty of St. Ildefonso have been maintained Could the plaintiff have insisted that the land did not lie in Louis ana, but in West Florida; that the occupation of the country by th United States was wrongful; and that his title under a Spanis grant must prevail, because the acts of Congress on the subje were founded on a misconstruction of the treaty? If it be sai that this statement does not present the question fairly, because plaintiff admits the authority of the court, let the parties be change If the Spanish grantee had obtained possession so as to be the d fendant, would a court of the United States maintain his title und a Spanish grant, made subsequent to the acquisition of Louisian singly on the principle that the Spanish construction of the treat of St. Ildefonso was right, and the American construction wrong Such a decision would, we think, have subverted those principl which govern the relations between the legislative and judicial d partments, and mark the limits of each.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 17. File June 1, /04 Wm. D. Bullard commissioner Office Supreme Cou U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2059 MISS. DOCUMENT No. 18.

Boundaries of Hancock County, Miss. Section 44, Code 1880, an Section 368, Code of 1892.

§ 44. Hancock county (established December 14, 1812), is bounde by beginning at the point in the middle of East Pearl river, whe the line between townships two and three, south in range eightee west, intersects said river; thence due east, along said township lin to the line between ranges fourteen and thirteen west; thence du south, along said range line, to the middle of the bay of St. Louis thence along the middle of said bay of St. Louis, southwardly to i entrance; thence due south to the southern boundary of the Sta of Mississippi, in the gulf of Mexico; thence westwardly, with sa

boundary, including all the islands within six leagues of the shores of the gulf of Mexico and Lake Borgne, to the most eastern junction of Pearl river and Lake Borgne, and to the east mouth of Pearl river; thence up said river, by the middle thereof, to the point of beginning.

368 (44). Hancock county (established December 14, 1812) is bounded by beginning at the point in the middle of East Pearl river, where the line between townships four and five, south, in range eighteen, west, intersects said river; thence due east along said township line to the line between ranges fourteen and thirteen, west; thence due south along said range line to the middle of the bay of St. Louis; thence along the middle of said bay of St. Louis southwardly to its entrance; thence due south to the southern boundary of the State of Mississippi in the gulf of Mexico; thence westwardly with said boundary, including all the islands within six leagues of the shores of the gulf of Mexico and Lake Borgne, to the most eastern junction of Pearl river and Lake Borgne, and to the east mouth of Pearl river; thence up said river by the middle thereof to the point of beginning. County site, Bay St. Louis.

(Endorsed:) 1812 (Original) Hancock county Louisiana *vs.* Mississippi. Miss. Doc. 18 Filed June 1/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2060 MISS. DOCUMENT No. 19.

Boundaries of Jackson County, Miss. Section 50, Code of 1880, and Section 374, Code 1892.

§ 50. Jackson county. (established December 14th 1812), is bounded by beginning at the northwest corner of section three, township two, south of range nine, west; thence east, on the line between townships one and two, south, to the State boundary between Alabama and Mississippi; thence southerly, on said boundary, to the gulf of Mexico; thence westwardly, with said boundary, to the centre of range nine, west; thence north, with the section lines, to the beginning.

374 (50). Jackson county (established December 14, 1812) is bounded by beginning at the north-west corner of section three, township two, south of range nine, west; thence east on the line between townships one and two, south, to the State boundary between Alabama and Mississippi; thence southerly on said boundary to the gulf of Mexico; thence westwardly with said boundary to the center of range nine, west; thence north with the section lines to the beginning. County site, Scranton.

(Endorsed:) 1812 (Original) Jackson county. Louisiana *vs.* Mississippi. Miss. Doc. No. 19. Filed June 1/04. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

Boundaries of Harrison County Miss. Section 45, Code 1880, and Section 369, Code of 1892.

§ 45. Harrison county (established February 5th, 1841), is bounded by beginning at the northwest corner of township two, south, in range thirteen, west; thence extending due east, along the line between townships one and two, to the line between sections three and four, township two, range nine, west; thence due south, through the middle of said range nine, to the middle of the bay of Biloxi; thence along the middle of said bay of Biloxi to its entrance, at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi, on the gulf of Mexico; thence westwardly, along said boundary to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay, including all the islands within six leagues of the shore of the gulf of Mexico; thence along the middle of said bay of St. Louis, northwardly to a point from whence the point at which the line between ranges fourteen and thirteen comes to said bay bears due north; thence due north to the place of beginning.

369 (45). Harrison county (established February 5, 1841) is bounded by beginning at the north-west corner of township two, south, in range thirteen, west; thence extending due east along the line between townships one and two to the line between sections three and four, township two, range nine, west; thence due south through the middle of said range nine to the middle of the bay of Biloxi; thence along the middle of said bay of Biloxi to its entrance at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi on the gulf of Mexico; thence westwardly along said boundary to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay, including all the islands within six leagues of the shore of the gulf of Mexico; thence along the middle of said bay of St. Louis northwardly to a point from whence the point at which the line between ranges fourteen and thirteen comes to said bay bears due north; thence due north to the place of beginning. County site, Mississippi City.

(Endorsed:) 1841 Original. Harrison county. Louisiana vs. Mississippi. Miss. Doc. No. 20 Filed June 1, / 04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar 13, 1905, James H. McKenney, clerk.

2062 MISS. DOCUMENT No. 21.

Chapter 52, Laws of Mississippi of 1842.

An Act to Extend the Jurisdiction of the County of Harrison, and for Other Purposes

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the county of Harrison shall be bounded on the south by the southern boundary of the State of Mississippi.

Approved February 22, A. D. 1842.

(Endorsed:) (Original) Miss. act, Feb. 22, 1842. Louisiana *vs.* Mississippi. Miss. Doc. No. 21 Filed June 1/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2063 MISS. DOCUMENT No. 22.

Article 2 of Section 2 of Chapter 2 of the Revised Code of Mississippi of 1857.

Art. 2. The counties lying immediately on the Mississippi river shall respectively, have and possess jurisdiction and extend to the middle of the river, or western boundary of the State, within the space embraced by extending their boundary lines, which strike the river, on a continuous direct course to the extreme boundary of the State, including all islands that may be within the limits just defined; and the counties bordering on the gulf of Mexico—to wit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State, within the space embraced by extending their boundary lines which strike the gulf of Mexico, or the inlets thereto, on a continuous direct course to the southern boundary of the State, including all islands that may lie within the limits thus defined.

(Endorsed:) 1857 (Original) Coast counties Louisiana *vs.* Mississippi Miss. Doc. No. 22 Filed June 1/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2064 MISS. DOCUMENT NO. 23.

THE STATE OF MISSISSIPPI,
Harrison County.

I, Z. T. Champlin, justice of the peace in district No. 1, of Harrison county, Mississippi, and custodian of the records of said office, hereby certify that the annexed transcripts in the cases of The State of Mississippi *vs.* —— Miller, March 14th, 1890, marketing unculled oysters.

—— Fulford, March 14th, 1890, marketing unculled oysters.
M. Edwards. " "
J. Perrisich " "
Capt. Strong. " "
Marco Ladina " "
Dominick Dulcich, " "
John Baker. " "
M. Bagatella " "
Emile Borsorge in channel.
George Smee. in channel.
R. B. Galloway. wharf unloading.
John Raymond channel.
Jack Cavocivich at wharf unloading.
John McAdy. in front Lopez factory.
Capt. Raymond, marketing unculled oysters.
Tony Bonacich. " "

Are true and correct transcripts of the original entry, proceedings and final judgment in each case, respectively taken from my official docket, pages 120 to 137 inclusive of both, now in my official keeping in the city of Biloxi, Mississippi, and I further certify that I am the identical Z. T. Champlin whose name appears as justice of the peace who tried said causes and entered said final judgments, as will more fully appear from the following entry made by me on page 75 of said docket when said docket was turned over to me by my predecessor W. M. Jordan (now deceased) justice of the peace of said district, on or about the 1st Monday of January 1886, to wit:

"A docket of proceedings both civil and criminal before Z. T. Champlin, justice of the peace, district No. 1 Harrison county, Miss."

I further certify that after diligent search in my said office and at all places where the affidavit and other papers are usually kept or likely to be found, I have been unable to find the same and presume them to have been lost or destroyed.

Witness my signature at my office in Biloxi Miss., the 14th day of June 1904.

This is an office of record but uses no seal.

Z. T. CHAMPLIN, J. P.,
Justice of the Peace.

2065 STATE vs. MILLER. } Marketing Unculled Oysters.

$25.50 paid.

Affidavit filed March 14th 1890 warrant issued and returned into court with defendant who being arraigned plead not guilty. After hearing the evidence the court finds the defendant guilty and finds him $10.00 and costs.
Fine remitted.

Z. T. CHAMPLIN, J. P.

Costs J. P.:

Sheriff	.25	Serving warrant	1.00
War	.40	R	.25
Writ	.20	Attend trial	.25
Writ	.20		
	1.05		1.50

Paid.
Remit.

STATE vs. FULFORD. } Marketing Unculled Oysters.

Affidavit filed March 14th, 1890, warrant issued and returned into court with defendant, who being arraigned plead not guilty. After hearing the evidence the court finds defendant guilty and fines him $10.00 and costs. Fine remitted.

Z. T. CHAMPLIN, J. P.

Paid.
Remit.

STATE vs. W. EDWARD. } Marketing Unculled Oysters.

Affidavit filed March 14, 1890, warrant issued and returned into court with defendant who being arraigned plead not guilty. After hearing the evidence the court finds the defendant guilty & fines him $10.00 and costs.
Fine remitted.

Z. T. CHAMPLIN, J. P.

2066 Paid.

ATATE vs. J. PERRISICH. } Marketing Unculled Oysters.

Affidavit filed March 14th, 1890, Warrant issued and returned into court with defendant, who being arraigned plead not guilty.

After hearing the evidence the court finds defendant guilty and fines him $10.00 and costs. Fine remitted in consideration of its being the first offense.

Z. T. CHAMPLIN, J. P.

Paid.

STATE
vs.
Capt. STRONG. } Marketing Unculled Oysters.

Affidavit filed March 14, 1890. Warrant issued and returned into court with defendant who being arraigned plead not guilty. After hearing the evidence the court finds defendant guilty and fines him $10.00 and costs.

In consideration of its being the first offense the fine is remitted.

Z. T. CHAMPLIN, J. P.

Paid.

STATE
vs.
MARCO LADINA. } Marketing Unculled Oysters.

Affidavit filed March 14th, 1890. Warrant issued and returned with defendant into court, who being arraigned plead not guilty. After hearing the evidence the court finds the defendant guilty and fines him $10.00 and costs.

In consideration of its being the first offense the fine is remitted.

Z. T. CHAMPLIN, J. P.

Paid.

STATE
vs.
DOMINICK DULCICH. } Marketing Unculled Oysters.

Affidavit filed March 14th, 1890.

Warrant issued and returned with defendant into court and after due trial the court finds him guilty and fines him $10.00 and cost. The fine remitted in consideration of its being the first offense.

Z. T. CHAMPLIN, J. P.

2067 STATE
vs.
JOHN BAKER. }

Affidavit filed March 14th. Warrant issued and returned into court March 15th, with defendant who being arraigned plead not guilty. After hearing the evidence the case dismissed because the State failed to lay the venue and defendant discharged.

Z. T. CHAMPLIN, J. P.

Aff.	.25	Warrant	1.00
Warrant	.40	R	.25
Writ	.20	Attend trial	.25
Writ	.20		
	1.05		1.50

Paid.

STATE
vs.
M. BAGATELLA. } Marketing Unculled Oyters.

Affidavit filed March 14th 1890.
Warrant issued same day returnable instanter.
Warrant returned into court with defendant who plead guilty and the court fines him $10.00 and cost, and in consideration of it being the first offense remits the fine.

Z. T. CHAMPLIN, J. P.

Aff.	.25	Warrant	1.00
Warrant	.40	R	.25
	.20	Attd. tr	.25
	.20		
	1.05		1.50

STATE
vs.
EMILIE BOSARGE. } In Channel.

Affidavit filed March 15th 1890.
Warrant issued and returned into court with defendants who being arraigned plead not guilty. After hearing the evidence the court dismissed the case.

Z. T. CHAMPLIN, J. P.

2068

STATE
vs.
GEORGE SMEE. } Channel.

Affidavit filed March 15th, 1890. Warrant issued and returned into court with defendant, who being arraigned plead not guilty. After hearing the evidence the court dismissed the case.

Z. T. CHAMPLIN, J. P.

STATE
vs.
R. B. GALLOWAY. } Wharf Unloading.

Affidavit filed March 15th, '90.
Warrant issued and returned with defendant into court, who be-

ing arraigned plead not guilty. After hearing the evidence the court dismissed the case.

Z. T. CHAMPLIN, J. P.

STATE OF MISS. vs. JOHN RAYMOND. } Channel.

Affidavit filed March 15, '90. Warrant issued and returned into court with defendant, who being arraigned plead not guilty. After hearing the evidence the court dismissed the case.

Z. T. CHAMPLIN, J. P.

STATE vs. JACK CAROCIVICH. } At Wharf Unloading.

Affidavit filed March 15, '90. Warrant issued and returned into court same day with defendant who being arraigned plead not guilty. After hearing the evidence the court dismissed the case without cost.

Z. T. CHAMPLIN, J. P.

STATE vs. JOHN MCADY. } In Front Lopez Factory.

Affidavit filed March 15, '90.

Warrant issued and returned into court with defendant who being arraigned plead not guilty. After hearing the evidence the case was dismissed because the State failed to lay the venue.

Z. T. CHAMPLIN, J. P.

2069 STATE vs. Capt. RAYMOND. } Marketing Unculled Oysters.

Affidavit filed March 15th '90. Warrant issued and returned into court with defendant who being arraigned plead not guilty. After hearing the evidence the case was dismissed because the State failed to lay the venue, Defendant discharged.

Z. T. CHAMPLIN, J. P.

STATE OF MISS. vs. TONY BONACICH. } Marketing Unculled Oysters.

Affidavit filed March 15th '90. Defendant in court plead not guilty. After hearing the evidence the case was dismissed because the State failed to lay and prove the venue. Defendant discharged.

Z. T. CHAMPLIN, J. P.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 23. Filed June 14/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2070 MISS. DOCUMENT NO. 24.

STATE OF MISSISSIPPI, }
Harrison County. }

I, Z. T. Champlin, justice of the peace in district No. 1 of Harrison county Mississippi, and custodian of the records of said office, hereby certify that the annexed transcripts in the cases of The State of Mississippi *vs.* M. Bagatella, January 20th, 1894, charged with violating oyster ordinances of Harrison county, Miss., Jake Stanvich, January 20th, 1894, charged with violating oyster laws of Harrison county, Miss., John Bowen, February 17th, 1894, charged with resisting arrest, are true and correct transcripts of the original entry, proceedings and final judgments in each case, respectively
2071 taken from my offical docket of said dates in my official keeping in the city of Biloxi, Mississippi, and I further certify that I am the identical Z. T. Champlin whose name appears as justice of the peace who tried said causes and entered said final judgments, as will more fully appear from the following entry made on first fly leaf of said doc'cet when said docket was opened by me justice of the peace of said district on or about the 24 of Aug. 1893, to wit:—

"A docket of proceedings both civil and criminal before Z. T. Champlin justice of the peace, district No. 1, Harrison county, Miss."

I further certify that after diligent search in my said office and at all places where the affidavit and other papers are usually kept or likely to be found, I have been unable to find the same, and presume them lost or destroyed.

2072 Witness my signature, at my office in Biloxi, Miss., this the 14th day of June 1904. This is an office of record but uses no seal.

Z. T. CHAMPLIN, J. P.,
Justice of the Peace.

STATE OF MISS. }
v. } Violating Oyster Ordinance of Harrison County.
M. BAGATELLA. }

Affidavit filed November 27th, 1893, warrant issued same day returnable instanter. Warrant returned into court with the following endorsement thereon. Duly executed by arresting the within named defendant and placed him under his own recognizance for appearing before this court, January 20th, 1894, the above case
2073 being called, defendant being called, after hearing the evidence answered not but made default. The court thereon fined him in the sum of ten dollars and costs of court, and to stand committed to the county jail until fine and costs are paid.

Z. T. CHAMPLIN, J. P.

Capias issued and placed in hand of Constable Alex Horn Jan. 22nd, 1894.

THE STATE OF MISS. vs. JOHN BOWEN. } Resisting Arrest.

Affidavit filed December 22nd, 1893. Warrant issued same day returnable instanter. Warrant returned into court January
2074 20th 1894, with defendant and the case continued until the 3rd Saturday in February 1894 on account of the absence of defendant's attorneys unavoidable absence.

February 17th, 1894.—This day the above case being called, the defendant being in court, after being arraigned plead not guilty. The defendant having asked for a jury venire was issued and the following named persons were empaneled and sworn as jurors:

John Treloer, John Eislette, R. J. Grady, Louis Llado, U. E. Desporte, A. J. Meynier—After hearing all the evidence the jury retired and after deliberation returned the following verdict—We the jury find the defendant not guilty.

(Signed) JOHN W. TRELOER, Foreman.

2075 The court thereupon discharged the defendant without cost.

Z. T. CHAMPLIN, J. P.

STATE OF MISS. vs. JAKE STANOVICH. } Violating Oyster Ordinance, Harrison County, Miss.

Affidavit filed 27th November 1893. Warrant issued same day returnable instanter. Warrant returned into court January 20th, 1894, duly executed by arresting defendant and placed him under his own recognizance to appear before the court Jan. 20th, 1894.

The above case being called this January 26th, 1894 defend-
2076 ant failing to appear though called, after hearing the evidence the court finds defendant guilty and sentenced him to pay a fine of ten dollars and costs of court and stand committed to the county jail until fine and costs are paid.

Z. T. CHAMPLIN, J. P.

Capias.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 24. Filed June 14/1904. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2077 MISS. DOCUMENT NO. 25.

THE STATE OF MISSISSIPPI, Harrison County. }

I, the undersigned clerk of the circuit court of Harrison county, State of Mississippi, hereby certify that the annexed 13 pages of type-written matter, as pen corrected, is a true and correct copy of

the original proceedings in the matter of an official inquest held upon the body of John Kennedy, filed in this office as required by law on the 29th day of November 1886.

That said original file now remains in this, my said office, in the court house of said county at Gulfport, Mississippi and the circuit court clerk of said county is official keeper and custodian of said record of said inquest.

Witness my hand and seal of office, at Gulfport, Harrison county, Mississippi, this the 14th day of June 1904.

[Seal of the Circuit Court, Harrison County, Mississippi.]

A. J. RAMSEY, Clerk.

CREOLE GAP, October the 29th, 1886.

A man found in the west mouth of Creole gap flotting by Joseph Cattenaro.

Description.

About 5 feet 6 in. high, light complexion, light hair and mustache about thirty years of age. Homespun shirt and blue flannel shirt drilling draw-s and *janes* pants had on lace shoes cotton socks. Left arm badly cut as with a hatchet and slight cut over the right eye.

We the undersigned do believe that he came to his death by foul means.

Names of the Jury.	Names of Boats.
Samuel Nelson.	Schr. Velocity.
Joseph D. Nelson.	8 " Masie.
Charles S. Strong.	" Grace Ellena.
John A. Nelson.	Sloop Water Witch.
J. W. Strong.	Olive.
Sam'l W. Nelson.	
Charles Ewing.	
Willie Williams.	
Joseph Cattenaro.	
S. Lhoe Bradasich.	
Andrew Sandro.	
Sam Cherstovich.	

2078 The State of Mississippi to the sheriff or any constable of Harrison county:

You are required immediately to summon six good and lawful men of said county to appear before me L. B. Holly a justice of the peace, dist. No. 1, of said county and *ex-officio* coroner of said county at grave yard in the town of Biloxi in said county on the 31st day of October 1886 at the hour of 7 o'clock p. m. then and there to inquire on behalf of the State touching the death of John Kennedy, and be you then and there.

Given under my hand at Biloxi in the said county the 31st day of October A. D. 1886.

L. B. HOLLY,
J. P. and *Ex-officio* Coroner.

Capt. Bayley.
B. R. Clemens.
Mun. Jones.
H. Schnapps.
John Henley.
C. M. Golden.

The State of Mississippi to any lawful officer of Harrison county:

This is to command you to summon Andro Sandro, Simeon Chesterich, Alphonso Fayard, Henry Collier, to appear before the coroner's jury on Nov. 1st 1886 at six o'clock p. m. to testify as witnesses on behalf of the State, as to the cause of the death of John G. Kennedy found dead, and have then and there this writ.

Witness my hand this 1st day of Nov. 1886.

L. B. HOLLY,
J. P., *Ex-officio* Coroner.

Received this writ this 1st day of Nov. 1886 within process executed same day by summoning the within named witnesses.

F. SEAL, Sh'ff,
Per THOMAS BACHNED, Dept. Sh'ff.

The State of Mississippi to any lawful officer of Harrison county:

This is to command you to forthwith summons some surgeon or physician to immediately appear before the coroner's jury now at the Biloxi graveyard to examine the dead body of —— Kennedy found drowned and have then there this writ.

Witness my hand this 31st day of October 1886.

L. B. HOLLY,
J. P., *Ex-officio* Coroner.

Received this writ this 31st day of Oct. 1886, within process duly executed by summoning Dr. Chas. Pelaez according to command of within writ.

F. SEAL, Sh'ff,
Per THOMAS BACHNED, D. S.

2079 BILOXI, MISS., Nov. 1st, 1886.

This is to certify that at the inquest and post mortem examination held on the body of one John Kennedy on the 31st day of October 1886 the following facts were ascertained.

The body having been in the water for several days, then buried and afterwards exhumed was in a fearful state of decomposition and

kin completely disorganized—after due and diligent search but wounds could be discovered, one on the arm and the other on forearm of the left side, as well as a lacerated wound on the left supposed to have been produced by dragging the body by who found him, of an incised character. Owing to the condi- of the body as aforesaid I am unable to determine whether said ds were inflicted by the bite of a fish or the cut produced by shells of the use of a sharp cutting instrument. I also dis- ed that the humerus of the left side was splintered but not ured.

e flesh was firm and exhibited a clean cut.

ere was no wound about the head or face to be observed owing swollen condition of his face and head.

CHARLES PELAES, M. D.

STATE OF MISSISSIPPI, }
Harrison County. }

mony Taken before Jury of Inquest on Body of John Kennedy Found Dead.

FONSE FAYARD, sworn:

ent out to look for the body with Louis Conewas and the two ers of the deceased.

Wednesday morning 27th of October we went to the South at Cat island where they said he was drowned. Ves Homes to us & told us the body was found in Creole gap & buried. ere 8 miles from where the body was buried. He was buried morning, we got there about three o'clock in the evening, we got to where he was buried a man whose name I do not came to us at the body, the first thing that I saw was his hand, his right hand, there was no shirt on his breast, where the men the body there was no shells or brush only marsh grass and one of the boatmen ask us if we wanted any assistance we gave isfaction. One man from the schooner Grace Ellena came with a quilt for us to -rap the body, we had it recovered and go and get a box as soon as the weather would permit. The drug the body above high water mark, it seemed to me that o brothers took it very hard at the grave, the three brothers on a schooner in the oyster trade. They told me that he fell oard between three and four o'clock in the morning, they were road to the marsh to get a load of oysters.

y said that he was sounding outside of south side of Cant about three miles south of sand spit of Cat island. John dy the deceased bought the boat from Joe Kennedy, his er.

his
ALFONSE FAYARD.
mark.

2080 Dr. Pelaez, sworn:

The flesh around the cut, on the forearm, flesh was firm. The bone on the forearm was shivered the cut was to the bone, the wound was perfectly smoothe. I presume if the cut was made by the oysters through the motion of the water there would have been more cuts. The wound on his arm would certainly caused death the artery was severed.

CHARLES PELAEZ, M. D.

Andro Sandro, sworn, says:

The man who first found the body I do not know his name, but his nick name Matriculo. The body was found west mouth of Creole gap. The tide brought in the body lay in the water face up the man *a*came to me and said it was a woman. The man put a rope around his neck and took him alongside the marsh & called all the men, then all hands hauled him ashore with the rope around his body we took a small knife and cut the shirt on his arm & breast to look for marks to identify the body. The shirt on the breast was torn, we found his forearm cut, in raising his arm we found a cut on his arm, the cuts looked as if done with a hatchet, we all thought the man was foully dealt. When we buried the body we put straw under and over the body a plank on each side. Captain of Mobile boat gave me the report to bring to Biloxi. We dragged the body to about 100 ft. above the highwater mark, there was nothing but grass and mud between the water & the place we buried body nothing that would make those cuts.

his
ANDRO SANDRO.
mark.

Simeon Christovich, sworn, says:

I was tonging oysters we saw something while in the water. I called my partner's attention to we had no skiffs to go to it but the tide drifted it towards us. After the thing came near the first boat the captain of the schooner Velocity Capt. Matricole he went to it in a boat and hollowed it was a women, he came to us took me & my partner and went to the body. Matricole said we must put the body and bring we towed the body to the mark with a rope around his neck. Matriculo went to all of the boats to get the men. They all came we took the body ashore and examined it we cut the sleeve of the shirt with a small pocket knife to find mark by which to identify the body as all sailors have mark we found no mark, but we found a cut on the arm & one on forearm. The cuts were deep the cuts looked as if cut with a sharp instrument and by a heavy blow, it does not look as if done by fish or oyster shell he had two cuts on his forehead they bled. The captain of the Mobile boat gave us the certificate to bring to the office in Biloxi, after we buried the body we put a high cross over the grave. The body I saw in the Biloxi grave yard is the idencical body we buried at Creole gap. The breast was bare.

SIMEON CHRISTOVICH.

2061 HENRY COLLIER, sworn, says:—

I met Mr. A. Kennedy & Mr. Castaned, they asked me if I would go out with John Sherer after the body of their brother John Kennedy, we took a boat belonging to the brothers and went out. John Caillaret, John Scherer Louis Coueras; C. F. Coueras, Joe Kennedy and myself that went in the boat. We took the lamp to look for the body, we found the grave at Creole gap with a small cross at the head *the* about 5 or 6 feet high, we could designate as a grave by the cross, we found the grave about 10 or 11 o'clock Friday night, we in digging up the body the first thing I saw was his hand, I did not recognize the body. We went prepared to dig up the body and bring it to Biloxi for burial, No one examined the body. The body was bare. I was so excited I did not notice the body, Joe Kennedy took it hard at the grave. All these brothers were on a boat together.

his
HENRY COLLIER.
mark.

JOE KENNEDY, sworn, says.

That the body at the Biloxi grave yard was that of my brother John C. Kennedy. We left to go for oysters Biloxi, saw a norther gathering we came back to main land about 1 o'clock the deceased called us, we got up make sail we cross over the spit near the bouy at Cat island, after we got our bearing he commenced sounding for oysters, our pole was 11 feet long. I was steering when he fell overboard, my other brother was asleep in the cabin. John hollered only once when he fell over board when I brought the schooner up with *with* an anchor. I put the skiff over *boat*, the boat hardly touched the water before Louis L. Kennedy was in it looking for him, there was about 11 feet of water where he fell over board, we were three brothers on the boat, when I found he was gone I waited until morning then came home, we were about three miles from Cat land, it was outside the spit in Cat Island pass, after we reported his death we returned to look for him. Ves Homes informed us that the body was found, we dug to the body, I saw his hand and was satisfied it was my brother we returned home for a box, I saw him when John Scherer and the party who went for his body dug up.

JOS. C. KENNEDY.

LOUIS L. KENNEDY, sworn, says:—

We left Biloxi about 11 o'clock — m. on Monday to get a load of oysters, being a stranger to these parts do not know the name of the place we started to. John waked us up we got under *weigh*. I went below and went to sleep when Joe called John overboard, we unched the skiff before Joe rounded the schooner up. I got in skiff and went back to look for John to the place where I thought John was. By this time the schooner had got out of sight. I found

the schooner by Joe's blowing the horn. After the body was
2082 found and buried we went to the grave dug to the hands and breast. I recognized it to be my brother by the description given by the men who found the body, but at the Biloxi grave yard I recognized the body to be that of my brother John.

LOUIS L. KENNEDY.

BILOXI, Oct. 31st, 1886.

To L. B. Holly, J. P. & *ex-officio* coroner:

We the undersigned jurors duly sujmoned, empaneled and sworn to diligently inquire into the cause of the death of John Kennedy would request that you cause to be summoned some surgeon or physician to appear before this jury as a witness upon the taking of such inquest.

Respectfully,

J. W. HENLEY.
B. F. CLEMENS.
H. KNAPP.
C. N. GOLDEN.
J. A. JOHNS.
WILLIAM BAYLEY.

I hereby certify that Dr. Charles Pelaez was summoned and performed the duties according to the above request.

Witness my hand this 2nd day of Nov. 1886.

L. B. HOLLY,
J. P. & *Ex-officio* Coroner.

THE STATE OF MISSISSIPPI, }
Harrison County. }

Verdict of Jury of Inquest Held on the Body of John C. Kennedy.
Found Drowned.

First. We the jury find that the deceased came to his death by accidental drowning.

2nd. From the evidence adduced at this inquest we are fully satisfied that the wounds found on the body of deceased were not inflicted by human hands.

Biloxi, Nov. 1st, 1886.

(Signed)

B. R. CLEMENS.
J. W. HENLEY.
J. A. JOHNS.
C. N. GOLDEN.
H. KNAPP.
WILLIAM BAYLEY.

Approved:

L. B. HOLLY,
J. P. & *Ex-officio* Coroner.

I, L. B. Holly, a justice of the peace of said county and *ex-*
2083 *officio* coroner certify that the foregoing is the written request of the above named jury, and also a true copy of the verdict of the jury of inquest on the body of John C. Kennedy found drowned.

Given under my hand this 2nd day of Nov. 1886.

L. B. HOLLY,
J. P. and *Ex-officio* Coroner.

THE STATE OF MISSISSIPPI, }
Harrison County. }

Coroner's inquest began and held on the body of John C. Kennedy found drowned, summons for jury issued Oct. 31st, 1886, returnable at 7 o'clock p. m .at the Biloxi grave same day, the sheriff at the appointed time and placed returned said summons endorsed.

Received this writ this 31st day of Oct. 1886, duly executed by summoning the following named good & lawful men of my county towit:—B. R. Clemems, C. N. Golden, H. Knapp, J. W. Henley, J. A. Johns & William Bayley, who being duly empaneled and sworn as directly by law proceeded to examine the body finding certain wounds thereon, in writing request that some surgeon or physician be summoned as a witness to examine said body, after examining the witness present, adjourned the inquest until Nov. 1st, and ordered subpœnas for Andro Sandro, Simeon Cretovitch, Alfonse Fayard, Henry Collier, also a warrant for the arrest of Joe and Louis Kennedy. This 1st day of Nov. 1886 the jury after hearing the evidence of the above named witnesses, also the statement of the said Joe & Louis Kennedy after mature deliberation rendered the following verdict.

1st. We the jury find that deceased came to his death by accidental drowning.

2nd. From the evidence adduced at the inquest we are fully satisfied that the wounds found on the body of the deceased were not inflicted by human hands.

Biloxi Nov. 1st 1886.

(Signed) B. R. CLEMENS.
J. W. HENLEY.
J. A. JOHNS.
C. N. GOLDEN.
H. KNAPP.
WALTER BAYLEY.

L. B. HOLLY,
J. P. & *ex Officio* Coroner.

Detailed Fee Bill (Sh'ff's Cost).

As coroner	$5.00
2 subpœnas @ .25	.50
1 summons doctor	.25
Swearing 7 witnesses	.35
	$6.10
Summoning coroner's inquest	1.00
Summoning six witnesses	1.50
Rec. & ret. 2 writs	1.00
	$3.50
Serving warrants of arrest by order of jury	2.00
	5.50
2084 Six jurors 2 days on inquest	12.00

Recapitulation.

Coroner	6.10
Sh'ff	5.50
Jury	12.00
	23.60

Doctor's fee left to the board for allowance.

I, L. B. Holly, a justice of the peace of said county certify that the foregoing is a copy of the record of the proceedings before me acting coroner as stated therein as appears on my docket.

Given under my hand this 2nd day of Nov. 1886.

L. B. HOLLY,
J. P. and *Ex-officio* Coroner.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. No. 25 Filed June 14/1904 Wm. D. Bullard commissioner. Kennedy inquest. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2085 MISS. DOCUMENT No. 25*a*.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the March Term, A. D. 1882.

THE STATE OF MISSISSIPPI,
Harrison County.

A term of the board of supervisors of said county, required by law, begun and was held at the court house of said county, in the town of Mississippi City, on the first Monday of March A. D. 1882,

being the 6th day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, F. B. Hiern, president, Jno. E. Morrison, T. J. Stewart, A. J. Bond, and Henry Williams, members; Thos. Bond, sheriff of said county, and F. S. Hewes, clerk of said board.

"Ordered by the board of supervisors of Harrison county Missis-" "sippi:—

"1st. That all oysters caught or taken from the public oyster" "banks or reefs, within the limits of this county, shall be culled" "on the banks or reefs, where taken, and that they be so culled as" "to scatter the cullings."

"2nd. That the catching or taking of oysters from said public" "banks or reefs, from the 1st day of May until the first day of Sep-" "tember, of each year, be and is hereby prohibited except for local" "consumption in this county."

"3rd. That it shall be unlawful for any person, company, or cor-" "poration, to convey or carry out of the limits of this county any" "oysters taken during the time prohibited in section 2 of this order."

"4th. That any person or persons violating the provisions of the" "1st section of this order shall be fined in the sum of $10.00, and" "for a violation of the second section, shall be fined in the sum of" "$20.00 and for a violation of the provisions of section 3, the fine" "shall be $25.00. Said fines to be recovered before any court of" "competent jurisdiction. One half of such fines, when collected," "to be paid to the informer and the other half to — paid into the" "county treasury for the benefit of the free public schools of this" "county."

"Done this the 7th day of March, 1882."

THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county of Harrison, and *ex officio* clerk of the board of supervisors thereof, do hereby certify that the foregoing contains a full, true correct and complete transcript of an ordinance passed by the board of supervisors of Harrison county, at their March term A. D. 1882, on the 6th day of March, 1882, regulating the taking of oysters from the public oyster reefs of Harrison county, as the same appears and remains of record in my office in Book No. 3, page 229, of the minutes of said board of supervisors.

Given under my hand and official seal of said chancery court hereto affixed at my office in Gulfport, Miss., the 23rd day of June, 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk Chancery Court & *ex Officio* Clerk of
Board of Supervisors, Harrison County, Miss.

2086 (Endorsed:) 1882 Louisiana *vs.* Mississippi Doc. 25 "A" Filed June 25/04 Wm. D. Bullard com'r. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2087 MISS. DOCUMENT No. 26.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the August Term, A. D. 1884.

THE STATE OF MISSISSIPPI,
Harrison County.

A term of the board of supervisors of said county, State aforesaid, required by law, begun and was held in and for said county, at the court house thereof, in the town of Mississippi City, in said county, on the first Monday of August A. D. 1884, being the 4th day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, F. B. Hiern, president, John E. Morrison, T. J. Stewart, A. J. Bond and W. E. Whittington, members, Florian Seal, sheriff of Harrison county, and F. S. Hewes, clerk of said board.

"Be it ordained by this board that any person or persons who" "shall take, carry away, injure or destroy, or in any manner inter-" "fere with, any beds of oysters, planted, bedded or grown, in which" "the right of property has been or may be hereafter granted and" "authority give- to bed, bank, plant or grow, in the waters of the" "Mississippi sound, within the limits of Harrison county, shall be" "guilty of a misdemeanor, and on conviction thereof, before any" "justice of the peace of this county, shall be fined in not less than" "the sum of ten dollars, and not more than one hundred, or im-" "prisoned in the county jail not less than five days, nor more than" "twenty, or both, such fine and imprisonment as the justice may" "deem proper."

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex-officio* clerk of the board of supervisors of Harrison county, Mississippi, do hereby certify that the foregoing contains a full, true, correct and complete transcript of an order passed by the board of supervisors of Harrison county and State of Mississippi, at their August term A. D. 1884, on the 4th day of August, 1884, as the same appears and remains of record in my office in Book Number Three, pages 334 and 335 of the minutes of the board of supervisors of said county and State.

iven under my hand and official seal of said chancery court to affixed at my office in Gulfport, Miss., on this the 23rd day une, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *Ex-officio* Clerk of the
Board of Supervisors of Harrison County, Miss.

Endorsed:) Louisiana vs. Mississippi. Miss. Doc. No. 26. Ordi-ce 1884. Filed June 25th 1904. Wm. D. Bullard comm'r. de for) Office Supreme Court U. S. Filed Mar. 13 1905. James McKenney, clerk. 1884 By Mississippi Abstract Title and ranty Co. Offices: Scranton, Gulfport, Hattiesburg, Mississippi.

8 MISS. DOCUMENT No. 27.

utes of the Board of Supervisors of Harrison County, Mississippi, at the August Term, A. D. 1885.

E STATE OF MISSISSIPPI, }
Harrison County. }

A term of the board of supervisors of said county, State aforesaid, uired by law, begun and was held in and for said county, at the rt house thereof, in the town of Mississippi City, in said county, the first Monday of August, A. D. 1885, being the third day of l month, the same being the time and place designated by law for ding said meeting of said board.

Were present and in attendance on said board, F. B. Hiern, pres-nt, Jno. E. Morrison, T. J. Stewart, A. J. Bond, and W. E. Whit-gton, members, F. Seal; sheriff of Harrison county, and F. S. wes, clerk of said court.

"It is hereby ordered and ordained that section 3. of the ordi-" ance passed and adopted at the March term 1882 of this board," nown as the "oyster ordinance" be and is hereby amended, by" riking out the word "taken" before the words "during the time" rohibited in section two of this order," and by inserting or adding" fter the word "order" aforesaid the words "except preserved or" anned oysters." It is further ordered that the said clerk publish" aid ordinance so amended in the Coast Beacon."

IE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county and ate, and *ex officio* clerk of the board of supervisors of Harrison unty, Miss., do hereby certify that the foregoing contains a true, rrect, full and complete transcript of an amendment to an ordi-

nance passed and adopted at the March term 1882 of the board of supervisors of said county and State as the same appears and remains of record in my office in Book 3, page 397, of the minutes of the board of supervisors of said county and State, at their August term A. D. 1885, on the 3rd day of August, 1885.

Given under my hand and official seal of said chancery court hereto affixed at my office in the town of Gulfport, Miss., this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *Ex officio* Clerk of the Board of Supervisors of Harrison County, Mississippi.

(Endorsed:) Louisiana vs. Mississippi Doc. No. 27 Filed June 25/04 Wm. D. Bullard, com'r. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2089 MISS. DOCUMENT NO. 28.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at Their March Term, A. D. 1888.

THE STATE OF MISSISSIPPI,
Harrison County.

A term of the board of supervisors of said county, State aforesaid, required by law, begun and was held, in and for said county, at the court house of said county, in the town of Mississippi City, in said county and State, on the first Monday of March A. D. 1888, being the *fifty* day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, F. H. McCaleb, John Scarborough, J. E. Cruthirds and W. E. Whittington, members, Florian Seal, sheriff, of said Harrison county, and F. S. Hewes clerk of said board.

MARCH 8TH, 1888.

"It is hereby ordered and ordained by the board of supervisors" "of Harrison county, Mississippi, that section two of the ordinance" "passed and adopted at the March term 1882 of this board, known" "as the oyster ordinance, be and is hereby amended by striking out" "the words "in this county" after the word "consumption." It is" "further ordered that the clerk publish said ordinance, as amended," "in the Biloxi Herald."

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex-officio* clerk of the board of supervisors of said county,

do hereby certify that the foregoing contains a full, true, correct and complete transcript of an amendment to an ordinance passed and adopted at the March term 1882 of this board, known as the "oyster ordinance," as the same appears and remains of record in my office in Book No. Three, page 534 of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office in the town of Gulfport, Miss., this the 22d day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court & *Ex-officio* Clerk of the
Board of Supervisors of Harrison County, Mississippi.

(Endorsed:) Louisiana vs. Mississippi Doc. 28 Filed June 25 '04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk. 1888.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the November Term, A. D. 1892.

THE STATE OF MISSISSIPPI, }
Harrison County. }

A regular term of the board of supervisors of said county of Harrison, begun and was held, in and for said county, at the court house thereof, in Mississippi City in said county and State, on the 1st Monday of November A. D. 1892, being the 7th day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough & R. W. Hatten, members, F. Seal, sheriff of said county, and F. S. Hewes, clerk of said board.

"An Ordinance for the Protection and Preservation of the Public "
"Oyster Reefs of Mississippi Lying within the Borders of Har- "
"rison County and to Create a Revenue to Enforce the Same."

"SECTION 1. It shall be unlawful for any person or persons to "
ship or carry beyond the limits of the State of Mississippi, by "
any boat or water-craft any oysters taken from any public reef "
in the waters of Harrison county, in said State, while the same "
are in the shell, or to take or catch any oysters from any public "
reef in said county to be so shipped or carried beyond the limits "
of the said State."

"SECTION 2. It shall be unlawful to take from any public reef
"in the waters of said county any oyster, the shells of which are
"less than two and one half inches in length, except for planting
"purposes, and all oysters taken for any other purpose shall be
"culled so that there will not be more than four oysters in any one
"bunch, and they shall be culled free from all dead and empty
"shells and young and unmarketable oysters, which shall be left
"on the reefs where they are taken; provided that such young and
"unmarketable oysters may be removed or disposed of for plant-
"ing purposes within the tide-water of the State of Mississippi."

"SEC. 3. No person shall catch oysters on any public reef in the
"waters of said county, without first procuring from the clerk of
"the circuit court of said county a license for each boat to be used
"by him in catching and transporting oysters, which license shall
"expire one year after date; and in his application for such license
"he shall give the capacity of his boat, or boats and their names;
"all boats shall pay the sum of fifty cents per ton burden for such
"license, and shall pay to the clerk fifty cents for each and every
"license so issued; provided that no boat or vessel under one ton
"measurement shall be subject to the provisions of this section;
"provided, further, that no boats licensed by the board of super-
"visors of Hancock and Jackson counties shall not be required to
"pay an additional license in this county."

"SEC. 4. The clerk shall keep a record of all licenses so issued,
"and shall correctly number the same, and the person to whom
"such license is issued shall cause such number and the word
"'licensed' to be painted in red letters not less than four inches in
"size in some conspicuous place on the boat for which such license
"is issued. The said clerk shall receive all money arising from
"said licenses and shall pay the same to the county treasurer, and
"such money so paid in shall create a fund, which fund shall be
"known and designated as the oyster fund, and shall be
2091 "appropriated by the board of supervisors, in their discre-
"tion, in such manner as will best secure the enforcing of
"this ordinance, and said fund shall be used for no other purpose."

"SEC. 5. The sheriff, oyster inspector, the several constables, and
"all other officers having like powers, within the county of Harri-
"son, shall have the power at any time to go on board of any
"boat or vessel being used in fishing oysters in the waters of said
"county and to demand that the parties in control of such vessel
"exhibit the license of such boat to be used in fishing for oysters
"in said waters; and it shall be unlawful for any person in con-
"trol or on board of such boat or vessel to refuse or fail to exhibit
"such license to any such officer demanding the same for inspec-
"tion; and it shall be the duty of the said sheriff constable and
"other officers, to arrest, with or without process, any person or
"persons violating any of the provisions of this ordinance and to
"take them before any magistrate or justice of the peace, or the
"mayor of any incorporated town or city, in said county, for trial

"and every such magistrate or justice of the peace, or mayor, shall "
"have jurisdiction of all offenses committed in violation of this "
"ordinance."

"Sec. 6 Any person who shall violate any of the provisions of "
"this ordinance shall on conviction be fined not less than ten dol- "
"lars for the first offense, and for the second offense not less than "
"twenty dollars, and be imprisoned in the county jail not less "
"than five days, and all persons so convicted shall stand committed "
"until the fines and costs are paid."

"Sec. 7. When a prosecution under this ordinance shall be com- "
"menced and prosecuted to a conviction upon the information or "
"complaint of any private person, and the officer or judge trying "
"the cause shall so certify on his docket, "then and in that case" "
"such prosecutor shall be entitled to one half of the fine, to be "
"paid to him by the officer collecting the same, upon the order of "
"the magistrate or judge trying the cause; the other half to be "
"paid into the county treasury."

"Sec. 8. That *is* this ordinance take effect and be in force from "
"and after this 7th day of November, 1892, and that all former "
"ordinances of this board on the subject, in conflict with this ordi- "
"nance be and are hereby repealed."

THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of the county of Harrison, said State, do hereby certify that the foregoing contains a true, full, correct and complete transcript of an ordinance passed by the board of supervisors of Harrison county, Mississippi, at their November term A. D. 1892, being the 7th day of November, 1892, as the same appears and remains of record in my office in Minute Book Number Four, pages 222, 223 and 224 of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office in Gulfport, Miss., this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk Chancery Court and *ex Officio* Clerk of the
Board of Supervisors of Harrison County, Miss.

(Endorsed:) Louisiana vs. Mississippi Doc. 29 Filed June 25/04 H. D. Bullard commissioner. Office Supreme Court U. S. Filed Oct. 13, 1905, James H. McKenney, clerk. 1892.

2093 MISS. DOCUMENT NO. 30.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the December Term, A. D. 1892.

THE STATE OF MISSISSIPPI,
Harrison County.

A regular term of the board of supervisors of said county of Harrison, State aforesaid, begun and was held in and for said county, at the court house thereof, in Mississippi City, in said county and State, on the 1st Monday of December A. D. 1892, being the 5th day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough, W. R. Hatten, members, F. Seal, sheriff of said county, and F. S. Hewes, clerk of the chancery court of Harrison county and *ex officio* clerk of said board.

"Ordered by the board that section 3 of an ordinance of this" "board, adopted on the 7th day of November 1892, entitled "An" "ordinance" "for the protection and preservation of the public" "oyster reefs of Mississippi lying within the borders of Harrison" "county, and to create a revenue to enforce the same be and is" "hereby amended as follows, by adding to said section as it now" "appears and after the word "county" in the last line thereof," "the words "provided further that a license, under this ordinance," "shall not hereafter issue to any boat, whose owner is not a citizen" "of the State of Mississippi."

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of the county of Harrison, State aforesaid, do hereby certify that the foregoing contains a full, true, correct and complete transcript of an amendment to an ordinance passed by the board of supervisors on the 7th day of November, 1892, entitled "An ordinance for the protection and preservation of the public oyster reefs of Mississippi, lying within the borders of Harrison county, and to create a revenue to enforce the same," as the same appears and remains of record in my office in Minute Book Number Four, pages 228 of the minutes of the board of supervisers of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office in Gulfport, Miss. on this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the
Board of Supervisors of Harrison County, Mississippi.

(Endorsed :) Louisiana *vs.* Mississippi Doc. No. 30 Filed June 25/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk. 1892

2094 MISS. DOCUMENT No. 31.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the January Term, A. D. 1893.

THE STATE OF MISSISSIPPI, }
Harrison County. }

A regular term of the board of supervisors of Harrison county, State aforesaid, was begun and held in and for said county, at the court house thereof, in Mississippi City, in said county, and State, on the 1st Monday of January, A. D. 1893, being the 2nd Monday of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough, and R. W. Hatten, members, F. Seal, sheriff of Harrison county, and F. S. Hewes, clerk of said board.

JANUARY THE 4TH, 1893.

"Ordered that M. Gurovich, Capt. Jack of schooner Gosana, Wm. " Dukate, I. Heidenheim, and F. S. Hewes, chairman, be and are " hereby appointed a committee to draft an oyster ordinance under " chapter 96, Code 1892, to be presented to the board at its next " meeting for consideration."

"Ordered by the board that the issuance of licenses to boats to " catch oysters in the waters of this county be and is hereby sus- " pended until the further order of this board."

"Ordered by the board that the oyster inspector shall be out on " the oyster reefs at least five days in each week."

"Ordered by the board that the board do now adjourn until " next Monday morning at 9 o'clock, being the 9th day of January, " 1893, for the purpose of receiving the report of the committee " appointed to draft an oyster ordinance and to act on same and " to consider the matter of the protection of oysters in the waters " of this county and pass all necessary orders and ordinances on " that subject."

Monday morning, nine o'clock, January the 9th, 1893, the board met pursuant to adjournment: Present, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough, members, F. Seal, sheriff, and F. S. Hewes, clerk ; absent, R. W. Hatten.

"Ordered by the board that the following ordinance be and is " hereby adopted. (The committee appointed at the last meeting " having reported and suggested the same.) "

"An ordinance for the protection and preservation of the public" "oyster reefs of Mississippi lying within the borders of Harri-" "son county, Mississippi, and to create a revenue to enforce the" "same."

"SECTION 1. It shall be unlawful for any person to take from" "the natural oyster reefs within the waters of this Harrison county," "Mississippi, any oysters between the first day of May, and the" "first day of September, of each year, except by boats owned by" "citizens of the State of Mississippi, for planting purposes and" "domestic use of the inhabitants thereof, and the owners of said" "boats shall present their licenses, hereinafter provided for, to" "the clerk of the circuit court of this county, and have en-" 2095 "dorsed on same the fact of ownership and citizenship, on" "proof thereof made to said clerk."

"SECTION 2. It shall be unlawful to take from any public oys-" "ter reef in the waters of said county of Harrison, any oysters the" "shells of which are less than two and one half inches in length," "except for planting purposes, and all oysters taken for any other" "purpose, shall be culled, so that there will not be more than four" "oysters in any one bunch, and they shall be culled free from all" "dead oysters, empty shells and young and unmarketable oysters," "which shall be left on the reefs where they are taken, provided" "that such young and unmarketable oysters may be removed or" "disposed of for planting purposes, within the tide waters of the" "State of Mississippi."

"SECTION 3. No persons shall catch oysters on any public reef" "in the waters of said county of Harrison without first procuring" "from the clerk of the circuit court of said county, a license for" "each boat to be used by him in catching or transporting oysters," "during the season of each year, to wit:—from the 1st day of Sep-" "tember to 1st day of May, and in his application for such license" "he shall give the capacity of his boat and boats and their names." "All boats shall pay the sum of fifty cents per ton burden for each" "and every license so issued, provided that no boat or vessel under" "one ton measurement shall be subject to the provisions of this" "section; provided further, that boats licensed by the board of" "supervisors of Hancock and Jackson counties shall not be re-" "quired to pay an additional license in this county."

"SECTION 4. The clerk shall keep a record of all licenses so" "issued, and shall correctly number the same, and the person to" "whom such license is issued, shall cause such number and the" "word "licensed" to be painted in red letters, not less than four" "inches in size, in some conspicuous place on the boat, for which" "such license is issued. The said clerk shall receive all moneys" "arising from said licenses, and shall pay the same to the county" "treasurer, and such money so paid in shall create a fund, which" "fund shall be known and designated as the "oyster fund," and"

"shall be appropriated by the board of supervisors in their discre- "
"tion, in such manner as will best secure the enforcing of this ordi- "
"nance, and said fund shall be used for no other purpose."

"SECTION 5. The sheriff, oyster inspector, the several constables, "
"and all other officers having like powers, within the county of "
"Harrison, shall have the power, at any time, to go on board of "
"any boat or vessel, being used in fishing oysters, in the waters of "
"said county, and to demand that the parties in control of such "
"vessel, exhibit the license of such boat, to be used in fishing for "
"oysters in said waters, and it shall be unlawful for any person in "
"control or on board of such boat, or vessel to refuse or fail to ex- "
"hibit such license to any such officer demanding the same for "
"inspection; and it shall be the duty of the said sheriff, constable, "
"and other officers to arrest, with or without process, any person "
"or persons violating any of the provisions of this ordinance, and "
"to take them before any magistrate or justice of the peace, or the "
"mayor of any incorporated town or city, in said county for trial, "
"and every such magistrate, justice of the peace, or mayor, shall "
"have jurisdiction of all offenses committed in violation of this "
"ordinance."

2096 "SECTION 6. Any person who shall violate any of the pro- "
"visions of this ordinance, shall on conviction be fined not "
"less than ten dollars, or more than twenty dollars, for the first "
"offense, and for the second offense, not less than twenty dollars," "
"or more than fifty dollars, and be imprisoned in the county jail "
"not less than five days or more than thirty days, and all persons "
"so convicted shall stand committed until the fines and costs be "
"paid."

"SECTION 7. When a prosecution under this ordinance shall be "
"commenced and prosecuted to a conviction upon the information "
"or complaint of any private person and the officer or judge try- "
"ing the cause, shall so certify on his docket, then and in that case "
"such prosecutor shall be entitled to one half of the fine, to be "
"paid to him by the officer collecting the same, upon the order of "
"the magistrate or judge trying the cause, the other half to be paid "
"into the county treasurey and placed to the credit of said oyster "
"fund."

"SECTION 8. That no corporation, person or association of per- "
"sons, shall take from the public oyster reefs in the waters of this "
"county, more than nine thousand barrels in any one season, and "
"are hereby authorized to take that amount from said reefs."

"SECTION 9. That all ordinances on this subject heretofore made "
"by this board and the amendments thereto be and are hereby re- "
"pealed, provided that all licenses heretofore issued under said "
"ordinances remain in force as issued, subject only to the provis- "
"ions of section one of this ordinance."

"SECTION 10. That this ordinance take effect from and after this "
"9th day of January, A. D. 1893."

"Ordered by the board that the duties of the oyster inspector ap- "

" pointed by this board shall be to see to the enforcement of the "
" oyster ordinance adopted by this board, especially as to the cull- "
" ing of oysters on the reefs, the taking of oysters only by boats "
" having a license from this county or that of Hancock and Jack- "
" son counties, and the taking of oysters for domestic use and plant- "
" ing purposes only, out of season, by citizens of this State. It "
" shall be the duty of such inspector to visit said reefs and be out "
" on same for at least 5 days in the week, and that the compen- "
" sation of such inspector be and is hereby fixed at $90.00 per "
" month including use of boat and crew, and it is further ordered "
" that the expenditures authorized above shall not exceed the re- "
" ceipts provided for in the oyster ordinance."

" Ordered by the board that F. D. Moran be and he is hereby "
" appointed oyster inspector of Harrison county as required by "
" chapter 96, Code 1892, vice L. F. Young, resigned."

THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of Harrison county, Mississippi, do hereby certify that the foregoing contains a full, true, correct and complete transcript of the following orders and ordinances adopted by the board of supervisors of said county at their January meeting 1893 thereof, to wit:—

2097 An order appointing a committee to draft an oyster ordinance, under chapter 96, Code 1892, which order appears in Minute Book 4, page 242, of the minutes of said board; also, an order suspending the issuance of licenses to boats to catch oysters in the waters of this county until the further order of the board, as the same appears in Minute Book Number Four, page 242; also, an order that the oyster inspector shall be out on the reefs at least five days in each week, as the same remains of record in Minute Book No. 4, page 242; also, an ordinance entitled "An ordinance for the protection and preservation of the public oyster reefs of Mississippi, lying within the borders of Harrison county, Mississippi, and to create a revenue to enforce the same," as the same appears and remains of record in my office in Minute Book No. 4, pages 243, 244 and 245; also an order defining the duties of the oyster inspector as to the enforcement of the ordinance adopted by the board, as the same remains of record in Minute Book No. 4, page 245; also, an order appointing F. D. Moran, oyster inspector of Harrison county, which appears of record in Minute Book No. 4, page 245; all of which orders and ordinances above appear and remain of record in my office as clerk of the chancery court, and *ex officio* clerk of the board of supervisors of Harrison county, Mississippi.

Given under my hand and the official seal of said chancery court

ed at my office in Gulfport, Mississippi, on this the 23rd day of
e, A. D. 1904.
Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Chancery Clerk and *ex Officio* Clerk of the Board
of Supervisors of Harrison County, Mississippi.

ndorsed:) Jan'y 1893. Louisiana *vs.* Mississippi Doc. 31.
l June 25/04 Wm. D. Bullard, commissioner. Office Su-
ne Court U. S. Filed Mar. 13, 1905, James H. McKenney,
k.

MISS. DOCUMENT NO. 32.

ntes of the Board of Supervisors of Harrison County, Mississippi,
at the January Term, A. D. 1893.

STATE OF MISSISSIPPI, }
Harrison County. }

regular term of the board of supervisors of said Harrison county,
e aforesaid, was begun and held in and for said county, at the
t house thereof, in Mississippi City, in said county and State, on
1st Monday of January A. D. 1893, being the 2nd *Mon*day of
month, the same being the time and place designated by law
olding said meeting of said board.
ere present and in attendance on said board, A. J. Bond, presi-
, Phil McCabe, T. J. Stewart, John Scarborough, and R. W. Hat-
members, F. Seal, sheriff of Harrison county, and F. S. Hewes,
k of said board.
Ordinance that section 1 of the ordinance adopted at the No- "
nber term, 1892, of this board, for the protection of oysters on "
public oyster reefs of Harrison county, Mississippi, be, and "
same is hereby amended by inserting after the word "persons" in "
first line of said section, the words, "other than inhabitants "
his State."
Ordered further that the amendment to said ordinance adopted "
he December term 1892, of this board, recorded on page 228,"
nute Book 4, wherein it is provided that a license under this "
inance shall not hereafter issue to any boat whose owner is "
a citizen of the State of Mississippi, be and the same is hereby "
ealed."

STATE OF MISSISSIPPI, }
Harrison County. }

F. S. Hewes, clerk of the chancery court of the county of Har-
, said State, and *ex officio* clerk of the board of supervisors of
ison county, Mississippi, do hereby certify that the foregoing

contains a true, full, correct and complete transcript of an amendment to an ordinance adopted at the November term 1892 of the board of supervisors of said county and State, entitled "An ordinance for the protection and preservation of the public oyster reefs of Mississippi, lying within the borders of Harrison county, and to create a revenue to enforce the same," as the same appears and remains of record in my office in Minute Book Number Four, page 234, of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office in Gulfport, Miss., on this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the
Board of Supervisors of Harrison County, Miss.

(Endorsed :) Doc. No. 32. Louisiana *vs.* Mississippi Filed June 25 '04 Wm. D. Bullard, commissioner. Office Supreme Court U.S. Filed Mar. 13 1905. James H. McKenney, clerk.

2099 MISS. DOCUMENT No. 33.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the August Term, A. D. 1893.

THE STATE OF MISSISSIPPI,
Harrison County.

A regular term of the board of supervisors of Harrison county, State aforesaid, was begun and held in and for said county and State, on the first Monday of August A. D. 1893, being the 7th day of said month, in the court house of said county, in Mississippi City, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president Phil McCabe, T. J. Stewart, John Scarborough, and R. W. Hatten, members of said board, F. Seal, sheriff of Harrison county, and F. S. Hewes, clerk of the chancery court of Harrison county, and *ex officio* clerk of said board.

"Ordered by the board of supervisors of Harrison county, in the" "State of Mississippi, that hereafter it shall be unlawful for any" "person, or persons, to take or catch oysters from the public oyster" "reefs in said county with dredges, scoops or drags, or like instru-" "ments, other than ordinary oyster tongs, within the waters of" "Harrison county. If any person or persons, shall so take or catch" "oysters with such dredges, scoops, scrapes or drag or like instru-" "ments, other than ordinary oyster tongs commonly used within" "the waters of said county, such person or persons shall for each"

"offense be guilty of a misdemeanor and on conviction shall be"
"imprisoned in the county jail not less than one month, nor more"
"than six months, and be fined not less than one hundred dollars,"
"nor more than five hundred dollars, and any one found on any"
"of the public oyster reefs in said county, in possession of such"
"dredges, scoops, scrapes or drag or like instruments, such posses-"
"sion shall be *prima facie* evidence of the guilt of such person or"
"persons."

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex-officio* clerk of the board of supervisors of Harrison county Mississippi, do hereby certify that the foregoing contains a full, true, correct and complete transcript of an order passed by the board of supervisors of said county and State at their August term A. D. 1893, making it unlawful to catch oysters from the public oyster reefs of Harrison county with dredges, scoops or drags, or like instruments, as the same remains and appear- of record in my office in Minute Book Number 4, page 289, of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office in Gulfport, Miss., on this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the
Board of Supervisors, Harrison County, Miss.

(Endorsed:) Louisiana *vs.* Mississippi D-c. 33 Filed June 25 '04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk. 1893.

2100 MISS. DOCUMENT No. 34.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the October Term, A. D. 1893.

THE STATE OF MISSISSIPPI,
Harrison County.

A regular term of the board of supervisors of said county was begun in and for said county on the first Monday of October A. D. 1893, being the 2nd day of said month, in the court house of said county, in Mississippi City, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, presi-

dent, and T. J. Stewart, members, F. S. Hewes, clerk of said board, and F. Seal, sheriff of said Harrison county.

A quorum of members not being in attendance, the sheriff adjourned the meeting of the board until 9 o'clock tomorrow morning.

TUESDAY MORNING, October 3rd, A. D. 1893.

The board met pursuant to adjournment.

Present: A. J. Bond, president, Phil McCabe, T. J. Stewart, and R. W. Hatten, members; F. Seal, sheriff of said Harrison county, and F. S. Hewes, clerk of the chancery court of said county, and *ex officio* clerk of said board.

"Ordered by the board that F. P. Lizana, be and he is hereby" "appointed oyster inspector of Harrison county, Miss., as required" "by chapter 96, Code 1892, and as such he shall perform the" "duties required of him by the order of this board made at the" "January term 1893 thereof, and recorded in this minute book on" "page 245 thereof, and that he shall receive for his services the" "amount fixed in said order."

"Ordered by the board that F. P. Lizana, oyster inspector of" "this county, be and he is hereby directed to notify J. H. Duggan," "or his agents and representatives on Cat island, who has appro-" "priated exclusively, contrary to law, the public oyster reefs" "within "Little bay," or "South bayou," at said "Cat island," to" "remove within ten days, after the service of said notice the ob-" "structions placed by him or them to the entrance of said "Little" "bay" or "South bayou" the said bay or bayou being a part of the" "navigable waters within the limits of Harrison county, Missis-" "sippi, It is further ordered that the clerk furnish the inspector" "with a copy of this order."

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors, do certify that the foregoing contains a full, true, correct and complete transcript of the appointment of F. P. Lizana as oyster inspector of Harrison county, Miss., and an order that the oyster inspector give notice to J. H. Duggan or his agents on Cat island to remove obstructions placed by him to the entrance of "Little bay" or "South bayou," as the same appears and remains of record in my office in Minute Book No. 4, page 312, of the minutes of the board of supervisors of Harrison county, at their October term, 1893.

2101 Given under my hand and official seal at Gulfport, Miss., this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk Chancery Court & *ex Officio* Clerk
Board of Supervisors.

(Endorsed:) Louisiana *vs.* Mississippi Doc. 34 Filed June 25/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk. 1893

2102 MISS. DOCUMENT No. 35.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the November Term, A. D. 1893.

THE STATE OF MISSISSIPPI,
Harrison County.

A regular term of the board of supervisors of Harrison county, State aforesaid, was begun and held in and for said county, on the first Monday of November A. D. 1893, being the 6th day of said month, in the court house of said county, in Mississippi City, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough, and R. W. Hatten, members, F. Seal, sheriff of said Harrison county, and F. S. Hewes, clerk of the chancery court of said county and *ex officio* clerk of said board.

"Ordered by the board that Lopez and Dukate be allowed to"
"examine the condition of the oysters, on the oyster reefs of this"
"county, and may use the dredge boat in the examination thereof"
"for two days during the month of November, 1893.

THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes clerk of the chancery court of said county and State and *ex officio* clerk of the board of supervisors of said county, do certify that the foregoing contains a full, true, correct and complete transcript of an order of the board of supervisors of said county of Harrison adopted at their November term 1893, allowing Lopez and Dukate to examine the oyster reefs of this county and the condition of the oysters as the same appears and remains of record in my office in Book No. 4, page 321, of the Minutes of the Board of Supervisors of Harrison County, Mississippi.

Given under my hand and official seal of said chancery court affixed at my office in Gulfport on this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the Board of Supervisors of Harrison County, Mississippi.

(Endorsed:) Louisiana *vs.* Mississippi Doc. 35 Filed June 25 '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the December Term, A. D. 1893.

THE STATE OF MISSISSIPPI, }
Harrison County. }

A regular term of the board of supervisors of Harrison county, State aforesaid, was begun and held in and for said county, on the first Monday of December, A. D. 1893, being the 4th day of said month, in the court house of said county in Mississippi City, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough and R. W. Hatten, members, F. Seal, sheriff of said Harrison county, and F. S. Hewes, clerk of the chancery court of said county and *ex officio* clerk of said board.

"Ordered by the board that the following ordinance be and is" "hereby adopted."

"1st—It is ordered by the board of supervisors of Harrison" "county that hereafter it shall be unlawful for any person to fish" "or take oysters from the waters of Harrison county in water" "under fourteen (14) feet in depth, with a dredge, scoop, drag, or" "other like instrument except ordinary oyster tongs."

"2nd—It is further ordered that no oysters shall be fished or" "taken from the waters of said county with such dredge, scoop or" "drag between the first day of May and the first day of November," "in any year."

"3rd—It is further ordered that no oysters shall be fished or" "taken from the waters of said county with any such dredge," "scoop, or drag except within the following places and limits," "towit:—Pass Marion channel, Cat Island channel, and the waters" "north and north west of Cat Island spit. Citizens of Missis-" "sippi and none others may take or fish oysters as hereinbefore" "provided."

"4th—Any person violating any of the provisions of sections" "(1, 2, or 3) one, two or three, of this ordinance shall be punished" "by a fine of not less than one hundred dollars, and not more than" "five hundred dollars."

"5th—It is further ordered that the ordinance adopted by this" "board at its August term 1893, prohibiting the taking or fishing" "of oysters in the waters of Harrison county, with such dredge," "scoop or drag, which ordinance is recorded in Minute Book No." "4, page 289. "of the proceedings of the board of supervisors of" "Harrison county, be and the same is hereby repealed."

"Ordered by the board that the ordinance adopted by this board"

"on the 9th day of January, 1893, and recorded in this book, on"
"page 245, defining the duties of the oyster inspector be and the"
"same if hereby amended by striking out from said ordinance the"
"following words, on the 10th, 11th and 12th lines of the same,"
"towit:—" And it is further ordered that the expenditures author-"
"ized above shall not exceed the receipts provided for in the"
"oyster ordinance."

2104 THE STATE OF MISSISSIPPI,
Harrison County.

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of said county, do hereby certify that the foregoing contains a full, true, correct and complete transcript of the following order and ordinance, towit:—An ordinance adopted by the board of supervisors of Harrison county at their December term, 1893, regulating dredging and the depth thereof and places where there shall be no dredging, as the same appears and remains of record in my office in Book No. 4, page 326 of the minutes of the board of supervisors; also, an order adopted by the board at said December meeting thereof amending an ordinance adopted by the board on January the 9th 1893, and recorded in Minute Book Number 4, page 245 thereof, by striking out certain words from said ordinance as appears from the above, as the same appears and remains of record in my office in Minute Book No. 4, page 328 of the minutes of the board of supervisors of Harrison county, Miss.

Given under my hand and official seal of said chancery court affixed at my office in Gulfport, Miss. on this the 23rd day of June, 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the Board of Supervisors of Harrison County, Miss.

(Endorsed:) 1893. Louisiana *vs.* Mississippi Doc. 36 Filed June 25/04, Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2105 MISS. DOCUMENT No. 37.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the February Ter-, A. D. 1894.

THE STATE OF MISSISSIPPI,
Harrison County.

A regular term of the board of supervisors of Harrison county, State aforesaid, was begun and held in and for said county, on the first Monday of February, A. D. 1894, being the 5th day of Feb-

ruary, 1894, in the court house of said county, at Mississippi City, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president, Phil McCabe, T. J. Stewart, John Scarborough and R. W. Hatten, members, F. Seal, sheriff of said county, and F. S. Hewes, clerk of the chancery court of said Harrison county and *ex officio* clerk of said board.

" It is ordered by the board that the ordinance for the protection "
" of the public reefs of Harrison county, Mississippi, passed at the "
" January 1893 meeting of this board be amended by adding the "
" following: " Be it further ordered that oysters culled so that they "
" do not contain more than ten per cent. of small oysters and shells "
" shall be deemed as culled according to the requirements of this "
" ordinance. "

THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of said county, do hereby certify that the foregoing contains a true, full correct and complete transcript of an amendment to an ordinance passed at the January 1893 meeting of the board of supervisors, as the same appears above, and as the same appears and remains of record in my office in Minute Book Number 4, page 348 of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of the said chancery court hereto affixed at my office in Gulfport, Mississippi, this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk of the Chancery Court and *ex Officio* Clerk of the
Board of Supervisors of Harrison County, Miss.

(Endorsed:) Louisiana vs. Mississippi. Doc. 37 Filed June 25/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk. 1894.

2106 MISS. DOCUMENT NO. 38.

Minutes of the Board of Supervisors of Harrison County, Mississippi, at the September Term, A. D. 1892.

THE STATE OF MISSISSIPPI, }
Harrison County. }

A regular meeting of the board of supervisors of said county of Harrison, begun and was held, in and for said county, at the court house of said Harrison county, State aforesaid, on the first Monday

of September, A. D. 1892, being the 5th day of said month, the same being the time and place designated by law for holding said meeting of said board.

Were present and in attendance on said board, A. J. Bond, president Phil McCabe, John Scarborough, and R. W. Hatten, members, F. Seal, sheriff of Harrison county, and F. S. Hewes, clerk of the chancery court of said county and *ex-officio* clerk of said board.

"James Thomas, C. F. Theobald and W. K. M. Dukate, composing the special committee appointed to make rules and regulations for the protection of the public oyster reefs of this county, submitted the following ordinance for approval by this board, which said ordinance having been duly considered is hereby approved and adopted by this board to be enforced and respected as provided by law, to wit. An ordinance for the protection and preservation of the public oyster reefs of Mississippi, lying within the borders of Harrison county, and to create a revenue to enforce the same."

"SECTION 1ST. It shall be unlawful for any person, or persons, to ship or carry beyond the limits of the State of Mississippi, by any boat or water craft, any oysters taken from any public reef in the waters of Harrison county, in said State, while the same are in the shells; or to take or catch any oysters from any public reef in said county, to be so shipped or carried beyond the limits of the said State."

"SECTION 2ND. It shall be unlawful for any person to take from the natural beds within the waters of this county any oysters between the first day of May and the first day of September of any year, except for planting purposes and local consumption."

"SECTION 3RD. It shall be unlawful to take from any public reef in the waters of said county, any oysters the shells of which are less than two and one half inches in length, except for planting purposes and all oysters taken for any other purpose shall be culled so that there will not be more than four oysters in any one bunch, and they shall be culled free from all dead and empty shells and young and unmarketable oysters, which shall be left on the reefs where they are taken; provided that such young and unmarketable oysters may be removed or disposed of for planting purposes within the tide-waters of the State of Mississippi."

"SECTION 4TH. No person shall catch oysters on any public reef in the waters of said county (artificial beds excepted) without first procuring from the clerk of the circuit court of said county, a license for each boat to be used by him in catching or transporting oysters, which license shall expire one year after date; and in his application for such license he shall give the capacity of his boat, or boats, and their names, and it shall be unlawful for any boat, so licensed to carry or have on board at any time, a greater number of barrels of oysters than the capacity of such boat as stated in such license. All boats having a capacity of 200 barrels or more shall pay the sum of six dollars, and boats

" having a capacity of less than 200 barrels shall pay the"
2107 " sum of four dollars, for such license, and shall pay to the"
" said clerk fifty cents for each and every licence so issued:"
" Provided that no boats or vessel under one ton measurement shall"
" be subject to the provisions of this section; provided further that"
" no boats licensed by the board of supervisors of Hancock or Jack-"
" son county, shall not be required to pay an additional license in"
" this county."

" SECTION 5TH. That said clerk shall keep a record of all licenses"
" so issued and shall correctly number the same, and the person to"
" whom such license is issued shall cause such number and the"
" word licensed to be painted in red letters, not less than four"
" inches in size, in some conspicuous place on the boat for which"
" such license is issued. Said clerk shall immediately procure the"
" painting of the necessary blanks to carry out the provisions of"
" this section, and shall issue his receipts, carefully numbering"
" the same, which receipts shall stand in lieu of, and shall confer"
" on the holder thereof, all the rights and privilegss of, licenses"
" granted under this ordinance, until said clerk shall obtain"
" the necessary blanks when he shall immediately issue licenses"
" to all persons holding such receipts. The said clerk shall"
" receive all money arising from such licenses and shall pay the"
" same to the county treasurer, and such money so paid shall"
" create a fund, which fund shall be known and designated as"
" the oyster fund, and shall be appropriated by the board of"
" supervisors, in their discretion, in such manner as will best"
" secure the enforcing of this ordinance, and said fund shall"
" be used for no other purpose."

" SECTION 6TH. The sheriff, the several constables, and all other"
" officers having like powers, within the county of Harrison, shall"
" have the power at any time to go on board of any boat or vessel"
" being used in fishing oysters in the waters of said county and to"
" demand that the parties in control of such vessel, exhibit the"
" license of such boat to be used in fishing for oysters in said"
" waters, and it shall be unlawful for any person in control or on"
" board of such boat or vessel to refuse or fail to exhibit such"
" license to any such officer demanding the same for inspection."
" And it shall be the duty of the said sheriff, constables and other"
" officers to arrest, with or without process, any person or persons"
" violating any of the provisions of this ordinance, and to take"
" them before any magistrate or justice of the peace, or the mayor"
" of any incorporated town or city, in said county, for trial, and"
" every such magistrate, justice of the peace of mayor shall have"
" jurisdiction of all offenses committed in violation of this ordi-"
" nance."

" SECTION 7TH. Any person who shall violate any of the provis-"
" ions of this ordinance, shall on conviction be fined not less than"
" ten dollars for the first offense, and for the second offense not less"
" than twenty dollars, and be imprisoned in the county jail not"

"less than five days, and all persons so convicted shall stand com-"
"mitted until the fines and costs are paid."

"SECTION 8TH. When a prosecution under this ordinance shall"
"be commenced and prosecuted to a conviction upon the informa-"
"tion or complaint of any private person, and the officer or judge"
"trying the cause shall so certify on his docket, then in that case"
"such prosecutor shall be entitled to one half of the fine to be paid"
"to him by the officer collecting the same, upon the order of the"
"magistrate or judge trying the cause; the other half to be paid"
"in the county treasury."

"SECTION 10TH. This ordinance shall take effect and be in force"
"from and after the 10th day of September, 1892.

2108 THE STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court of said county and State, and *ex officio* clerk of the board of supervisors of the county of Harrison said State, do hereby certify that the foregoing contains a true, full, correct and complete transcript of an ordinance passed by the board of supervisors of Harrison county, Mississippi, at their September term A. D. 1892, being the fifth day of September, 1892, as the same appears and remains of record in my office in Minute Book Number Four, pages 210, 211 and 212 of the minutes of the board of supervisors of Harrison county, Mississippi.

Given under my hand and official seal of said chancery court hereto affixed at my office at Gulfport, Miss., this the 23rd day of June, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES,
Clerk Chancery Court and *ex Officio* Clerk of the
Board of Supervisors of Harrison County, Miss.

(Endorsed:) Louisiana *vs.* Mississippi. Doc. 38. Filed June 25/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2109 Miss. Document No. 39.

Pilots' Laws, Rules and Regulations of Ship Island Harbor, Mississippi.

Ernest Desporte, Harbor Master.

Office: Biloxi, Miss.

Laws, Rules, and Regulations of Ship Island Harbor.

Laws of the State of Mississippi, Annotated Code 1892.

Chapter LIX.

An act authorizing the board of supervisors of each county, having a sea-port or harbor therein, to appoint a board of pilot commissioners, and amended by chapter 128, Laws of the State of Mississippi, passed at a regular session of the Mississippi legislature, held in Jackson, commencing January 7th, 1896, and ending March 24th, 1896.

Harbors.

Jurisdiction over Harbors.

Section 2252. The board of supervisors of each county, having a sea port or harbor therein, shall appoint three citizens of sufficient skill and knowledge in maratime affairs as a board of pilot commissioners, who shall have jurisdiction over the harbors and passes leading thereto of their respective counties, but the mayor and board of aldermen of the cities of Natchez, Vicksburg, and Greenville shall have jurisdiction of and be harbor commissioners for their respective harbors.

Commissioners to Keep Record of Their Proceedings.

Section 2253. The several boards of pilot commissioners shall keep a record of their acts and doings, which shall be public records, to be kept and preserved by the clerk of the board.

Terms of Office and Vacancies.

Section 2254. The term of office of pilot commissioners shall be four years, and upon the death, resignation, or removal from office of any commissioner the board of supervisors shall fill the vacancy.

2110 Oath and Bond: Pilot Commissioners to Act as Port Wardens.

Section 2255. The pilot commissioners are empowered to act as port wardens and to perform all duties of such. They shall, before entering on their duties, take an oath, (that prescribed by two hun-

and sixty-eight of the constitution) and give bond to be ap-
ed by the clerk of the chancery court of their respective counties
e penalty of one thousand dollars, conditioned for the faithful
ormance of their duties.

Harbors and Port Regulations.

CTION 2256. The pilot commissioners shall make and publish
eedful regulations for the government of the harbor and port,
may prescribe fines, penalties and forfeitures, and are empowered
force and collect the same.

es of Harbor Masters; Terms of Office; Oath and Bond; Fees.

CTION 2257. The pilot commissioners shall appoint a harbor
er, who shall pass the same examination as to proficiency re-
ed of pilots as to handling vessels, knowledge of the harbor and
orage of vessels therein. His term of office shall be two years.
hall take the oath of office required by section two hundred
sixty-eight of the constitution, and must give a bond to be ap-
ed by the pilot commissioners, in the penalty of one thousand
rs, conditioned for the faithful performance of his duty. The
or master shall have general supervision of the harbor and port,
r the direction of the pilot commissioners, and shall be entitled
harge the following fees, payable by the ship, steamship or
ig vessel to which service is rendered, viz: boarding fee, five
rs; moving fee, five dollars; superintending discharge of ballast,
exceeding three and one-half dollars a day for each day actually
ged.

Duties of Port Wardens; Preference to Present Pilots.

CTION 2258. The pilot commissioners, as port wardens, shall
control of the harbor and port, see that the harbor master and
s perform their duty, and that the regulations are carried out;
shall hold marine surveys and perform such other duties as
be required by the regulations and the character of their office.
shall, as soon as qualified, and at such other times as may be
ssary, examine the pilots acting as such, who have licenses, and
ersons who may make application to be licensed as pilots in all
ers pertaining to the management of vessels; also in regard to
knowledge of the channel and harbor where they wish to act.
pon examination they be found qualified to take command
which probably will enter the port and thoroughly familiar
the channel and currents of the harbor the pilot commissioners
first appoint and license the pilots heretofore appointed and
sed, and then such other persons of those qualified as are requi-
o perform the duties of pilot at that port and for a term of two
s, but the pilot commissioners shall have power to revoke the
se of any pilot or harbor master for misbehavior, neglect of duty,

drunkenness on duty or off duty, or incompetency, or any other cause detrimental to the interest of commerce and navigation. The
2111 board of commissioners shall require from each pilot satisfactory bond for the faithful performance of his duties.

Compensation of Officers and Compulsory Pilotage.

SECTION 2259. That the board of pilot commissioners shall receive the sum of ten dollars from each pilot and harbor master whom it examines, appoints and licenses. The fees allowed pilots for compulsory pilotage shall be so adjusted as not to burden shipping, and shall not in any case exceed four dollars nor be less than three and one-half dollars per foot, and all United States vessels of one hundred and fifty tons burden or less shall be subject to compulsory pilotage. The pilot commissioners of each city or county may fix the rate of pilotage which shall be paid by vessels entering and leaving their respective harbors, but in no case shall they fix the rate greater than that now provided by law. They shall also regulate the compensation and fees of harbor master and port wardens.

Pilots Licensed; Preferences.

SECTION 2260. In appointing pilots preference shall be given those persons who may have served an apprenticeship in this State with the pilots, if they pass the requisite examination.

Apprenticeship.

SECTION 2261. After the year eighteen hundred and ninety four a new applicant cannot be appointed to the position of pilot unless he passes the qualifications prescribed in this chapter and has served an apprenticeship with the pilots in this State.

Penalty for Piloting without License; Misconduct.

SECTION 2262. Any person or persons acting as pilots without being duly licensed shall be guilty of a misdemeanor and punished accordingly, and shall forfeit and pay to the pilot commissioners the sum of two hundred and fifty dollars for every day while so waiting, and that it shall be unlawful for any person or persons not licensed pilots by the Board of Pilot Commissioners of the State of Mississippi to interfere with the business of pilots by serving or assisting in piloting vessels through the harbor or passes in the gulf of Mexico except in cases of distress; and any person or persons violating the provisions of this section shall on conviction thereof be fined not less than one hundred dollars, in the discretion of the court trying the offenders, and the fine collected by this act shall be nor more than two hundred and fifty dollars, paid into the county treasury for school purposes.

Compensation of Pilots Detained in Quarantine; Penalty for Carrying Pilots to Sea.

SECTION 2263. In all cases where any pilot shall be detained in quarantine by reason of having boarded a vessel in the discharge his duty as a pilot, the vessel and her owners shall be required ay him three dollars per day during the time of his necessary ention in quarantine; but the provisions of this section apply to harbors or ports on the sea coast. If the master of any el carry off a pilot from any sea port he shall pay such pilot the sum of five dollars per day for every day the pilot is absent, and he shall further supply the pilot with provisions and accommodations as is usual for the maintenance of mas- of vessels and the master as well as the owner shall be liable the same; but if such vessels have laid to for the space of four rs, after crossing the bar, and a pilot boat did not appear to re- e the pilot, the claim shall not be allowed.

Quorum.

SECTION 2264. Any two of the pilot commissioners shall constitute norum for the transaction of business.

Terms of Office Not to Expire.

SECTION 2265. The terms of office of the present pilot commis- ers shall not expire until the end of the time for which they e appointed.

Special Laws Repealed.

SECTION 2266. All special or local laws providing for pilot com- ioners, limiting the number of pilots and requiring the serving n apprenticeship and relating thereto, are hereby repealed.

ilots' Rules and Regulations, Ship Island Harbor, Mississippi.

t a meeting of the board of pilot commissioners for Ship Island or, it was ordered by the board that the following rules and lations for the government of pilots, and protection of commerce Ship Island harbor, Mississippi, be and are hereby made and ted.

ule 1. That any licensed pilot who shall take or bring a steamer essel into port shall be entitled to take her out, and any other taking out such a steamer or vessel shall forfeit the full amount lotage to the pilot rejected, and the captain and owners thereof be bound to pay to the pilot rejected the fees as established by unless the master aforesaid shall show good cause to the con- , which shall be satisfactory to the board of pilot commissioners. all be the duty of the master of every vessel to give notice to

said pilot before going ashore to clear his vessel, and get from him a bill for pilotage; if such notice cannot be given personally it shall be given by hoisting the jack on the foremast head twenty four hours before going ashore. That all vessels being ready for sea are required to pay their pilotage on shore at Biloxi.

Rule 2. That all steamers or vessels entering said harbor, or leaving the same, shall be subject to compulsory pilotage, and shall pay to the first licensed pilot who shall speak and offer his service to any steamer or vessel entering or leaving said harbor at the rate of four dollars per foot, unless they be United States vessels of one hundred and fifty tons burden or less.

2113 Rule 3. Pilots shall forfeit their authority as such for more than 36 hours' absence from their several bars, except in case of sickness, or when absent in discharge of duty.

Rule 4. That whenever any vessel is ready to leave the harbor the pilot who brought her in shall have notice, and if such notice cannot be given personally it shall be given by hoisting a jack at the fore masthead twenty-four hours before leaving; when, if the pilot signalized does not come on board, the master may take the first pilot that may offer.

Rule 5. If a master of a vessel shall detain a pilot on board, the wind and weather permitting his going to sea, such pilot shall be entitled to five dollars for each day so detained.

Rule 6. No pilot shall be interested, directly or indirectly, in the earnings of more than one pilot boat, or more than one partnership of pilots. No combination or partnership of pilots shall exist unless sanctioned by the board of pilot commissioners. Any pilot violating this rule may be deprived of his license and forfeit a sum to be determined by a majority of the commissioners.

Rule 7. Any pilot bringing a vessel into the harbor who shall fail to bring such vessel to, during the existence of quarantine regulations at quarantine buoy, unless visited by the port physicians, shall be deemed guilty of misconduct, and shall be either suspended from his duties as pilot or shall forfeit his license.

Rule 8. The pilot commissioners shall have power to revoke the license of any pilot for misbehavior, neglect of duty, or drunkenness, or any other cause detrimental to the interest of commerce or navigation.

Rule 9. Any person who shall act as a pilot for any of the passes leading into said harbor without a license from the board of pilot commissioners shall be fined not less than one hundred dollars nor more than three hundred dollars for each and every offense, recoverable before any court of competent jurisdiction in this State, said fine to be paid for the benefit of the common school fund of this State.

Adopted October 6, 1894.

Rule 10. The pilot association shall assign to each boat a full complement of pilots—not less than three—but subject to have more or less, as may be sanctioned or approved by the pilot commissioners.

le 11. It shall be the duty of the captain of the pilot boat or aptain of the watch, to report to the chairman any and all who shall be absent from duty during the week they are ed to duty.

le 12. A pilot guilty of intoxication or the excessive use of in- ting liquors, shall be suspended or have his license revoked, e commissioners may adjudge.

le 13. A pilot, while on his business *a* a pilot, found guilty of abusive or insulting language or guilty of threatening con- shall be suspended or have his license revoked, as the commis- s may adjudge.

le 14. Whatever charges are preferred against a pilot the presi- shall furnish to said pilot a copy of the charges and written of the time and place of the investigation. Said pilot shall the right to be represented by counsel. At least seven days' shall be given to said pilot.

le 15. Any pilot, against whom charges of intoxication or con- nbecoming a pilot, either when on or off duty, shall be proven to the satisfaction of the commissioners, shall be punished by suspension or by revocation of his license at the discretion of the commissioners.

e 16. Should a vessel take the ground or meet with any acci- hile in charge of a pilot, the said pilot shall report the same president, or at the office of the board, or secretary, within -four hours after said accident shall have occurred.

e 17. Suspension beyond thirty days, cancellation or revoca- license of pilot shall be made by the commissioners only, at etings for that purpose.

e 18. A pilot during his term of suspension shall not partici- the profits or earnings of any other pilot or pilots, associa- company of pilots, and any pilot or pilots who shall pay or any part of the earnings or profits as above stated during uspension shall be subject to a forfeiture of his or their

e 19. No pilot or pilots shall receipt any captain or owner of ssel, directly or indirectly, for a greater amount of money ey actually have received for services rendered, a violation of le will subject said pilot or pilots to thirty days' suspension; le will also apply to harbor masters.

e 20. All captains of pilot boats are required to make a report ecretary of the board of pilot commissioners on the first day e and the first day of January each year of all vessels boarded boat during said time; said report shall be made with care curacy, making a correct report of anything out of the ordi- ne of duty. The captain is compelled under penalty to report lect of duty on the part of the pilots under him; this report body only such vessels as are loaded and sailed from Ship harbor.

e 21. All pilots shall be and are hereby required to register

the names, tonnage and official numbers of their respective pilot boats with the secretary of the board of pilot commissioners.

Rule 22. All vessels engaged in the business of piloting at the entrance to Ship Island harbor shall carry each a black number of not less than three feet in length displayed to view, such number to be designated by the board of pilot commissioners; and the secretary shall issue a certificate of number to each vessel so employed; and any piloting done in a vessel not so numbered and registered as a pilot vessel will not be recognized by this board, except in case pilots are compelled to use the small boats belonging to their pilot vessels, such boats to bear the corresponding numbers of their respective pilot vessels on each side of the bows; and any licensed pilot found piloting in a vessel not numbered shall forfeit his license.

Rule 23. No vessel or boat engaged in the business of piloting at the entrance to Ship Island harbor shall be engaged in any other traffic nor as a pleasure or excursion boat, while employed as a pilot boat on duty.

Rule 24. Pilots are required to take all vessels entering Ship Island pass to the northward of the quarantine turning buoy or buoys lying between the pass and the quarantine anchorage, unless expressly permitted to do otherwise in any particular instance by the quarantine officer of the port.

Adopted April 15, 1898.

H. LIENHARD,
R. McINTOSH,
W. K. M. DUKATE,
Commissioners.

2115 Rules and Regulations for Harbor Masters of Ship Island Harbor.

SECTION 1. It shall be the duty of the harbor master to visit all vessels upon their arrival in this port and to designate their anchorage ground and berth; to inform the master or captain of the rules and regulations of the port, and to attend to the enforcement of the same; to cause all ballast to be discharged and deposited as ordered by this board and to render such other and further services in the execution of his office as may be necessary, or which shall be required of him by the master of such vessels, also to move all vessels that are to be moved in the harbor of Ship island, and the pilots are not to move any vessel at anchor in the harbor of Ship island, except to take them to sea or in case of distress, unless requested by the harbor master.

SECTION 2. It shall be the duty of the master of every vessel arriving at Ship Island harber in ballast, to report the same immediately to the harbor master, whose duty it shall be to cause the said vessel to be discharged and the said ballast to be deposited at such place as the board of pilot commissioners may designate in

ter not more than six feet deep at low water, and the harbor mas- shall not move any vessel from the ballast ground to her landing th with more than fifty tons of ballast on board, said ballast may discharged from the landing berth.

ECTION 3. Any owner, master or person in charge of any vessel o shall permit, allow or cause any ballast to be discharged or own overboard from such vessel into the waters of Ship Island bor shall be liable to a fine of one hundred and fifty dollars for first offense and a fine of one thousand dollars for the second and h subsequent like offense, to be recovered before a court of com- ent jurisdiction; and the vessel from which said ballast may e been discharged and thrown overboard shall be liable to be ceeded against to recover the payment of said fines.

ECTION 4. The harbor master shall be entitled to a fee of five lars on boarding each vessel, three dollars and fifty cents per day le superintending the discharge of ballast, and for each service dered at the request of the master a like fee of five dollars, and dollars and fifty cents for each dispute or disagreement between sters of vessels settled by him. And for each removal $5 and for oring vessels $5 each.

ECTION 5. All difficulties and disputes arising between masters of sels to which any one of the rules and regulations may apply ll be adjusted and settled by the harbor master, with the right ppeal from the decision of the board of pilot commissioners or a ority of them.

ECTION 6. All lighters transporting ballast from vessels in Ship nd harbor shall have bulwarks of sufficient height to fully pre- t the spilling of such ballast overboard; and any lighter spill- or discharging such ballast into the waters of the harbor shall fined not more than five hundred dollars and not less than nty-five dollars.

ECTION 7. All ballast shall be deposited on the north side of p island and north side of Cat island in six feet of water at low tide, provided said ballast can be deposited in such depth of 6 water as is included in a regular buoyed and defined ballast ground, and in accordance with section 2, rules and regula- s.

ECTION 8. No person shall be employed or retained as a harbor ster for Ship island who has an interest, directly or indirectly, in ballast lighter He shall employ a deputy when three or more sels are engaged in discharging ballast.

ECTION 9. The harbor master shall act in the interest of no bal- lighter, stevedore or other person having business or intercourse h a vessel in said harbor, but shall confine himself to the duties aid office.

ECTION 10. The harbor master shall at his individual expense nly mark and define and maintain at all times buoys showing northwest and northeast limits of the established ballast ground Ship island, the said buoys to be placed in ten (10) feet of water

and all lighters shall discharge their ballast on the inside of said buoys and, as provided in section 2, failure so to do to subject the masters and owners to the penalties prescribed in section 7.

SECTION 11. The harbor master shall be liable for the acts of his deputy, and for violating any of the foregoing sections (applying to the harbor master or his deputy) shall be fined upon conviction in a sum not less than ten dollars for each offense and for repeated violations subject himself to suspension and removal from office.

SECTION 12. Should the harbor master fail or neglect to report to the pilot commissioner any and all violations of sections 3, 6 and 7 of these rules he shall at once be suspended, and upon conviction, be fined and removed from office.

Adopted October 6, 1894.

H. LIENHARD,
R. McINTOSH,
W. K. M. DUKATE,
Commissioners.

List of Pilots.

Regularly Licensed for Ship Island Harbor Pass and All Other Passes Leading into the Same.

J. Lewis,
Fritz Abbley,
L. R. Bowen,
L. Llado,
F. D. Moran.
H. C. James,
J. H. Stilphen,
M. A. Scarlsorough,
J. E. Lewis,

ERNEST DESPORTE,
Harbor Master; Office, Biloxi, Mississippi.

(Herald Job Print, Biloxi, Miss.)

(Endorsed:) Louisiana vs. Mississippi Doc. 39. Filed June 25 '94. Wm. D. Bullard, commissioner. Office Supreme Court U.S. Filed Mar. 13, 1905. James H. McKenney, clerk.

217 MISS. DOCUMENT No. 40.

Act of Congress Approved February 20th, 1811, Providing the Conditions upon which Louisiana Might be Admitted into the Union.

Gayarre's History of Louisiana under American Domination, Pages 264 and 265.

218 Act of Congress Approved February 20th, 1811, Providing the Conditions upon which Louisiana Might be Admitted into the Union.

Gayarre's History of Louisiana under American Domination, Pages 264 and 265.

"The conditions annexed to this grant of authority were; That
e constitution should be republican and consistent with the Con-
itution of the United States; that it should contain the fundamen-
l principles of civil and religious liberty; that it should secure to
e citizen the trial by jury in all criminal cases, and the privilege
the writ of *habeas corpus* conformable to the provisions of the
onstitution of the United States; that the laws enacted by the new
ate should be promulgated, and all its records of every description
served, and its judicial and legislative written proceedings con-
cted, in the language in which the laws and the judicial and
gislative proceedings of the United States were published and con-
cted; *that the said convention should provide by an ordinance, irrev-
ble without the consent of the United States, that the people inhabit-
g the said Territory agreed and declared that they forever disclaimed
right or title to the waste or unappropriated lands lying within the
d Territory; that the same should be and should remain at the sole
d entire disposition of the United States;* that each and every tract
land sold by Congress should remain exempt from any tax laid
order or under the authority of the State for any purpose what-
r for the term of five years from and after the respective days of
sales thereof; that the lands belonging to citizens of the United
tes residing without the said State should never be taxed higher
n the lands belonging to persons residing therein; and that no
es should be imposed on lands the property of the United States;
that the River Mississippi, and the navigable rivers and waters
ing into the same, or into the gulf of Mexico, should be common
lways and forever free, as well to the inhabitants of the said State
o other citizens of the United States, without any tax, duty, im-
t, or toll therefor imposed by the said State.

The 4th section of the act declared that, in case the constitution
the State to be created should not be disapproved by Congress
their next session, the said State should be admitted into the
on upon the same footing with the original States.

And at pages 274 and 275, the same historian says: "The convention having assented to all the stipulations imposed by the Federal Government as a preliminary conditions to the framing of a constitution and State government for the Territory of Orleans, and the constitution having been adopted by a unanimous vote, two delegates, Messrs. E. Fromentin and A. B. Magruder, were elected to carry to Washington city, and lay before the proper authorities, the constitution, and the other acts of the convention, with special instructions to urge the speedy action of Congress, and with full power to give all necessary explanations. Two thousand dollars were allowed to each for their expenses."

"The convention adjourned *sine die* on the 28th of January 1812, after having adopted all the provisions which were deemed expedient to carry the constitution into practical effect, should it be approved and sanctioned by Congress.

Here is the preamble of the constitution: "We, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, contained in the following limits, towit; beginning at the mouth
2119 of the River Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude—thence due north to the northernmost part of the thirty-third degree of north latitude—thence along the said parallel of latitude to the River Mississippi—thence down the said river to the River Iberville, and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico—thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast—in convention assembled by virtue of an act of Congress entitled: An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of said State into the Union on an equal footing with the original States and for other purposes—in order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana."

(Endorsed:) Louisiana vs. Mississippi Doc. No. 40 Filed June 25th 1904. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney clerk.

Miss. Document No. 41.

Record Oyster Boat Licenses.

Account of Amounts Received.

..., Clerk Circuit Court, in Account with Oyster Fund, Harrison County, Mississippi.

Owner's name.	Name of boat.	Cap. in bbls.	Am't rec'd.
Thomas Morrison	Schr. E. Glennan	130	$4.00
Lopez, Dunbar's Sons & Co.	Schr. Corine	200	6.00
" " " "	" C. W. Makie	"	"
" " " "	" C. Olivari	175	4.00
Lopez & Dukate	" Schrimp	200	6.00
" "	" Emma Hand	200	6.00
L. Lopez	" Castelar	150	4.00
Lopez & Cox	" North America	200	6.00
W. Gorenflo	" Nymph	200	6.00
" "	" Clara Isabela	150	4.00
M. Giurvich & Co	" Martha C	120	4.00
Frank Cuzzi	" Frank Cuzzi	120	4.00
Marco Niccovich	" Orion A	170	4.00
Dominic Dulicich	" Mississippi C	200	4.00
William M. Rush	" Rush	120	4.00
Antonia Silvestrich & Co	" Four Sisters	120	4.00
Biloxi Canning Co	" Alphonse	115	4.00
" "	" Clementine	115	4.00
" "	Sloop St. Helena	90	4.00
" "	" Gesv Clara	90	4.00
E. Westbrook	Schr. Lady Thorn	150	4.00
J. Carson	" Mystery	175	4.00
J. Childers	" Italy	120	4.00
Edward Bourge	Sloop Sea Bird	40	4.00
William Parker	" Edna	75	4.00
" "	" Elnora	70	4.00
F. Stojcich	Schr. Della	160	4.00
J. Ford	" Anne	45	4.00
J. Musich	" Maggie	50	4.00
Louis Schraff	" Fly	60	4.00
D. Giubisich	Schr. Garibaldi	240	6.00
Paid county treasurer			
			$138.00
Francis Fornier	Schr. Loretta	130	4.00
Hormen Shoeman	" Garnet	300	6.00
J. T. Mayberry	" Alert	195	4.00
Louis Romard	Lugger Rosalie	175	4.00
" "	Schr. Gypsy	150	4.00
Antonia Vergini	" Ida	198	4.00
Joana Forgia	" Young America	100	4.00
Engine Rhine	" New Hope	150	4.00
C. G. Charlot	Sloop Uncle Joe		4.00
S. Christovich	Schr. Lara C	175	4.00
A. Burnicich	" Bella Chersina	250	6.00
A. Balius	" Addie	99	4.00

MISS. DOCUMENT No. 41—Continued.

Date.	Owner's name.	Name of boat.	Cap. in bbls.	Am't rec'd.
Oct. 5	C. Fountain	Schr. Adeiona	100	$4.00
" 6	V. D. Gregoria	" American Eagle	240	6.00
" "	Jas. Charlot	" Centenial	200	6.00
" "	H. S. Piernas	" Hennettapp	160	4.00
" "	Peter Farve	" St. Peter	170	4.00
" 6	Prandaus	Sloop Euphrise	45	4.00
" "	J. Kander	Schr. Lara E.	125	4.00
" "	Geirgio Ziz	" Rosa Bell	100	4.00
" "	William Manuel	" Mary A. Manuel	185	4.00
" "	J. Cartson	Sloop Ticoon	125	4.00
" "	F. Taconie	Schr. Henry Western	250	6.00
" 13	D. W. Barnes	Sloop Rhody	75	4.00
" "	Henry Clay	Schr. Lucena	100	4.00
" 17	N. Elenterius	" Violet	135	4.00
" "	J. Lassale	Sloop Swan	65	4.00
" "	A. Mora	Schr. Dora	120	4.00
" "	J. Cocham	Sloop Monta Christo	125	4.00
" "	J. Allen	" St. Charles	100	4.00
" 18	A. Perez	Schr. Antonia T., Jr	150	4.00
" "	G. Desport	" Natide	150	4.00
" "	M. Stanovich	" Katye R.	170	4.00
2122				
1892.				
Oct. 19	B. A. Ramsey	Schr. Alice Carney	400	6.00
" "	E. Tiblier	" Olivira T.	75	4.00
" 20	Strong & Nelson	" Mable Nelson	300	6.00
" "	M'Castner	" Undine	250	6.00
" "	T. P. Nelson	Sloop Olive	100	4.00
" "	R. Nicase	Schr. Odelia	150	4.00
" 21	R. L. & J. W. Fulford	" J. E. Hooper	225	6.00
" "	C. Ellison	" Phœnix	100	4.00
" "	J. J. Childers	" Nels Johnson	225	6.00
" "	Thomas Sumrall	" Queen of the Fleet	225	6.00
" "	N. E. Lipscomb	" Falcon	240	6.00
" 22	M. F. Villar	" Katye Maria	600	6.00
" "	T. Ramon	" Grover Cleveland	180	4.00
" 24	M. Fountain	" Alina	350	6.00
" "	P. Benoit	" Julia B.	150	4.00
" 25	J. Beaugez	" Four Brothers	80	4.00
" "	G. Spandonie	" Letricite	250	6.00
" "	J. Labache	" L. Lopez	250	6.00
" 26	C. Williams	" Vallia Redding	275	6.00
" 27	J. Lacoste	" Edward Corrigan	225	6.00
" "	J. Goodier	" Santmaria	150	4.00
" 31	C. S. Sang	" Grace Ellena	250	6.00
	By amount paid county treasurer			$258.00
Nov. 1	A. Roduguez	Schr. Corra L.	120	$4.00
" 3	A. Orsivinaz	" Live Oak	190	4.00
" "	J. Gooseman	" Maggie	300	6.00
" "	D. Coovivich	Lugger Greyhound	190	4.00
" "	J. Lipscomb	Schr. Carrie	250	6.00
" "	J. Fountain	Sloop Oregon	150	4.00
" 4	H. Latimer	Schr. John J. Dovicol	400	6.00
" 5	Geo. T. Terry	" Julia	195	4.00

MISS. DOCUMENT No. 41—Continued.

Owner's name.	Name of boat.	Cap. in bbls.	Am't rec'd.
John Gellich	Schr. Eureka	11 tons	$5.50
Jacob Covaccerich	" Josamia	10	5.43
Carried for'd to next	page		$48.93
To amount brought forw'd			$48.93
John Aken	Schr. Bell of the Lake	Tons 13	6.50
L. Grou	" Emma	" 6	3.35
J. Catchard	Sloop Edward Julia	" 3	1.60
W. Jauglett	Schr. Pelican	" 10	5.25
W. W. Cruse	" Virginia	" 12	6.00
T. Harrub	" Francis Cox	" 8	4.37
J. B. Fountain	Sloop Virginia Cellia	" 3	1.85
Vade Lustrone	Schr. Irma	" 6	3.25
J. Green	Sloop Nellie	" 2	1.00
B. Lizana	Schr. Julia	" 2	1.00
W. Gilbert	" Elenora	" 2	1.00
J. W. Fulford	" Newton	" 9	4.88
Z. Wentzell	" Olena	" 4	2.00
C. Rally	" Two Brothers	" 7	3.50
J. Cabrich	" Union	" 6	3.05
V. Covavich	" Clara C	" 8	4.00
M. Bagattella	Sloop Marry D	" 5	2.90
M. Bagatta	Schr. Three Boys	" 4	2.35
M. Vurovich	" May	" 3	1.55
J. Bradford	" Ursen Minor	" 18	9.40
G. Fountain	" Convenient	" 4	2.45
By R. W. #601			$120.18
			120.18
F. D. & E. Moran	Lugger Flora	" 6	$3.00
J. Moran	Schr. Katye M.	" 10	5.00
J. B. Moran	" Emma P. Clements.	" 11	5.50
C. Ladiner	" Charles Patten	" 8	4.00
F. Fountain	Sloop Creole	" 2	1.20
. Senjon	Schr. Lake Flower	" 6	3.02
. Lopez	" Arazonia	" 4	2.00
. Lopez	" Mississippi	" 4	2.00
. Lopez	" Texas	" 4	2.00
Carried f'w'rd to next	page		$27.72
Am't brought f'r'd		Tons.	$27.72
. Lopez	Schr. Indiania	4	2.00
Labassa	" Ruby	12	6.10
. Nelson	" R. Seal	5	2.62
. Ladiner	" Sarah R. Runcie	5	2.98
Estappa	Sloop Morning Star	3	1.50
Crutte	Schr. J. Cruette	7	3.75
Ramon	" Willie R	8	4.00
H. Ramon	" Alethia	8	4.00
y T. R. #611			$54.67
			54.67

MISS. DOCUMENT No. 41—Continued.

Date.	Owner's name.	Name of boat.	Tons.	Am't rec'd.
1893.				
Jan. 23	J. Tomasavich	Lugger Danilo II	6	$8.12
1893.				
Feb. 13	P. Lutzzi	Schr. Louisa	3	1.50
" "	J. Taconi	" Julia	10	5.00
" "	H. McCaughan	" Maria	3	1.50
" "	Geo. Rudolph	Sloop Algerine	3	1.50
" "	Chas. Reeves	Cat rig Morning Star	3	1.50
" 16	F. Panilo	Schr. Antonietta	7	3.50
" "	F. Ranatzi	Lugger Australia	6	3.45
" 17	L. J. Rosi	" R. E. Lee	8	4.15
" "	J. Ivorsich	" L. Indeffand	5	2.84
" "	V. Bronzini	Schr. Josepha	7	3.50
" 18	G. Caladora	Sloop Catarina	8	4.00
" "	C. Burtma	Schr. Roma	4	2.25
" "	L. Manzey	Sloop Pauline	4	2.00
" 22	F. Abley	Schr. Philadelphia	15	7.64
" 28	L. Rodovich	Lugger St. George	6	3.41
				$50.86
2125	By R. W. # 621			50.86
1893.				
Mar. 1	H. Aken	Schr. Harriet	4	$2.25
" "	I. Brasher	" Rosalie M	6	3.25
" 8	W. A. Terrell	" Cinderella	8	4.31
" "	C. E. Graham	" Mexican Gulf	9	4.50
" 9	G. Serino	" Grazia Cerino	9	4.75
" "	S. Teskdo	Lugger Carmella	8	4.06
" 10	T. Masarich	" Y. Wallace	6	3.50
" 11	August Chersonde	" Leon	8	4.20
" 14	J. Mullholand	Schr. Lulia	7	3.50
" 15	A. Quargold *et al*	" Lausana	10	5.50
" 17	S. Lotritch	" Geno	8	4.45
" "	A. Lotritch	" Rosa L	7	3.85
" 22	C. Williams	" Andrew Perze	5	2.50
" 28	T. Todesca	" F. W. Elmer	7	3.80
				$54.41
1893.				
Apr. 3	R. Crutti	Sloop Volunteer	2	$1.00
" "	D. Randazer	Schr. Mary	9	4.60
" 6	A. Rossi	Lugger St. Augustine	6	3.00
" 7	C. Ryan	Schr. The Sisters	4	2.00
" 18	E. Coney	Sloop Tallstine	3	1.50
" 20	J. Barracco	Lugger Jophine	8	4.05
" "	Mrs. Russo	Schr. Salvadore Russo	8	4.50
				$20.60
May the 4th.	By R. W. # 646			(?) 26.55

MISS. DOCUMENT No. 41—Continued.

. Hewes, Clerk of Circuit Court, in Account with Oyster Fund, Harrison County, Mississippi.

Owner's name.	Name of boat.	Tons.	Am't rec'd.
W. Gorenflo	Schr. Clara Isabel	5	$2.75
Hugh Lanabe	Sloop Hattie D	2	1.00
M. Stanovich	Schr. Katye R	7	3.50
J. Canger	" Laura E	5	2.64
P. Farve	" St. Peter	7	3.90
A. S. Pumas	" Huretta	8	4.00
P. Prandana	Sloop Euphrise	3	1.50
M. Fountain	" Oregon	5	2.58
P. Lutz	Schr. Louisa	3	1.50
J. Thomasvich	Lugger Danilo II	6	3.13
F. Remon	Schr. Willie R	8	4.29
F. H. Remon	" Alethia	8	4.27
			$35.06
By R. W. # 693			35.06
V. Redding	Schr. Vallie Redding	12	$6.05
H. McCaughn	" Marier	3	1.50
Wm. Gorenflo	" Nymph	13	6.50
D. A. Ramsey	" Emma Hand	15	7.76
Gustave Pacquet	Sloop Wandaer	5	2.50
M. Bagattella	" Mary D	5	2.90
N. Clarisse	Schr. Gipsy	3	1.87
Muldarling	Cat rig Ranger	4	2.00
B. Boginiceh	Sloop Carline	4	2.00
E. Tibler Jr.	" Tycoon	4	2.00
" "	Schr. Olvia T	3	1.50
D. Gubisich	" Garibalda	8	4.34
J. W. Strong	" Grace Ellena	9	4.50
L. Lopez	" barge Texas	4	2.00
L. Lopez	" " Indiana	3	1.75
C. S. Strong	" Ellen Bruggs	19	9.50
Lopez & Dukate	Steamer Julis Elbert	21	10.50
Forw'd to next page			$69.42
William Rush	Schr. Rush	4	2.15
F. McConivich	" Union	6	3.00
Tony Tranto	Lugger Roselee	6	3.48
N. Elenterius	Schr. L. Lopez	12	6.00
			$84.05
By R. W. # 698			84.05
Joseph Musich	Sloop Maggie	3	$1.50
A. Vergilie	Schr. Harry Gerdes	6	3.44
W. H. Murphy	" Two Brothers	9	4.55
Frank Thompson	" Queen of the Fleet	12	6.47
Elisha Neison	" R. Seal	5	2.62
Antonio Silverstrich	" Four Sisters	5	2.50
V. D. Gregoria	" American Eagle	8	4.47
Seal & Tolliman	" Grover Cleavland	8	4.00
N. Winston	" Hard Task	4	2.00

Date.	Owner's name.	Name of boat.	Tons.	Am't rec'd.
Jan. 3	T. H. Allen	Schr. Newton	9	$4.50
" 12	William Johnson	" Nels Johnson	12	6.00
" 24	W. Wentzell	" O'Lena	4	2.42
" 24	Lopez Dunbar Sons & Co	" C. Olivari	8	4.00
" 25	R. J. Cuveas	Sloop Messenger	4	2.00
" "	Mrs. A. Stiner	Schr. Undine	8	4.25
" "	J. J. Childress	" Itlay	5	2.71
" "	Jonana Forgnia	" Young America	5	2.50
" 27	L. Lopez	Barg- Arizona	3	1.50
" "	L. Lopez	" Mississippi	3	1.50
" "	D. Covisivich	Lugger Grey Hound	9	4.75
Feb. 1	To R. W. # 704			$67.69
2128				67.69
1894.				
Feb. 1	A. Sellier & N. Dedaux	Victoria D	14	$7.00
" "	A. Moran	Schr. Dora	4	2.30
" "	M. Gurivich & Co	" Martha C	4	2.00
" "	M. Vuyovich	" May	3	1.53
" "	J. W. Bohn	" Lillie Armstrong	16	8.00
" "	J. W. Fulford	" J. C. Smith	8	4.34
" 10	Lopez & Dukate	" Shrimp	12	6.00
" 13	M. Ervin	" Ruby	12	6.10
" "	Strong & Nelson	" Mable Nelson	9	4.62
" 15	Vincient Covavich	" Clara C	8	4.00
" "	Frank Taconi	" Henry Webstor	9	4.98
" 17	W. N. Johnson	" Amethyst	13	6.50
" 20	P. Sotjcish	" Della	7	3.56
" 22	N. X. Lipscomb	" Falcon	10	5.00
" "	A. Bomsich	" Bella Chersma	11	5.00
" 24	M. Fountain	" Alma	11	5.50
" "	I. Bresha	" Roselee M	7	3.50
" 26	R. I. Lamuis	" Castelar	5	2.50
March 1	By receipt Wart # 709			$82.93
2129				82.93
1894.				
Mar. 1	F. Cuzzy	F. Cuzzy	4	$2.00
" 2	Joe. Catchot	Sloop Edward Julnis	2 1/2	1.25
" 5	" "	Schr. Odeia	5	2.50
" "	" "	Ca- rig Morning Star	2	1.00
" "	" "	Sloop Faulstin	2	1.00
" "	" "	Schrr. Edna	4	2.00
" 6	H. Brasha	" Superior	6	3.00
Mar. 5th	Less R. W. # 732			$12.75
				6.50
Apr. 6th	By R. W. # 732			$6.25
1895.				6.25
Mar. 2nd	Lopez & Dukate	Steamer Julius Elbert	29	$14.50
Apr. 9th	By R. W. # —			14.50
Nov. 4th	Lopez, L	Steamer Julius Elbert	22	$11.00

2130 THE STATE OF MISSISSIPPI, }
Harrison County. }

I, A. J. Ramsey, clerk of the circuit court of said county and as such *ex-officio* custodian of the records of oyster boat licenses issued by the circuit court clerk of the said county during the years 1892, 1893, and 1894, which said record remains in said office and in my custody, certify that the following pages are a true and correct copy taken from the official register or record of such licenses issued to boats operating in Harrison county during the said years, and that to the best of my knowledge, information and belief said licenses authorize said boats to operate 18 miles, from the shore southward.

Witness my signature at Gulfport, Miss., this the 23rd day of June 1904.

[Seal of the Circuit Court, Harrison County, Mississippi.]

A. J. RAMSEY,
Clerk of the Circuit Court.

(Endorsed:) Louisiana *vs.* Mississippi Doc. No. 41 for Miss. Filed Aug. 8/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

131 MISS. DOCUMENT NO. 42.

Minutes of the Board of Supervisors of Jackson County, Mississippi, at August Term, 1893.

An Ordinance to Prevent the Taking of Oysters from the Public Reefs in the Waters of Jackson County, in the State of Mississippi, with Dredges.

SECTION 1. Be it ordered by the board of supervisors of Jackson unty that it shall be unlawful for any person or persons to dredge oysters in the waters of Jackson Co.

SECTION 2. Any person violating the provisions of this ordinance ll on conviction be fined one hundred dollars or be imprisoned the county jail for six months, or both, all persons so convicted ll stand committed until said fine and costs are paid, said fine e recovered before any court of competent jurisdiction, one half fine to be paid to the informer and the other half to be paid into county treasury.

ECTION 3. This ordinance to take effect from and after its adop-

TE OF MISSISSIPPI, }
County of Jackson, }

F. H. Lewis, clerk of the chancery court of Jackson county, issippi, and *ex-officio* clerk of the board of supervisors of Jack-

son county, and legal custodian of the records of said board, do hereby certify that the *following* is a true and correct copy of an order passed by the board of supervisors of Jackson county held in the town of Scranton, at the August term 1893, on the 10th day of August 1893, as will more fully appear from the minutes of said meeting of said board of record on page 556 of Minute Book No. 2 of the minutes of the board of supervisors of Jackson county, now on file in my office.

Witness my signature this the 5th day of August 1904.

[Seal of Chancery Court, Jackson County, Miss.]

F. H. LEWIS, Clk,
By FRED TAYLOR, D. C.

(Endorsed:) Louisiana *vs.* Mississippi. Doc. No. 42 for Miss. Filed Aug. 9, '04. —— ——, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2132 MISS. DOCUMENT No. 43.

Ordered that the following ordinance be and is hereby adopted

An Ordinance for the Protection and Preservation of the Public Oyster Reefs of Mississippi Lying within the Borders of Jackson County and to Create a Revenue to Inforce the Same.

SECTION 1. It shall be unlawful for any person or persons to ship or carry beyond the limits of the State of Mississippi by boat or water craft any oysters taken from any public reef in the waters of Jackson county in said State while the same are in the shell or to take or catch any oysters from any public reef in said county to be so shipped or carried beyond the limits of said State.

SECTION 2. It shall be unlawful for any person to take oysters from the public reefs in this county during the months of May, June, July and August for any other purpose except for domestic use or local trade.

SECTION 3. It shall be unlawful for any person to take oysters from the public oyster reefs of this county without first culling them of all young and unmarketable oysters all oysters taken for planting purposes shall be culled of all dead and empty shells which shells shall be returned to the reef from which they were taken.

SECTION 4. It shall be unlawful for any person to catch oysters on any public reef in the waters of said county without first procuring from the clerk of the circuit court of said county a license for each boat to be used by him in catching or transporting oysters which license shall expire one year after date and in his application for license he shall give the correct ton-age of his boat or boats and

heir names and shall pay fifty cents per ton for such license and fty cents to the clerk of court for every license so issued and no oat under one ton measurement shall be subject to the provisions f this section, boats licensed by the board of supervisors of Harri- on and Hancock county shall not be required to pay additional cense in this county and no license shall be issued to any person ngaged in fishing oysters in this county who is not a resident citi- n of the State of Mississippi.

SECTION 5. The said clerk shall keep a record of all license- so sued and shall correctly number the same and the person to whom ch license is issued shall cause such number and the word license be painted in red letters not less than four inches in size in some nspicuous place on the boat for which such license is issued, said erk shall, immediately procure the printing of the necessary anks to carry out the provisions of this section the said clerk shall ceive all money arising from said license and shall pay the same the county treasurer and such money so paid in shall create a nd which fund shall be known and designated as the oyster fund d shall be appropriated by the board of supervisors in their dis- tion in such manner as will best secure the inforcing of this or- nance and said fund shall be used for no other purpose.

SECTION 6. All owners or persons in command of boats licensed fish oysters in Jackson county at any time when called upon to hibit said license by any county or municipal officer — comply h said request and upon the refusal of any owner or person in command of any boat to do so he shall be arrested by said 33 officer with or without process so demanding his license and be taken before any mayor or justice of the peace having isdiction in this county and on conviction shall be fined or im- soned as hereafter prescribed.

SECTION 7. Measure for oysters in Mississippi is as follows Stave asure demention bottom sixteen inches across inside top eighteen hes inside height nine and one half inches from center of bottom ide of center of top, three of these measures filled rounded with- heaping shall make one barrel of oysters all such measures d in this county shall be stamped by the measure of this county which service he shall receive fifty cents for each measure mped by him and it shall be unlawful for any person to sell ters by the barrel in any other measure than the stamped asure.

SECTION 8. Any person *which* shall violate any of the provisions his ordinance shall on conviction be fined not less than five dol- for the first offense and for the second offense not less than ten lars and be imprisoned in the county jail not less than ten days all persons so convicted shall stand committed until the fine costs are paid one half of said fine to be paid to the informer the other one half to be paid into the county treasury.

SECTION 9. This ordinance shall take effect and be in forced from after the 7th day of November 1892.

STATE OF MISSISSIPPI,
County of Jackson.

I, F. H. Lewis, clerk of the chancery court of Jackson county, Mississippi and *ex officio* clerk of the board of supervisors of said county, and legal custodian of the records of said board, do hereby certify that the foregoing is a true and correct copy of an order passed by the board of supervisors of Jackson county at November term 1892 held at the court house at Scranton said county, on the 7th day of November 1892, as will more fully appear from the minutes of said meeting of said board of record on page 520–523 of Minute Book No. 2 of the board of supervisors of Jackson county, now on file in my office.

Witness my signature this the 6th day of August A. D. 1904.

[Seal of Chancery Court, Jackson County, Miss.]

F. H. LEWIS, Clk,
By FRED TAYLOR, D. C.

(Endorsed:) Louisiana *vs.* Mississippi Doc. No. 43 for Miss. Filed Aug. 9 1904. —— —— commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2134 MISS. DOCUMENT No. 44.

Minutes of the Board of Supervisors of Jackson County, Mississippi, at June Term, 1892.

Be it ordered by the board of supervisors of Jackson county:

1st. That it shall not be lawful for any person or persons to take, catch or remove oysters growing or being in the natural banks not having been planted or bedded there in any of the waters of Jackson county, with intent or for the purpose of carrying them out of Jackson county for sale or for planting or bedding out or for canning purposes.

2nd. If any person shall violate the foregoing order he shall forfeit the boats or vessels employed for the purpose, and shall be fined the sum of twenty five (25.00) dollars for the first offense and fifty ($50.00) dollars for the second offense, or imprisoned in the county jail for thirty days for each offense.

3rd. It shall be the duty of the sheriff or any constable of said Jackson county to seize the boats, vessels or their apparel and take in his possession such boats or vessels so unlawfully employed and carry them before a justice of the peace having cognizance of the case, and the case is to proceed to hearing as if by regular proceedings before the justice of the peace having jurisdiction thereof and if said person or persons have been adjudged guilty of the above offense they shall forfeit said boat or vessel to be sold by the sheriff

or legal officer and the proceeds after paying cost and expense shall go to the common school fund.

4th. This shall not apply to any persons who is a *bona fide* resident or shipper of Jackson county.

5th. It is further ordered that no persons, residents or non residents of this county shall *not* catch or remove any oysters in their natural banks, only for local consumption from the 1st day of May to the 1st day of September and any one violating this section shall be subject to the same penalty as provided in the 2nd section of this order.

STATE OF MISSISSIPPI, }
County of Jackson. }

I, F. H. Lewis, clerk of the chancery court of Jackson county, Mississippi, and *ex officio* clerk of the board of supervisors of Jackson county, and legal custodian of the records of said board, do hereby certify that the foregoing is a true and correct copy of an order *a* passed by the board of supervisors of Jackson county at a special term of said board held at the court house in the town of Scranton, in said county on the 2nd day of June A. D. 1885, as will more fully appear from the minutes of said meeting of said board of record on pages 76 and 77 of the Minute Book No. 2 of the minutes of the board of supervisors of Jackson county, now on file in my office.

Witness my signature on this the 6th day of Aug. A. D. 1904.

[Seal of Chancery Court, Jackson County, Miss.]

F. H. LEWIS, Cl'k,
By FRED TAYLOR, D. C.

(Endorsed:) No. 44 Miss. Louisiana *vs.* Mississippi Doc. No. 44 Miss. Filed Aug. 9, '04 —— —— commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, Clerk.

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MISS. DOCUMENT NO. 45.

Minutes of the Board of Supervisors of Jackson County, Mississippi, at September Term, 1884.

This day coming on for hearing the request of the citizens of this county for the protection and preservation of the oysters fish shrimp and game being produced in a state of nature within its bounds and the board of supervisors being satisfied that the same should be protected and preserved.

It is therefore ordered that no person or persons, who is not a *bona fide* resident of the county of Jackson shall hereafter be permitted or allowed to catch and market any oysters, fish, shrimp or

other game that may be taken or caught within the territorial limits of said county.

It is further ordered that in order to become a *bona fide* resident of said county within the meaning of this ordinance such person or persons must have been actual freeholders or householders for a space of six months.

It is further ordered that every breach of said ordinance shall be considered a misdemeanor and the person so offending shall be fined not less than twenty five dollars and not more than one hundred dollars or imprisoned for not less than thirty days for each offense, besides being subject to all the penalties now enacted by the statutes of this State.

It is further ordered that all oysters fish shrimp or game together with the boats, casts, seines and nets or other fishing tackle found in the possession of persons violating this ordinance shall be subjected to be sold to pay all cost and fines imposed upon them.

It is further ordered that this ordinance take effect from and after the first Monday in October 1884.

STATE OF MISSISSIPPI, }
County of Jackson. }

I, F. H. Lewis, clerk of the chancery court of Jackson county, Mississippi, and *ex-officio* clerk of the board of supervisors of Jackson county, and legal custodian of the records of said board, do hereby certify that the foregoing is a true and correct copy of an order passed by the board of supervisors of Jackson county at the September special term 1884, held at the court house in the town of Scranton, in said county on the 29 day of September 1884, as will more fully appear from the minutes of said meeting of said board of record on page 46 of Minute Book No. 2 of the minutes of the board of supervisors of Jackson county, now on file in my office.

Witness my signature, this the 6th day of August A. D. 1904.

[Seal of Chancery Court, Jackson County, Miss.]

F. H. LEWIS, Clk,
By FRED TAYLOR, D. C.

(Endorsed:) Louisiana vs. Mississippi Doc. No. 45 for Miss. Filed Aug. 9/04. —— —— commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

Rules and Regulations of the Board — Health of Harrison County, Mississippi, for the Year 1877.

Article 1.

The board of health shall meet at the court house, in Mississippi City, on the third Monday of each month, from March to November, and as often thereafter as the public health shall make such meetings necessary. Three members of said board constituting a quorum.

Article 2.

It shall be the duty of the board of health to supervise the administration of all the health laws of Harrison county, to examine into all cases of malignant, pestilential, infectious, and epidemic diseases, which may occur in said county, and the causes thereof; to examine into all such nuisances as may tend to endanger the health of the said county, and to take such steps as may be necessary for their removal; to exercise a general supervision over the sanitary regulations of all institutions, including hospitals, markets, prisons and public schools; to superintend all matters pertaining to quarantine and the quarantine physician and direct all measures of detention, disinfection and purification of vessels, cargoes and passengers, coming from ports against which quarantine may have been proclaimed.

SECTION 2. Whenever it shall appear to the board of health, that any pestilential or infectious disease has made its appearance in the county, said board shall take such measures as to them may seem expedient and requisite to prevent the spread of such diseases; and any person failing to comply with the requirements of the board of health in all such cases, shall forfeit and pay such fine as may be imposed by a court having competent jurisdiction, not to exceed one hundred and fifty dollars. That no person laboring under any contagious, infectious or other disease dangerous to the public health, shall be removed from one place to another without the permit of the board of health, under a penalty not to exceed one hundred and fifty dollars fine, or imprisonment, or both, at the discretion of the court imposing the same.

SEC. 3. It shall be the duty of every physician or other person practicing medicine in said county, to report to the board of health thereof, every case of small-pox, yellow fever, or other infectious, contagious or pestilential disease, which he may be called upon to treat within the limits of said county; said report to be made within twenty-eight hours after he shall have ascertained the character of the case, and to specify the name of the patient and the locality of the house in which such person is to be found; and, for every viola-

tion of this provision, the guilty party shall forfeit and pay a fine not to exceed one hundred and fifty dollars. That every citizen upon whose premises there may occur any case of small-pox, yellow fever, or other infectious or pestilential disease not under the charge of any physician, shall in like manner report the fact to the board of health. Under such penalty for failure so to do as a court, &c. may impose, not exceeding one hundred and fifty dollars.

2137 But whenever any disease has become epidemic, the board of health may at their discretion declare it unnecessary to report further cases.

SEC. 4. It shall be the duty of the board of health to open a pest-house for the treatment of paupers and indigent persons afflicted with pestilential or contagious diseases; to prescribe rules for its efficient management, and to furnish supplies and medical attendance to its inmates, which said supplies and medical attendance are to be paid for by said county.

Quarantine Regulations for the Ports of Pass Christian, Mississippi City, Biloxi, and Handsboro—All in Harrison County, Mississippi.

Quarantine.

Article 1.

Be it ordained, That there shall be established a strict system of quarantine to be enforced against all vessels arriving in the above enumerated ports, from any port or place where yellow, malignant or pestilential or infectious fever, or other infectious or dangerous diseases is prevailing; or, having any such person on board, suffering from such diseases. That this article shall only be in force when so proclaimed from time to time by the board of health and every proclamation shall define the length of time that it shall continue in force. That it shall be the duty of the quarantine physician and health officer, to attend at the quarantine station; to board all vessels entering the harbor of the respective ports above named; to fully examine into the condition of the vessels and cargo, and the health of all persons thereon; to examine as many of such persons on board, under oath, to learn and obtain any facts that he may deem essential and necessary; which oath he is hereby authorized to administer; to detain all vessels coming from any infected port or place, or that has any case of disease described in the first section of this article, on board, the cargo and every person on board, for any length of time that he may deem necessary or expedient; to direct such measures to be taken as may be necessary to purify the vessel, and supervise the same at the expense of the captain, owner or consignee of the vessel; to treat any person who may be sick of any malignant or infectious disease or fever; to sign all permits for vessels and persons to pass the quarantine, and all discharges for vessels or persons leaving the quarantine; without

which no vessels or persons shall be permitted to leave or pass the quarantine station.

And any person violating any of the quarantine regulations he, or the owner and captain, together with the vessel to which he may belong, or be a passenger, shall be fined such sum as a court of competent jurisdiction may impose, not exceeding one hundred and fifty dollars; or, by imprisonment, or both, at the discretion of the court.

That it is the duty of every person acting as a pilot, to deliver to the officer in charge of every vessel coming into the ports aforementioned, a copy of these regulations, or so much as may
2138 be wanted for the use of the vessel, of which the board shall have a sufficient number of copies printed.

During the existence of the quarantine, all pilots and other persons having charge of vessels entering the aforementioned ports, shall bring such vessels to anchor at the quarantine station; and no vessels shall leave such anchorage until it shall have been boarded by the quarantine physician, and shall have received permission from him to do so.

Every pilot or other person violating this section, shall be fined such sum as a court of competent jurisdiction may impose, not exceeding one hundred and fifty dollars, imprisonment or both.

That all persons who may receive medical treatment under this ordinance shall pay, for the use of the board of health, five dollars for each day of such treatment.

And where the persons so treated, shall be unable to pay the charge, the captain, owner or consignee of the vessel to which he may belong, shall pay the same.

That the word vessel, whenever used in this ordinance, shall extend to boats, steamers and watercrafts of every description.

That no vessel shall take on or discharge the cargo or ballast of any vessel at quarantine without a written permit from the quarantine physician, under such penalty as a court of competent jurisdiction may impose, not to exceed one hundred and fifty dollars on the owner, consignee or person in charge.

Rules.

That the quarantine station is hereby located by the board of health, at a place designated "the Lagoon," which is about four miles east of the light house, in Ship Island harbor.

Rule II. The quarantine physician shall, in every instance, determine the length of time a vessel shall remain at quarantine, and the time that all persons on board such vessels shall remain in quarantine.

Rule III. The quarantine physician shall make a monthly report on the third Monday of every month to the board of health of the number and class of vessels quarantined; the number of patients treated by him; the amount of fees collected, and all other information connected with the station as may be necessary and proper.

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Rule IV. All vessels at quarantine shall keep a flag at halfmast at the main during the day, and a lantern in the same position at night.

Any violation of these rules and regulations, shall be punished by a fine in such sum as a court of competent jurisdiction may impose, for the benefit of all parties concerned.

That it shall be the duty of the quarantine physician and any member of the board of health, to prosecute before a justice of the peace or circuit court, any person or persons violating any of the above and foregoing rules and regulations.

(Signed) G. N. SMITH, M. D.,
President of Board of Health.
RODERICK SEAL,
CHAS. L. LE ROUX, M. D.,
CHAS. PELAEZ, M. D.,
A. P. CHAMPLIN, M. D.,
Members of the Board of Health.

2139 STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes, clerk of the chancery court in and for the county and State aforesaid, do hereby certify that the above and foregoing is a true, correct and complete transcript of the rules and regulations of the board of health of Harrison county, Mississippi, for the year 1877, as the same remain on file in my office.

Given under my hand & official seal on this the 8th day of August, A. D. 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES, Clerk.

(Endorsed:) 1877. Louisiana *vs.* Mississippi Miss. Doc. 46 Filed Aug. 9/04 —— —— commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2140 MISS. DOCUMENT NO. 47.

Quarantine Physician's Report.

HARRISON CO., MISS., July 22, 1878.

To the honorable board of health of Harrison Co., State of Miss.

GENTLEMEN: I have the honor to submit the following report of my labors as quarantine physician and health officer of Harrison Co. Miss.

Quarantine having been declared by your honorable body to be in force in this Co. on the 23d of April 1878, I immediately entered upon the discharge of my duties.

From the 23d day of April 1878 to the 22nd day of July 1878 inclusive, I boarded five vessels to wit: 3 barks—1 brig and 1 schooner—

The sanitary condition of the vessels boarded by me was good and all had clean bills of health with the exception of the barks "Formose" and "Mathusalem" whose bills of health were qualified by the statement that there *was* a few cases of small pox in Bordeaux at the time that said vessels left there.

Names of Vessels and Ports Whence They Came.

Bark "Formose" Bordeaux France. Bordeaux
Brig "Frontier" Pensacola U. S. Pensacola
Bark "Stadt Frankfurt" Brest France. Brest
Schooner Mollie Emma U. S. Matanzas
Barks "Mathusalem" Bordeaux France. Bordeaux

I desire to call the attention of your hon'ble body to the fact that yellow fever of a virulent type is now raging in several ports on the island of Cuba and the greatest diligence shall be exercised on my part to enforce the quarantine laws and make them effective so far as it lays within my power to do so.

Respectfully submitted your obed't serv't

CHAS. PELAEZ, M. D.,
Quarantine Physician & Health Officer,
Harrison Co., Miss.

Filed July 22d 1878
F. S. HEWES,
Sect. Bd. of H.

STATE OF MISSISSIPPI, }
Harrison County. }

I, F. S. Hewes clerk of the chancery court in and for the county and State aforesaid do hereby certify that the above and foregoing is a true correct and complete transcript of quarantine physician's report, filed July 22d 1878, as the same remains on file in my office.

Given under my hand and official seal this August 8th 1904.

[Seal of Chancery Court, Harrison County, Mississippi.]

F. S. HEWES, Clerk.

(Endorsed:) 1878 Louisiana vs. Mississippi Miss. Doc. 47 Filed Aug. 9 '04 —— —— commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2141 MISS. DOCUMENT NO. 48.

Biographical and Historical Memoirs of Mississippi.

CHAPTER I.

Topography, Natural History, and Paleontology.

Mississippi is bounded on the south by the north line of southeast Louisiana, Pearl river and the Mississippi sound of the gulf of Mexico; on the east by the west line of Alabama, and on the north east by the Tennessee river; on the north by the south line of Tennessee (latitude 35 degrees), and on the west by the Mississippi. It embraces also the islands in the gulf of Mexico, within six leagues of shore, viz: Isles Dauphin, Ronde, Corne, au Chevreul, aux Vasseau, au Chat, St. Josephs, Grand island, and a few smaller bodies of elevated sands, or a territory extending from latitude 30 degrees, to latitude 35 degrees north, and from longitude 11 degrees 25 minutes west to 14 degrees 33 minutes west. The area in square miles, as stated in the United States Census Reports, is forty-six thousand eight hundred and ten, but local authorities place it as high as fifty five thousand five hundred. The width of the State, on the line of latitude 35 degrees, is one hundred and twenty miles; on latitude 31 degrees, one hundred and eighty-six miles, and on the Gulf coast, seventy-eight miles. The length of the State, on the line of longitude 12 degrees 30 minutes, being the greater line, is three hundred and thirty miles, but the frontage on the Mississippi is continental in its proportions.

From Goodspeed's History of Mississippi. Published 1891.

(Endorsed:) State of Louisiana *vs.* State of Mississippi. Mississippi Doc. 48 Filed Aug. 20th 1904. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2142 MISS. DOCUMENT NO. 49.

Article 9, Chapter 13 (Public Health and Safety), Hutchinson's Mississippi Code, 1798 to 1848.

AN ACT to Prevent the Destruction of Oysters in the Waters of the State of Mississippi, July 26, 1843.

§ 1. It shall be unlawful for any person or persons to take or catch oysters in any of the waters of this State with a scoop or drag, or any other instrument than such tongs and rakes as are now in use; and all persons whatever, are hereby forbid the use of such instruments in taking or catching oysters in the waters of this State, on pain of forfeiting to the State, the boat or vessel employed for the

purpose, together with her papers, furniture, tackle, and apparel, and all things on board the same.

2. The sheriffs of the counties bordering on the said waters of the State of Mississippi, are hereby charged with the execution of this law, and if any of the said sheriffs shall be, at any time hereafter, credibly informed of the violation of the same, by the oath of any credible person, administered before any justice of the peace, or upon his own view, it shall appear to him that any person or persons are, or to have been engaged in using a scoop or drag, or instrument hereby prohibited in taking or catching oysters in the waters of this State, it shall be his duty to seize and take into his possession the boat or vessel thus unlawfully employed, together with her papers, furniture, tackle, and apparel, and all things on board the same, and to arrest and take into his custody all the boatmen belonging to said boat or vessel, and carry them before a justice of the peace of his county, representing to the justice of the peace the breach of law committed, and naming to him the witnesses to support the charge; and the said justice shall be and he is hereby authorized to take cognizance of the offense then charged, and shall docket the case in the name of the State against the boatmen in the custody of the sheriff, and shall immediately summon before him the witness or witnesses named by the sheriff, and all the witnesses that may be named by him and the defendants; and shall examine the said witnesses on oath, with the said sheriff, if necessary, and inquire fully into the alleged offense of which the finding a scoop or drag, or other prohibited instrument on board such boat or vessel, shall be considered *prima facie* evidence of guilt, and after a full investigation of the case, if the justice shall think the charge groundless, he shall immediately discharge the said boatmen, and restore to them the boat or vessel seized by the sheriff, and all things belonging to him or them; but if he shall be of opinion that oysters have been taken and caught in contravention of this act, by said defendants, he shall require of each or every person found to be concerned, bond, with security for his appearance at the next circuit court of his county, to answer said charge, and on failure to give the same, the said justice shall commit all such defendants to the jail of the proper county; and upon such persons being found guilty, the circuit court shall fine or imprison such persons, as in cases of malicious mischief; and it shall be the duty of the sheriff to take bond with security from the owner or owners of such boat, or craft and tackle, conditioned that the same shall be forthcoming, and subject to the judgment of the said circuit court; and the said circuit court shall, at its next term thereafter direct an issue to be made up to try the fact of forfeiture of such boat; and if the issue shall be found against said boat, the court shall cause a judgment of forfeiture to be entered against the same, and shall award a *venditioni exponas* against the same.

3. Within ten days from the rendition of the judgment, it shall be the duty of the sheriff, after having given ten days'

notice, by public advertisement in three public places of his county, to sell for cash to the highest bidder, for the benefit of the State, the boat or vessel in his possession, together with the property, furniture, tackle and apparel; and the said sheriff is hereby directed to account with the auditor, and pay to the treasurer of this State, the proceeds of such sale, stating his account on oath, with the said auditor, of all expenses necessarily incurred by him in the seizure and disposition, and sale of the said property, and paying the balance that remained after deducting said expenses to the said treasurer, upon which balance the treasurer is authorized to allow him a compensation of ten per centum for his services for conducting the said business; and the said treasurer is hereby required to account for said sums as other money in his office.

4. If resistance be apprehended by the sheriff engaged in the execution of this act, he shall summon to his aid the *posse comitatus* of his county, armed and equipped as occasion may require, and without delay to perform his duty, and if resistance be made to the sheriff by the boatmen of the boat or vessel, or other persons in seizing the same, and taking such boatmen, such resistance in the boatmen or other persons shall be deemed a misdemeanor against the laws of this State, presentable by the grand jury of the county, whose officer is resisted, and punishable by fine and imprisonment, as in cases of resistance to legal process in the hands of such officer.

5. If any person or persons shall obstruct the navigation of any of the creeks, rivers or channels of this State, by throwing into the waters thereof, heaps of refuse in the process of picking the oysters for market, they shall be liable to, and incur a penalty not exceeding twenty dollars, nor less than ten dollars for each and every offense, to be recovered before a justice of the peace, one-half to the informer and the other half to the State, and the party so offending shall stand committed until the said fine, and all cost be paid or otherwise discharged by due course of law.

Chapter XXVI, Revised Code of Mississippi, 1857.

An Act for the Preservation of Game and Oysters in this State.

Art. 1. The board of police of the respective counties within this State shall have full power and jurisdiction for the protection and preservation of the oysters growing or being grown, and of the game running or being produced in a state or condition of nature within the territorial limits of each county respectively; and to regulate the times, places and circumstances under which either may be taken, and by whom and in what quantities, and to what extent made marketable; and with ample power to conserve the same for domestic use and consumption of the citizens and sojourners of the counties respectively, and also to secure a private right of property in oysters, banked, planted, or cultivated in the waters of the county. And to this end said boards of police may, from time to time, pass all such

dinances, in form of orders or resolutions, as they may respectively em necessary; and such ordinances shall from the date of their loption, or from such prospective date as may be specified, have e same force and effect as if enacted by the legislature of this State, and shall remain in force until repealed by said —.

41 Art. 2. The said board may respectively direct the publication of such ordinances, in such manner as they may judge st expedient; and copies thereof, certified by the clerk of the ard, shall at all times be taken as sufficient authentication of said linances.

Art. 3. The judicial administration of said ordinances shall per- n as matter of police, to any justice of the peace in the counties spectively, whether the act complained of transpired in his beat elsewhere in said county, or before any magistrate of any city or wn within said county, whether designated as mayor or by any er title; and the breach of any ordinance prescribed by the board police shall be decreed and taken to be a misdemeanor, and a lation of police order, and subject to forfeiture of the oysters or ne taken in violation of such police regulations, and to such fine d imprisonment as may be prescribed by said ordinances, or to or more of these penalties; and such complaints shall be sumrily heard and disposed of, as other matters affecting the public ce and order.

rt. 4. It shall be the duty of all sheriffs, constables, and town d city marshal/s, within the county, to seize with or without pros, any person or persons whom they may see and know, or have d reason to believe, to be violating any such police regulations, d to seize all such oysters or game found in the possession of such sons in violation of said police regulations, together with the ts, casts, or other conveyances or things in which oysters or game y be held or contained; and first securing the same, shall forthh convey the person or persons from whose custody the game or ters shall have been taken, before any such magistrate or justice he peace as aforesaid, to be dealt with according to the rules and ulations prescribed by such board for such offense.

rt. 5. It shall be competent for the board of police in cases of eiture of the articles seized, to determine the disposition to be le of them; and if there be any delay given to the party arrested the hearing of the case, the magistrate may cause the articles d to be disposed of before the hearing, and the proceeds to be d to abide the result.

pproved, March 11, 1856.

Chapter 30 of the Revised Code of Mississippi of 1871.

An Act in Relation to the Preservation of Game and Oysters.

Article 1.

§ 1889. The boards of supervisors of the respective counties within this State, shall have full power and jurisdiction for the protection and preservation of the oysters growing, or being grown, and of the game running or being produced, in a state or condition of nature, within the territorial limits of each county respectively; and to regulate the time, places and circumstances, under which either may be taken, and by whom and in what quantities, and to what extent made marketable; and with ample power to conserve the same for domestic use and consumption of the citizens and sojourners of the counties respectively, and also to secure a private right of property, in oysters banked, planted, or cultivated in the waters of the county. And to this end, said board of supervisors may, 2145 from time to time, pass all such ordinances, in form of orders or resolutions, as they may respectively deem necessary; and such ordinances shall, from the date of their adoption, or from such prospective date as may be specified, have the same force and effect as if enacted by the legislature of this State, and shall remain in force until repealed by said boards.

§ 1890. The said boards may respectively direct the publication of such ordinances, in such manner as they may judge most expedient; and copies thereof, certified by the clerk of the board, shall at all times be taken as sufficient authentication of said ordinances.

§ 1891. The judicial administration of said ordinances, shall pertain as matters of police, to any justice of the peace in the counties respectively, whether the act complained of transpired in his beat, or elsewhere in said county, or before any magistrate of any city or town, within said county, whether designated as mayor, or by any other title; and the breach of any ordinance prescribed by the board of supervisors, shall be decreed and taken to be a misdemeanor, and a violation of police order, and subject to forfeiture of the oysters or game taken in violation of such police regulations, and to such fine and imprisonment as may be prescribed by said ordinances, or to one or more of these penalties; and such complaints shall be summarily heard and disposed of, as other matters affecting the public peace and order.

§ 1892. It shall be the duty of all sheriffs, constables, and town and city marshals, within the county, to seize, with or without process, any person or persons, whom they may see and know, or have good reason to believe, to be violating any such police regulations, and to seize all such oysters or game, found in the possession of such person, in violation of said police regulations, together with the boats, casts, or other conveyances or things, in which the oysters or

game may be held or contained; and, first, securing the same, shall forthwith convey the person or persons from whose custody the game or oysters shall have been taken, before any magistrate or justice of the peace, as aforesaid, to be dealt with according to the rules and regulations prescribed by such boards for such offense.

§1893. It shall be competent for the boards of supervisors, in cases of forfeiture of the articles seized, to determine the disposition to be made of them, and if there be any delay given to the party arrested, for the hearing of the case, the magistrate may *be* cause the articles seized, to be disposed of before the hearing, and the proceeds to be held to abide the result.

§1894. That this act shall take effect from and after the first day of October, A. D. 1871.

Approved, April 8th, 1871.

Power of Boards of Supervisors.

§956. The boards of supervisors of the respective counties within this State shall have full power and jurisdiction for the protection and preservation of the oysters growing or being grown, and of the game running or being produced in a state of nature within the territorial limits of each county respectively; and to regulate the times, places and circumstances under which either may be taken, and by whom and in what quantities, and to what extent made marketable; and with ample power to conserve the same for domestic use and consumption of the citizens and sojourners of the counties respectively, and also to secure a private right of property in oysters, banked, planted or cultivated in the waters of the county. And to this end said boards of supervisors may, from time to time, pass all such ordinances, in form of orders or resolutions, as they may respectively deem necessary; and such ordinances shall from the date of their adoption, or from such prospective date as may be specified, have the same force and effect as if enacted by the legislature of this State and shall remain in force until repealed by said board.

(Section 956, of the Revised Code of the State of Mississippi of 1880.)

Chapter LXXXIV, Laws of Mississippi of 1884 (Page 89).

An Act to Amend Chapter 29 of the Revised Code of 1880.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the provisions of chapter 29 of the Revised Code of 1880, are hereby so extended as to give the boards of supervisors of the respective counties within this State full power and jurisdiction for the protection and preservation of fish, shrimp and crabs within the waters and jurisdiction of each county respectively.

SEC. 2. Be it further enacted, This act shall take effect from its passage.

Approved, March 14, 1881.

Chapter LXXXIII, Laws of Mississippi of 1881 (Page 88).

An Act to Amend Section 956 of the Code Relating to the Preservation of Oysters and Game.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That section 956 of the Code of 1880 be and the same is hereby amended as follows: Add after the word "game," in the fourth line of said section, the words "and fish," and that this act take effect from the date of its passage.

Approved, March 13, 1884.

Chapter CVI, Laws of the State of Mississippi of 1886 (Page 180).

An Act to Encourage Planting Oysters, and for Other Purposes.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That all persons having or owning lands in the counties of Hancock, Harrison and Jackson in this State, fronting on the gulf of Mexico or Mississippi sound, bays or bayous, shall have the exclusive right and authority to plant oysters in the waters of said gulf of Mexico, bays and bayous, in front of their lands: *provided*, said right shall not extend across any channel, and only up and to the same, and shall in no way impede or obstruct navigation, or include any natural oyster reefs.

2147 SECTION 2. Be it further enacted, That said oysters so planted and their increase are hereby declared to be the personal property of the owners of the said land.

SEC. 3. Be it further enacted, That any person or persons who shall remove or interfere with the oysters planted by the owners of the land fronting the waters in which the oysters are planted, shall be guilty of a misdemeanor, and on conviction before any court of competent jurisdiction, shall be fined in a sum of not more than twenty five dollars and not less than five dollars, or be imprisoned in the county jail not more than twenty days nor less than one day, and that any person convicted under this act shall be confined in the county jail, until said fine and all costs are paid.

SEC. 4. Be it further enacted, That all laws in conflict with this act are hereby repealed.

Approved, March 4, 1886.

Chapter 90, Laws of Mississippi, 1888.

An Act to Amend an Act Entitled "An Act to Encourage Planting Oysters, and for Other Purposes," Approved March 4, 1886, and for Other Purposes.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That section one of an act entitled "An act to encourage planting oysters, and for other purposes," approved March 4, 1886, be and the same is hereby amended by adding to the said section the following: "And provided that no person shall fence in or stake off any of the public oyster reefs, or any part or parts thereof, in the counties of Jackson, Harrison or Hancock, under a penalty of two hundred dollars, to be recovered in any court of competent jurisdiction, in the name of the State, for the use of the common school fund.

SEC. 2. Be it further enacted, That any person who has fenced in or staked off any of the public oyster reefs, or any parts thereof, in the first section of this act mentioned, who shall not within thirty days after the passage of this act remove such fencing or stakes, and any person who shall hereafter fence or stake off such public oyster reefs, or any part thereof, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding two hundred dollars.

SEC. 3. Be it further enacted, That this act take effect and be in force from and after its passage.

Approved March 7, 1888.

Chapter 194, Laws of Mississippi of 1890 (Page 304).

An Act to Protect the Public Oyster Reefs in the Counties of Jackson, Harrison, and Hancock.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the selling of unculled oysters in the within named counties is hereby prohibited (except for planting purposes), and any person or persons found selling or buying oysters not culled from all young and unmarketable oysters, shall on conviction for the first offense be fined in a sum of not less than twenty-five dollars and ten days in the county jail, and for the second or other offenses be fined one hundred dollars and remain months in the county jail. One-half of the fine to go to the one giving the information leading to the arrest and conviction and the other half to go to the common school fund of the State.

SEC. 2. There shall be a measure known as the oyster measure, which shall be of the following description and size: A half barrel measure shall be a tub 17 inches in diameter on the bottom (inside), inches in diameter on top (inside), and 13 inches deep (inside).

A quarter of a barrel shall be a box 6 inches deep, 12 inches wide, and 18 inches long (inside). All measures before being used shall be taken to the sheriff of the county where to be used, who shall measure them, and if they comply with the provisions of this section, he shall stamp on the measure the word "Inspected," with his name attached, and shall receive a fee of twenty-five cents for each measure stamped. And all oysters in the shell shall be sold and bought by the above mentioned measure, and any person found selling or buying oysters in the shell by any other measure, shall on conviction be fined not less than ten dollars for each offense.

SEC. 3. The catching of oysters from the public oyster reefs during the months of May, June, July and August is prohibited, except for home use and local consumption, and anyone convicted of violating the provisions of this section shall be subject to all the penalties provided in section one of this act, provided that nothing in this section shall prohibit the catching of oysters on the public reefs of Harrison county for planting purposes in said county.

SEC. 4. No person or persons shall take in any one year from the public oyster reefs more than one thousand barrels of oysters for their individual use, or for planting purposes, and any person or persons violating the provisions of this section shall be subject to all the fines and penalties as provided in section one of this act.

SEC. 5. All acts and parts of acts in conflict with this act are hereby repealed, and this act take effect and be in force thirty days after its passage.

Approved February 22, 1890.

Chapter 96 of the Annotated Code of Mississippi of 1892.

Oysters, Crabs, Fish, and Shrimp.

3080. Coast counties to regulate.—The boards of supervisors of the counties of Hancock, Harrison, and Jackson have full jurisdiction and authority for the protection and preservation of oysters, crabs, salt water fish, and shrimp in their respective counties, and they may make all the proper regulations for that purpose, to the same extent, and with like effect in every particular, and to be enforced and subject to the like penalties and forfeitures as the regulations of boards of supervisors generally for the protection of game and fish.

3081. Regulations to protect public oyster reefs.—The boards of supervisors of said counties shall have full authority to make all needful regulations, not contrary to law, for the protection of the public oyster reefs in their respective counties, and to con-
2149 serve the same for the use of the inhabitants of the State.

3082. Regulations as to shrimp.—It is unlawful to haul any shrimp-net on the beach above low tide; and the said boards of supervisors may prescribe the size of the meshes of shrimp-nets, but may not otherwise regulate the taking of shrimp. All nets of meshes smaller than those prescribed shall be forfeited.

83. Mississippi sound; regulations.—The regulations of any
y relating to the preservation and protection of oysters, fish,
, and shrimp in the Mississippi sound and adjacent waters,
not give any preference to citizens of that county over those
y other county.

84. Natural oyster-reefs public.—All natural oyster reefs belong
e public, and cannot be appropriated exclusively by any
n.

85. Unlawful to take oysters in certain months.—It is unlawful
e oysters from the public oyster-reefs during the months of
June, July and August, except for the domestic use of the in-
nts and for planting purposes, as regulated by the boards of
isors.

86. Unlawful to sell unculled oysters.—In taking oysters from
tural reefs, they shall be there culled of all young and un-
table oysters, unless taken for planting.

87. Taking of oysters limited.—Any person, corporation, or as-
on of persons shall not take from the public oyster-reefs more
wo thousand barrels, unless authorized by the board of super-
and in no case to exceed ten thousand barrels in any one

88. Oysters are personal property.—Oysters, whether in the
l reefs or in plantations, are personal property, and the sub-
larceny; and any person taking oysters from the public
r beds contrary to law or the regulations of the board of super-
shall be guilty of larceny, in addition to suffering the other
es prescribed.

89. Oyster-boats to be licensed.—The taking of oysters in any
han licensed boats, except the boat be of less than one ton bur-
d the only one belonging to the party, is prohibited; and the
of supervisors of said counties shall license oyster boats and
e all proper regulations for the same; but the fee for license
t exceed one dollar a ton burden, and the license shall be
season only, and shall be taken out in the county of the
e of the owner of the boat, or in the county where the boat
oyed, and shall be good in each of said counties. Every
boat shall have conspicuously painted on it the word
ed," and the number of the license.

90. Oyster-inspector.—The boards of supervisors of said coun-
jointly, or each may severally, appoint an oyster inspector
vise the oyster and other interests in the sound and adjacent
nd may prescribe his duties and fix his compensation.

91. Powers of oyster-inspector.—The oyster-inspector shall have
ority and power of a police officer, and he may arrest, with
ut warrant, all persons violating the laws and regulations;
may seize and hold for condemnation or forfeiture, all oysters,
h, and shrimp taken unlawfully or contrary to the regula-
d all boats, tackle, nets, and appliances used in such taking.

92. Police boats.—The said boards of supervisors may, in like

manner, purchase and equip one or more boats, to be used by
2150 the inspector as the board or boards shall direct, as police boats, and may regulate the *the* use thereof in the protection of oysters, crabs, fish, and shrimp, and the enforcement of the laws and regulations.

3093. Expenses; how defrayed.—The fees for licenses, and all fines, penalties and forfeitures for violating the laws and regulations concerning oysters, crabs, fish, and shrimp, shall constitute a special fund in each of said counties, out of which all the expenses incurred shall be paid, but any deficiency may be supplied by allowance out of the general fund of the counties. All fees, fines, penalties, and forfeitures shall be paid into the treasuries of the respective counties, and shall be disbursed only on the warrant of the board of supervisors. The several county treasurers shall be liable for all such funds on their official bonds.

3094. Planting oysters.—The sole right of planting oysters belongs to a riparian owner, and extends only up to the channel, and does not include any natural oyster-reef or bed. Stakes of such frail material as may not injure water craft may be set up to designate the bounds of the plantation; but the water shall not be fenced in or otherwise appropriated, and navigation shall not be impeded.

3095. Misdemeanor to violate laws or regulations.—Any violation of the laws and regulations relating to oysters, crabs, fish, and shrimp shall be a misdemeanor.

Chapter 129, Laws of Mississippi 1896, Page 142.

An act to regulate the fishing of oysters, crabs, fish, and shrimp in the gulf of Mexico and Mississippi sound, and to increase the public revenue by leasing public oyster grounds, and to repeal chapter 96 of the Code of 1892.

Section 1. Be it enacted by the legislature of the State of Mississippi, That the boards of supervisors of the counties of Hancock, Harrison and Jackson have full jurisdiction and authority for the protection and preservation of oysters, crabs, salt water fish, and shrimp, in their respective counties, and they may make all proper and reasonable regulations for that purpose, to *be* the same extent, and with like effect in every particular, and to be enforced and subject to the like penalties and forfeitures as the regulations of boards of supervisors generally for the protection of game and fish.

Sec. 2. That the boards of supervisors of said counties shall have full authority to make all needful and reasonable regulations, not contrary to law, for the protection of the public oyster reefs in their respective counties.

Sec. 3. That it is unlawful to haul and shrimp net on the beach above low tide; and the said boards of supervisors may prescribe the size of the meshes of shrimp nets, but may not otherwise regulate the taking of shrimp by *bona fide* residents of this State. All nets of meshes smaller than those prescribed shall be forfeited.

1. That the regulation of any county relating to the preser-
and protection of oysters, fish, crabs and shrimp, in the Mis-
sound, and adjacent waters, shall not give any preference to
itizens of that county over those of any other county.

SEC. 5. That all natural oyster reefs belong to the public
and cannot be appropriated exclusively by any person, and a
oyster reef is hereby declared to be such a reef, as from which
n can make reasonable wages by taking oysters in ordinary
r.

6. That it is unlawful to take oysters from the public oyster
ring the months of May, June, July and August, except for
nestic use of the inhabitants and for planting purposes as reg-
by the boards of supervisors.

7. That in taking oysters from the natural reefs, they shall
ed as far a- practicable, without destruction to the oyster, of
ng and unmarketable oysters, unless taken for planting.

8. That oysters, whether in the natural reefs or in planta-
re personal property, and the subject of larceny, and any
taking oysters from the public reefs or beds contrary to law,
regulations of the boards of supervisors, shall be guilty of lar-
n addition to suffering the other penalties prescribed.

9. That the sole right of planting oysters and erecting bath
and other structures in front of any land bordering on the
f Mexico or Mississippi sound, belongs to a riparian owner,
tends not more than one thousand yards from the shore, and
ot include any natural oyster reef or bed, and does not ex-
eyond any channel. Stakes of such frail material as may not
any water craft may be set up to designate the bounds of the
tion; but the water shall not be fenced in or otherwise appro-
l, and navigation shall not be impeded.

10. That the clerks of the chancery court of Harrison, Jack-
d Hancock counties be authorized to lease to *bona fide* resi-
of Mississippi for a period of fifty years, for cash, any g.ounds
Mississippi sound, covered with water, within their respective
es, which is a thousand yards from the shore, or is in front of
ublic land, or is beyond the channel from the shore for the
ng and cultivating of oysters; and no more than forty acres
e leased to a single person or corporation: Provided, however,
round planted by private individuals under the provisions of
isting laws shall not be so leased, or the owner or owners dis-
in their possession; and provided further, that this shall not
to public oyster reefs.

11. That when any person, being a *bona fide* resident of Mis-
i, desires to take advantage of section 10 of this act, he shall
a survey of the land desired to be leased by him, to be made
county surveyor, and shall also mark the boundaries of the
by placing on each corner of the same buoys, marked in such
as to clearly designate the ground sought to be leased, and
ile his petition to the clerk to lease such ground, and the ex-

penses so incurred shall be repaid to the petitioner by the clerk out of the proceeds of such lease, on the affidavit of such petitioner being filed in his office.

SEC. 12. That when any person, being a *bona fide* resident, files in the office of the clerk of the chancery court of the county in which the land is situated, the petition and survey provided for in section 11 of this act, it shall be the duty of said clerk to advertise in some newspaper published in the county, for three weeks, a notice stating the land to be leased, when to be leased, and where to be leased, and at the time and place advertised, he shall proceed to lease the same at public outcry, to the highest bidder, being a *bona fide* resident of the State of Mississippi, and the proceeds arising from the sale, after paying the expenses of advertising, surveying and marking
2152 such lands, shall be by him paid into the State treasury, and at the time of paying the same he shall also file in his office a statement of his doings under this act.

SEC. 13. That the boards of supervisors of Jackson, Harrison and Hancock counties shall never adopt any rules or regulations to prevent citizens of the State of Mississippi from dredging oysters in water fourteen feet in depth, or more, or from fishing with tongs in water of any depth.

SEC. 14. That chapter 96 of the Code of Mississippi of 1892, be and the same is hereby repealed, and this act take effect and be in force from and after its passage.

Approved March 14, 1896.

Chapter 58, Laws of Mississippi, 1902.

An act to regulate the fishing and canning of oysters in the State of Mississippi and improving and enlarging oyster beds in the Mississippi waters and to repeal chapter 96 of the Annotated Code, chapter 129 of the Laws of 1896, and chapter 90 of the Laws of 1898.

Repealing Existing Oyster Laws.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That chapter 96 of the Annotated Code, chapter 129 of the Laws of 1896, and chapter 90 of the Laws of 1898, in relation to oysters, crabs, fish and shrimp, be and the same are hereby repealed.

Board of Oyster Commissioners Created; Governor to Appoint Commissioners; Terms of Office.

SEC. 2. That a board of oyster commissioners be, and the same are hereby created, to consist of five members to be appointed by the governor, whose term of office shall begin on the first Monday in September, and shall be for five years each, except the members of the first board appointed under this act, whose terms of office

shall begin upon their appointments and shall continue for one, two, three, four, and five years, respectively, after the first Monday in September, 1902, so that one member of said board shall be appointed annually. In case of a vacancy, the governor shall appoint a successor to fill out the unexpired term. In making appointments, the governor shall endeavor to select members who are familiar with all branches of the oyster industry, but who are not engaged in catching, canning, or dealing in oysters in any way.

Meeting of Board; to Supervise Oyster Catching and Canning; Compensation of Commissioners; Duties of Secretary; Deputy Inspectors.

SEC. 3. Said board shall have an official seal and shall meet on the first Monday in each month during the canning season, and as often as business may require, at the office of the secretary of the board, and the president may call special meetings on giving one day's notice to each member. They shall receive and audit the accounts of oysters bought and caught, of all canneries and dealers, and the accounts of all inspectors and members of said board, and all the expenses incident to the carrying into effect of this act; and shall see that privilege taxes and license fees are paid and
2153 that the officers faithfully discharge their duties and shall hear complaints of any person aggrieved by the action of any officer. The members of said board shall receive as compensation five dollars per day while engaged, not to exceed twenty days in any one year, and shall receive their actual traveling expenses to be audited and allowed by the board. Said board shall annually, at a regular meeting to be held on the first Monday in September, elect a president from their number, who shall preside at all meetings and shall have but one vote, and a chief inspector, who shall not be a member of said board, who shall be familiar with the oyster industry but shall not be interested therein as fisher, packer or shipper, and who shall receive the sum of one hundred dollars per month, as such inspector, and actual railroad fare, in performing the duties of his office. Said board shall annually elect at said meeting a secretary, who may be a member of said board, and who shall perform all the duties usually performed by secretaries of like bodies to be prescribed by the board. He shall have his office at some point centrally located on the Gulf coast, to be fixed by the board. He shall keep his office open at all times during business hours. He shall keep the seal of the board, and shall receive as his compensation the sum of six hundred dollars per annum, fifty cents per each license issued, and, if a member of said board, his regular per diem. Said board shall appoint deputy inspectors, not exceeding three, who shall be familiar with fishing and culling oysters, who shall serve during the canning season. They shall visit the different points where oysters are canned or shipped and aid the inspector in enforcing the provisions of this act, and shall receive therefor the sum

of sixty dollars per month for the time they are engaged, together with their actual railroad fare.

License Fee for Catching Oysters.

SEC. 4. Any owner of any vessel of over one ton burden gross, desiring to catch or take oysters from the public oyster reefs of this State shall first obtain from the secretary of the board of oyster commissioners a license therefor, and said license shall have effect for twelve months from the first day of the month in which it is issued, and no vessel of over one ton burden gross shall be used in catching and fishing for oysters on the public reefs in the waters of this State unless so licensed.

Secretary to Account for License Blanks.

SEC. 5. The auditor shall furnish the said secretary from time to time a sufficient number of license blanks, which shall be charged to said secretary, and all unused blanks shall be accounted for annually by said secretary, and all moneys collected therefor by said secretary shall be paid into the State treasury monthly and placed to the credit of the oyster fund.

License; What to Show; Fees for Same.

SEC. 6. Each license to take and catch oysters in this State shall state the name of the applicant and the name of his or her vessel, and a license under the provisions of this act shall not be used except on the vessel so mentioned in said license, and the applicant therefor shall pay a license fee of two dollars and fifty cents on vessels of over one ton burden gross and under five tons; and five dollars for vessels of five tons and under ten; ten dollars on
2154 vessels of ten tons and under twenty; and fifteen dollars on vessels of twenty tons and over for each vessel for which he may obtain license, and fifty cents license fee to the officer issuing the same.

Unlicensed Boats Prohibited.

SEC. 7. No person shall take oysters with rakes, tongs, dredges, or other instruments from the public reefs of this State in an unlicensed boat of over one ton burden gross, and all persons engaged in taking and catching oysters shall exhibit their authority for so doing when required by an officer of the police force. Any boat of over one ton burden gross, which is not enrolled in the custom house of the United States, shall pay a license fee of two dollars and fifty cents.

Fee for Unclassified Vessels; Secretary to Receive 50 Cents for Each License.

SEC. 8. Before issuing any license, the secretary of the board shall collect the license fee, as provided for in section 6, and in case there are no measurements and the vessel or vessels are not classified by the custom house records, a license fee of two dollars and fifty cents shall be exacted from any person or persons fishing or taking oysters from the waters of this State in any canoe, barge, skiff or other vessel of over one ton burden gross. Said secretary shall receive as a fee for the issuance of said license, the sum of fifty cents for each license so issued, to be paid by the person to whom the license is issued. No license shall be required of any canoe, barge, skiff or other vessel of one ton burden gross or under.

Vessels to be Provided with Numbers.

SEC. 9. The board of oyster commissioners shall have painted a sufficient number of signs in black figures on white canvass, numbered from naught to two hundred, consecutively, and a greater number, if needed, and with each license so issued the applicant is to be furnished a number corresponding to the number of his or her license; said figures shall be twenty-two inches in length and proportionate in width, and the figures shall be at least six inches apart; the receiver of said number shall not conceal nor deface the same, but when fishing shall expose the number to view upon the sails of his or her vessel, or some conspicuous portion of such vessel, and shall at all times when fishing or tonging oysters from the public reefs of this State, expose said number at the starboard side of their vessel.

Tax on Canning Factories and Shippers.

SEC. 10. Each canning factory shall pay a privilege tax of one hundred dollars, and each shipper of raw oysters a tax of twenty-five dollars, and shall receive from the secretary of the board of oyster commissioners a license therefor upon the payment of said sum to said secretary, as well as a license fee of fifty cents for issuing the same, and it shall be unlawful for any person to can or ship raw oysters without first having paid said tax and received said license.

2155 Additional Tax on Oysters; Packer to Pay Same; When to be Collected; Record of all Oyster Purchases Kept; Not to Apply to Oysters Taken from Private Beds.

SEC. 11. In addition to the privilege license required by this act, a further tax and fee of two cents per barrel is hereby laid upon all oysters canned and packed in and on all oysters shipped raw in or

from this State, and on all oysters caught or taken from the public reefs for packing, canning, and for shipment or sale raw.

This tax shall be paid by the person, firm, or corporation packing or canning said oysters, and in cases of oysters sold or shipped raw by the dealer selling or shipping the same, that is to say, by the first dealer who handles said oysters, and any oysters sold by any person who has purchased same from a dealer who has paid the license thereon shall not be again taxed.

It shall be the duty of the inspector of State fisheries to collect from each firm, corporation, packer, commission man, dealer or other person engaged in buying and selling oysters said tax upon the first day of each month, or as soon thereafter as practicable, and oftener if he deem it necessary, and to pay the same to the treasurer once each month.

Each packer, canner, corporation, firm, commission man, and dealer shall keep a record of all the oysters purchased by them, with the names of the parties from whom purchased and date of purchase and shall keep an itemized account of all oysters caught by such packer, canner, corporation, firm, dealer, or other person, and all caught and taken by boats controlled by them, and shall exhibit the same at all times when called upon by any commissioner or officer so to do, and shall, on the first day of each month, make return under oath as to the number of barrels purchased and caught during the preceding month, and the making of any false affidavit to any return shall be perjury and punishable as if provided in other cases of perjury.

This section shall not apply to oysters taken from private bedding grounds, but the burden of proof shall be on any person having oysters in his possession to show that they came from private bedding grounds.

Taxes may be collected by the chief inspector under this section by distress, and all laws regulating the collection of other taxes by distress shall, as far as practicable, apply to the collection of this tax, but the chief inspector and not the sheriff, shall collect the same.

Oyster Fund Created.

SEC. 12. All moneys received or obtained by the payment of taxes or the issuance of licenses under the provisions of this act, except the sum of fifty cents for each licence, to be retained by the secretary, shall be paid over to the State treasurer, and shall constitute a fund to be known as the "oyster fund;" the expenses of enforcing this act shall first be paid out of said fund, and the sum of five thousand dollars annually shall be expended in improving the oyster reefs and in spreading the shells and making new bottom, under the direction of the board of oyster commissioners; the remainder of all moneys received thereunder shall, on the 15th day of September in each year, be passed to the credit of the general fund.

Oysters to be Culled.

SEC. 13. All oysters taken from the public reefs of the waters of this State, either with scoops, dredges, tongs, or other instru-
2156 ments or appliances, shall be culled upon their natural beds or bars as taken, and all young oysters measuring less than two and one-half inches from hinge to mouth, and all dead shells, shall be returned to the bed or bar from which taken, and it shall be unlawful for any person to remove from public reefs or beds where taken any oysters without immediately culling the same and returning all dead shells and young oysters to the same reefs from which taken.

How Cargo to be Culled.

SEC. 14. No captain or other person in charge of any vessel shall have oysters in his or her possession, or offer for sale in this State, oysters taken from the public oyster reefs which contain more than 7 per cent. of shells and small oysters, and in order that the inspector may arrive at the percentage of unculled oysters, he shall cause to be culled, according to law, every tenth barrel in the cargo, if he deem it necessary; if the cargo upon this basis of percentage prove unculled as required by law, the inspector shall condemn said cargo, cause the same to be reculled, and cause the young oysters and dead shells to be returned to the reefs from whence taken, and shall proceed against said offender as the law directs for such offense.

Unlawful to Buy Unculled Oysters.

SEC. 15. It shall be unlawful for any packer, commission man or other person to purchase or have in his possession, oysters not culled according to law.

Inspector to Patrol Oyster Reefs and See that Oysters are Culled; May Arrest for Violation of this Law; Licensed Vessels to Assist Inspector.

SEC. 16. The board of oyster commissioners shall provide the chief inspector with one additional inspector, who shall be a seafaring man competent to act as captain of the boat on which he shall be engaged, who shall receive a salary of sixty dollars per month during the canning season, whose duty it shall be to patrol daily the waters of the Mississippi sound under the direction of the chief inspector, and to see that all oysters taken from public oyster reefs are culled on the reefs or beds where taken, and when not otherwise engaged, the chief inspector shall patrol said sound in person, under rules to be adopted by the board; and said inspector and all subordinate inspectors shall be clothed with power to arrest with or without warrant any person who shall violate any of the provisions of this act, and to take him before a justice of the peace for trial. They

shall at all times be governed by all lawful rules and regulations prescribed by said board. It shall be the duty of every captain of a licensed vessel, when called upon by an inspector so to do, to assist said officer, both in person and with his boat and crew, in making any arrest for a violation of this act, and such captains may use such force at their command as may be necessary in making the arrest when such persons attempt to escape or resist arrest, and any such captain or member of any crew failing so to do, shall be guilty of a violation of this act, and subject to its penalties.

Patrol Board and Crew to be Provided by Commissioners.

SEC. 17. The board of oyster commissioners shall provide the necessary boat and engage the necessary crew to be employed
2157 by the chief inspector in patrolling the waters of the Mississippi sound, as aforesaid, and all expenses therefor shall be audited and allowed by the board of oyster commissioners at any regular meeting or any meetings called therefor, not to exceed in amount one hundred and forty dollars per month, exclusive of the salary of the captain, as fixed by section 16 of this act.

Reefs to be Dredged When Too Thick; Oyster Beds to be Built up.

SEC. 18. During the season between the 15th day of May and the 1st day of September in each year, the chief inspector, under the direction and control of the board of oyster commissioners, shall employ boats, crews, and laborers, and shall dredge the oysters in the Mississippi sound from places where they are too thick, and shall spread them on reefs there they are too thin, and shall carry shells from the factories and spread them in places where the oyster beds can be improved and enlarged thereby, and the board of oyster commissioners, in transplanting and spreading shells, may expend such sums out of the "oyster fund" as they may deem proper, not exceeding five thousand dollars per annum.

How Expenses to be Paid.

SEC. 19. All expenses of enforcing this act, together with the salaries of the officers herein provided for, shall be paid by the State treasurer out of the "oyster fund" on the warrant of the auditor. Whenever an allowance is made by said board, a certificate shall issue to the person to whom such allowance is made, which certificate, with a copy of the account on which the allowance is made, shall be presented to the governor, and when the governor or shall have endorsed his approval thereon, the auditor shall issue his warrant therefor.

Oysters Not to be Taken from Reefs During Certain Seasons.

SEC. 20. It shall be unlawful for any person to catch or take oysters or have oysters taken from the public oyster reefs in his or

her possession between the 15th day of May and the 15th day of September in any year, except for planting or domestic purposes or consumption in the State of Mississippi; provided, that this section shall not prevent transportation companies from carrying oysters from other States through this State, nor shall it be construed to prevent any person from taking oysters from private bedding grounds or transplanting or cultivating. And it shall be unlawful to take and catch oysters in the State of Mississippi between the 1st day of May and the 15th day of September in any year to be transported out of the State or to transport oysters in their raw state at any time out of the State of Mississippi without first paying the chief inspector a license tax of two cents per barrel.

Unlawful to Violate or Evade This Act.

SEC. 21. It shall be unlawful for any packer, commission man, or boatman to conspire or agree with any person to evade any of the provisions of this chapter, or to knowingly participate in any such violation.

Inspector's Duties; Penalty for Evading Inspection.

SEC. 22. It shall be the duty of the inspector of oysters to supervise the operation of the oyster industry and to dilligently aid in the enforcement of the provisions of this act, and it shall be unlawful for any packer, commission man, or boatman to refuse to
2158 open his house or boat where oysters may be dumped or stored, for inspection to any officer whose duty it is to inspect the same, or to conspire or agree with any other person to evade any of the provisions of this act, or to knowingly connive at or participate in such violation.

Right to Plant Oysters or Erect Bath Houses on Land Bordering the Mississippi Sound Belongs to Riparian Owner; Bounds of Oyster Plantation Marked with Stakes.

SEC. 23. The sole right of planting oysters and erecting bath houses and other structures in front of any land bordering on the gulf of Mexico or Mississippi sound, belongs to the riparian owner, and extends not more than five hundred yards from the shore, but does not include any reef or natural oyster bed, and does not extend beyond any channel. Stakes of such frail material as will not injure any water craft may be set up to designate the bounds of the plantation; but the water shall not be fenced in or otherwise appropriated, and navigation shall not be impeded.

Oysters Taken for Planting Purposes at Any Time.

SEC. 24. This act shall not prohibit any citizen of Mississippi from taking oysters from the public reefs for planting in the waters of

this State from the 15th day of May to the 1st day of July, and oysters taken for planting purposes shall not be required to be culled.

Oyster Commissioners and Secretary to Make Bonds.

SEC. 25. The members of the board of oyster commissioners shall enter into bond in the sum of two thousand five hundred dollars each, and the chief inspector in the sum of ten thousand dollars, conditioned according to law, to be approved by the governor; and the secretary and subordinate inspectors shall enter into bond in the sum of two thousand five hundred dollars each, conditioned according to law, to be approved by and filed with the board of oyster commissioners, and to be recorded in a book kept for that purpose, and each of said officers shall take an oath to faithfully discharge the duties of the office upon which he is about to enter, and shall file said oath with said secretary. No person directly or indirectly engaged in canning, shipping, fishing or dealing in oysters shall be accepted as a surety on any bond required by this act.

Board to Report to the Governor Annually.

SEC. 26. It shall be the duty of said board to make an annual report to the governor and to report to the legislature biennially, in which said reports shall be set forth in details the amount of expenses of the industry under their supervision.

Governor May Remove Members of Board.

SEC. 27. The governor shall have the power to remove the president or any member of the board for neglect of duty or incompetency, and to appoint his successor, and the board of oyster commissioners shall have the power to remove any inspector or other subordinate officer for any neglect of duty or incompetency, malfeasance or misfeasance in office, whenever the interest of the service may in their judgment require it, and to appoint another in his stead.

2159 Steam Dredges and Steam Vessels Not Allowed to Take Oysters.

SEC. 28. No steamer or other vessel using or propelled by steam or any other power than sail or hand, and no dredge, tongs, scoop, or other instrument or appliance of any character propelled, managed, aided, used or operated by means of steam or other power except hand and sail, shall be used or employed in catching or taking oysters in any of the waters of this State. This shall not prohibit the transportation by means of steam vessels of any oysters that have been lawfully caught.

Organization of Commissioners.

SEC. 29. Immediately after their appointment, the first board of oyster commissioners appointed under this act shall qualify and shall organize by electing a president and secretary who shall hold such offices until the first Monday in September, A. D. 1902.

Penalty for Violating Provisions of this Act.

SEC. 30. Any person violating any of the provisions of this act shall be fined not less than ten dollars nor more than fifty dollars, for the first offense, and not less than twenty-five dollars, nor more than five hundred dollars for any subsequent offenses.

Appropriation for Carrying Act into Effect.

SEC. 31. To meet the necessary expenses of carrying this act into effect, there shall be appropriated annually the sum of twelve thousand dollars, or so much thereof as may be necessary, out of the oyster fund of this State.

Laws Repealed Hereby to Remain in Effect for Enforcement of Penalties and Prosecution of Offenses Committed under Them.

SEC. 32. Nothing herein contained shall affect or abate any prosecutions already commenced for any violation of any law hereby repealed, nor shall this bill operate to release any person for any violation of any such law, but all such violations, whether prosecutions have or have not been heretofore begun, shall be prosecuted and punished as if such laws were still in force.

SEC. 33. That this act shall take effect and be in force from and after the first day of June, A. D. 1902.

Approved, February 13, 1902.

Chapter 113, Laws of Mississippi, 1904.

An act to make an appropriation to purchase or build a patrol boat for the use of the board of oyster commissioners and the inspectors appointed by said board in patrolling the waters of the Mississippi sound in protecting the natural reefs in said sound.

Appropriation to Purchase a Patrol Boat for Protecting Oyster Reefs.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the sum of three thousand dollars ($3,000), or so much thereof as may be necessary, is hereby appropriated out of the oyster fund for the purpose of purchasing or building a suitable patrol boat to be used by said oyster commission and the inspectors appointed by said board in patrolling the waters of

the Mississippi sound, in protecting the natural oyster reefs and enforcing the provisions of chapter 58, Acts of 1902.

Oyster Commission to Purchase Patrol Boat.

SEC. 2. That said board of oyster commissioners is hereby authorized to purchase said patrol boat and pay therefor out of the appropriation herein provided for.

May Build Same if Suitable Boat Cannot be Purchased.

SEC. 3. That in the event that a suitable patrol boat cannot be found, said oyster commission is hereby authorized to have said patrol boat built by some competent mechanic and boat builder, according to plans and specifications furnished by said board and under the direction and supervision of said board. That said board of oyster commission- shall draw their warrants for the purchase or for the building of said boat as now provided by law out of the oyster fund, not to exceed the said sum of three thousand dollars ($3,000) and shall submit an itemized account of all expenditures made under the provision- of this act in their report to the legislature.

SEC. 4. That this act take effect from and after its passage.
Approved March 18, 1904.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 49. Filed Aug. 20, 1904. Wm. D. Ballard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2161 MISS. DOCUMENT NO. 50.

By the King. A Proclamation. George R.

Whereas, we have taken into our royal consideration the extensive and valuable acquisitions in America, secured to our crown by the late definitive treaty of peace concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdom as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation; we have thought fit, with the advice of our privy council, to issue this our royal proclamation, hereby to publish and declare to all our loving subjects, that we have, with the advice of our said privy council, granted our letters patent under our great seal of Great Britain, to erect, within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, filed and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.

First, the government of Quebec, bounded on the Labrador coast
the River St. John, and from thence by a line drawn from the
of that river, through the Lake St. John, to the south end of
Lake Nippissim; from whence the said line, crossing the River
Lawrence and the Lake Champlain in 45 degrees of north
ude, passes along the High Lands, which divide the rivers that
pty themselves into the said River St. Lawrence, from those
ich fall into the sea; and also along the north coast of the Baye
Chaleurs, and the coast of the gulf of St. Lawrence to Cape
anes, and from thence crossing the mouth of the River St. Law-
ce by the west end of the island of Anticosti, terminates at the
said River St. John.

Secondly. The government of East Florida, bounded to the west-
d by the gulf of Mexico and the Apalachicola river; to the
thward, by a line drawn from that part of the said river where
e Catahouchee and Flint rivers meet, to the source of St. Mary's
er, and by the course of the said river to the Atlantic ocean;
d to the east and south by the Atlantic ocean, and the gulf of
rida, including all islands within six leagues of the sea coast.

Thirdly. The government of West Florida, bounded to the south-
d by the gulf of Mexico, including all islands within six leagues
the coast from the River Apalachicola to Lake Pontchartrain;
the westward by the said lake, the Lake Maurepas, and the River
sissippi; to the northward, by a line drawn due east from that
t of the River Mississippi which lies in thirty-one degrees north
ude, to the River Apalachicola, or Catahouchee; and to the
tward by the said river.

Fourthly. The government of Grenada, comprehending the island
that name, together with the Grenadines, and the islands of Do-
ica, St. Vincent, and Tobago. * * *

Given at our court at St. James's the 7th day of October, 1763, in
third year of our reign.

God save the king.

(Annual Register vol. 6, 1763, page 208.)

(Endorsed:) Louisiana vs. Mississippi Miss. Doc. No. 50 Filed
20 04 Wm. D. Bullard, commissioner. Office Supreme
t U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2162 MISS. DOCUMENT No. 51.

Extract from His Most Christian Majesty's letter to M. d'Abbadie, director general and commandant for His Majesty in Louisiana, ordering him to deliver up to His Catholic Majesty all the French possessions in North America not already ceded to Great Britain. From the original, printed by Denis Brand, printer to the king at New Orleans, in October, 1764, and circulated amongst the French inhabitants there.

Mons. d'Abbadie:

By a special act, done at Fontainebleau, Nov. 3, 1762, of my own will and mere motion, having ceded to my very dear and beloved cousin the King of Spain, and to his successors, in full property, purely and simply, and without any exceptions, the whole country known by the name of Louisiana, together with New Orleans, and the island in which the said city is situated; and by another act done at the Escurial Nov. 13, in the same year, His Catholic Majesty having accepted the session of the said country of Louisiana, and the city and island of New Orleans, agreeable to the copies of the said acts, which you will find hereunto annexed; I write you this letter to inform you, that my intention is, that on receipt of these presents, whether they come to your hands by the officers of His Catholic Majesty, or directly by such French vessels as may be charged with the same, you are to deliver up to the governor, or officer appointed for that purpose by the King of Spain, the said country and colony of Louisiana, and the posts thereon depending, likewise the city and island of New Orleans, in such state and condition as they shall be found to be in on the day of the said cession, willing that in all time to come they shall belong to His Catholic Majesty, to be governed and administered by his governors and officers, and as possessed by him in full property without any exceptions.

At the same time, I hope for the prosperity and peace of the inhabitants of the colony of Louisiana, and promise myself, from the friendship and affection of His Catholic Majesty, that he will be pleased to give orders to his governor, and all other officers employed in his service in the said colony, and in the city of New Orleans, that the ecclesiastics and religious houses which have the care of the parishes and of the missions, may continue to exercise their functions, and enjoy the rights, privileges and immunities, granted by their several charters of establishment; that the ordinary judges do continue, together with the superior council, to administer justice according to the laws, forms, and usages of the colonies; that the inhabitants be preserved and maintained in their possessions; that they be confirmed in the possession of their estates, according to the grants which have been made by the governors and directors of the colony, and that all the grants be holden and taken as confirmed by His Catholic Majesty, even though not as yet confirmed by me.

Hoping, above all, that His Catholic Majesty will be pleased to bestow on his new colony of Louisiana the same marks of protection and good will, which they enjoyed while under my dominion, and of which the misfortunes of war alone have prevented their experiencing greater effects, I command you to cause my present letter to be recorded in the superior council of New Orleans, to the end that the several estates of the colony may be informed of its contents, and may have resource thereto when necessary. And the present being for no other purposes, I pray God, Monf .d'Abbadie, to have you in his holy keeping.

Given at Versailles, April 21, 1764.

(Signed) LOUIS.

2163 (Page 271, vol. 8 (London 1784) Annual Register for 1765.)

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 51. Filed Aug. 20, '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2164 MISS. DOCUMENT NO. 52.

Extract.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France, Dated .

DEPART. OF STATE, September 28, 1801.

You have been already informed of the intention of the President that your departure from France should be hastened, and that you would be furnished with a passage in the Boston frigate, which, after landing you at Bordeaux, is to proceed to the Mediterranean.

From different sources information has been received that, by some transaction concluded, or contemplated between France and Spain, the mouth of the Mississippi, with certain portions of adjacent territory, is to pass from the hands of the latter to the former nation. Such a change of our neighbors in that quarter is of too momentous concern not to have engaged the most serious attention of the Executive. It was, accordingly, made one of the subjects of instruction to Mr. Charles Pinckney, our minister ple-ipotentiary to the court of Spain. You will find an extract of the passage hereto annexed, No. 1. A paragraph connected with the same subject, in a letter to Mr. King, is also extracted and annexed, No. 2. In these extracts you will see the ideas entertained by the Executive, and the general considerations which, it is presumed, will have most tendency to dissuade the parties from adhering to their object. As soon as you shall have prepared the way by the necessary inquiries at Paris, it will be proper for you to break the subject to the French government, and to make the use of these considerations

most likely to give them their full weight. You will probably find it advantageous to press, in a particular manner, the anxiety of the United States to maintain harmony and confidence with the French Republic, the danger to which these will be exposed by collisions, more or less inseparable from a neighborhood under such circumstances, and the security which France ought to feel that it cannot be the interest of this country to favor any voluntary or compulsive transfer of the possessions in question from Spain to France.

Among other topics to be employed on this occasion, you may, perhaps find it eligible to remark on the frequent recurrence of war between France and Great Britain, the danger to which the western settlements of the United States would be subject of being embroiled by military expeditions between Canada and Louisiana, the inquietudes which would be excited in the Southern States, whose numerous slaves have been taught to regard the French as the patrons of their cause, and the tendency of a French neighborhood, on this and other accounts, to inspire jealousies and apprehensions which may turn the thoughts of our citizens towards a closer connexion with her rival, and possibly produce a crisis in which a very valuable part of her dominions would be exposed to the joint operation of a naval and territorial power. Suggestions of these kinds must be managed with much delicacy; or rather the expediency of hazarding them at all, as well as the manner of doing it, must be left to your own information and discretion.

Should it be found that the cession from Spain to France has irrevocably taken place, or certainly will take place, sound policy will require, in that state of things, that nothing be said or done which will unnecessarily irritate our future neighbors, or check the liberality which they may be disposed to exercise in relation to the trade and navigation through the mouth of the Mississippi; every thing being equally avoided, at the same time, which may compromit the rights of the United States beyond those stipulated in the treaty between them and Spain. It will be proper, on the contrary, to patronize the interests of our western fellow-citizens, by cherishing in France every just and liberal disposition towards their com-
2165 merce. In the next place, it will deserve to be tried whether France cannot be induced to make over to the United States the Floridas, if included in the cession to her from Spain, or at least West Florida, through which several of our rivers, particularly the important River Mobile, empty themselves into the sea. Such a proof, on the part of France, of good will towards the United States, would contribute to reconcile the latter to an arrangement in itself much disrelished by them, and to strengthen the returning friendship between the two countries; and, by affording a fund for indemnifying and soothing our fellow-citizens who have suffered from her wrongs, would, in that view, also, be a measure founded not less in an enlarged policy, than in solid justice. The great importance of West Florida to the United States recommends to your patriotism

he prudent use of every fair consideration which may favor the at-ainment of the object.

These ideas suppose that the cession to the United States is to be btained from the single will of France. But it may happen that he Floridas are so far suspended, on unfinished negotiations be-ween her and Spain, as to admit or require the concurrence of both n gratifying the wishes of the United States. In this state of things, rance may yield to the considerations suggested with less of con-ession and reluctance; and as Spain, to-, must feel an interest in the ood will of the United States, and is responsible, in justice, for very onsiderable depredations on their commerce, there may be the reater possibility of her joining in the measure.

Should the Floridas neither have been ceded to France, nor be an equisition contemplated by her, still it will be material, considering er intimate and influential relations to Spain, to dispose her to favor xperiments on the part of the United States, for obtaining from Spain he cession in view. The interest which the latter has in cultivating ur friendly dispositions, and the obligation she is under to satisfy ur claims for spoilations, for doing which no other mode may be so onvenient to her, are motives to which an appeal may be made ith no inconsiderable force. Mr. Pinckney is accordingly to avail imself of the most auspicious occasions for sounding and exciting he dispositions of the Spanish government on this subject; and our efforts at Paris cannot be too attentively combined with his at Madrid, as well on the last supposition that Spain alone is to make he cession, as on the former, that France is to have a direct share n the transaction. Mr. Pinckney's instructions will relate to each lternative, and you will be sensible of the advantages of such a orrespondence between you as will give the proper concert to your perations.

(American State Papers (Foreign Relations), vol. 2, page 510.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 52. Filed Aug. 0, '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. iled Mar. 13, 1905 James H. McKenney, clerk.

166 MISS. DOCUMENT No. 53.

(Extract *of* a Letter of Albert Gallatin, Esq., to J. Madison, Esq.)

DATE FEB'Y 7, 1803.

If West Florida can alone be purchased, it is certainly worth at-nding to; but in that case, making the River Iberville the bound-ry, as it was made in the treaty of 1762, between France and Eng-nd, the article should be so worded as to give us the whole channel that river, or at least to permit us to open it, so as to render it avigable in all seasons. At present, the bed is 30 feet above low-ater mark for 15 miles, from the Mississippi to Amit river; but I

have no doubt that a very small opening would be widened and deepened afterwards by the river. There is no obstruction, the whole being level, or mud or sand. But supposing even a portage there, the advantage of American houses settled in a- American port would soon give a preference over New Orleans to that port. The seaport may be, perhaps, on the main, between Pearl and Pargacola rivers, but certainly on that island called "Ship island," as through the passage between that and the next island there are more than 20 feet water, and good anchorage close to the shore, which faces the main. A frigate of 36 guns was seen there by E. Jones, (the first clerk in my office, who is a brother of our late consul at New Orleans, and lived ten years with him in West Florida,) and it is the reason of its bearing that name. Judge Bay says that there is another island called Deer island, close to the entrance of Lake Pontchartrain, which affords the same advantages. That Jones disbelieves; but the other is certain; and as it is about half way between Mobile and the lake, as the whole navigation between these two places is locked in by the islands, and safe even for open boats and canoes, that island would become the proper seaport for both rivers, Mississippi and Mobile; for you can bring but nine feet up Mobile bay, 7 feet over the bar of Lake Pontcgartrain, and 15 over the bar at the mouth of the Mississippi. It results from all that, that the possession of West Florida, even without New Orleans island, is extremely important and that if it can be obtained, it ought expressly to include all the islands within twenty leagues, or such distance as to include those which are marked on the map.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. 53. Filed Aug. 20/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2167 MISS. DOCUMENT NO. 54.

Letter of Secretary of State to Mr. Monroe, Minister to Spain, of Date July 29, 1803.

The communications by Mr. Hughes, including the treaty and conventions signed with the French government, were safely delivered on the 14th instant. Enclosed is a copy of a letter written in consequence of them to Mr. Livingston and yourself.

On the presumption which accords with the information given by Mr. Hughes, that you will have proceeded to Madrid, in pursuance of the instructions of the 17th February last, it is thought proper to observe to you, that although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it.

You will be at no loss for the arguments most likely to have weight in prevailing on Spain to yield to our wishes. These colonies, separated from her other territories on this continent by New Orleans, the Mississippi, and the whole of western Louisiana, are now of less value to her than ever; whilst to the United States they retain the peculiar importance derived from their position, and their relations to us through the navigable rivers, running from the United States into the gulf of Mexico. In the hands of Spain, they must ever be a dead expanse in time of peace; indefensible in time of war, and at all times a source of irritation and ill blood with the United States. The Spanish government must understand, in fact, that the United States can never consider the amicable relations between Spain and them as definitely and permanently secured, without an arrangement on this subject, which will substitute the manifest indications of nature for the artificial and inconvenient state of things now existing.

The advantage to be derived to your negotiations from the war that has just commenced will certainly not escape you. Powerful, it might be presumed effectual, use may be made of the fact that Great Britain meant to seize New Orleans with a view to the anxiety of the United States to obtain it; and of the inference from that fact that the same policy will be pursued with respect to the Floridas. Should Spain be engaged in the war, it cannot be doubted that they will be quickly occupied by a British force, and held out on some condition or other to the United States. Should Spain be still at peace, and wish not to lose her neutrality, she should reflect that the facility and policy of seizing the Floridas must strengthen the temptations of Great Britain to force her into the war. In every view it will be better for Spain that the Floridas should be in the hands of the United States than of Great Britain; and equally so that they should be ceded on beneficial terms by herself, than that they should find their way to us through the hands of Great Britain.

The Spanish government may be assured of the sincere and continued desire of the United States to live in harmony with Spain; that this motive enters deeply into the solicitude of their government for a removal of the danger to it which is inseparable from such a neighborhood as that of the Floridas; and that, having by a late convention with Great Britain adjusted every territorial question and interest with that nation, and the treaty with France
2168 concerning Louisiana having just done the same with her, it only remains that the example be copied into an arrangement with Spain, who is evidently not less interested in it than we are.

By the enclosed note of the Spanish minister here, you will see the *the* refusal of Spain to listen to ou. past overtures with the reasons for the refusal. The answer to that communication is also enclosed. The reply to such reasons will be very easy. Neither the reputation nor the duty of His Catholic Majesty can suffer from any measure founded in wisdom and the true interests of Spain. There is as little

ground for supposing that the maritime powers of Europe will complain of, or be dissatisfied, with a cession of the two Floridas to the United States, more than with the late cession of Louisiana by Spain to France, or more than with the former cessions through which the Floridas themselves have passed. What the treaties are subsequent to that of Utrecht, which are alleged to preclude Spain from the proposed alienation, have not been examined. Admitting them to exist in the sense put upon them, there is probably no maritime power who would not readily acquiesce in our acquisition of the Floridas as more advantageous to itself, than the retention of them by Spain. Shut up against all foreign commerce, and liable at every moment to be thrown into the preponderant scale of Great Britain, Great Britain her self would unquestionably have no objection to their being transferred to us, unless it should be drawn from her intention to conquer them for herself, or from the use she might expect to make of them in a negotiation with the United States. And with respect to France, silence at least is imposed on her by the cession to the United States of the province ceded to her by Spain, not to mention that she must wish to see the Floridas, like Louisiana, kept out of the hands of Great Britain; and has, doubtless, felt that motive in promising her good officers with Spain for obtaining these possessions for the United States. Of this promise, you will, of course, make the proper use in your negotiations. For the price to be given for the Floridas, you are referred, generally, to the original instructions on this point. Although the change of circumstances lessens the anxiety for acquiring immediately a territory which now more certainly than ever, must drop into your hands, and, notwithstanding the pressure of the bargain with France on our Treasury, yet, for the sake of a peaceable and fair completion of a great object, you are permitted by the President, in case a less sum will not be accepted, to give two millions and a quarter of dollars, the sum heretofore apportioned to this purchase. It will be expected, however, that the whole of it, if necessary, be made applicable to the discharge of debts and damages claimed from Spain, as well those not yet admitted by the Spanish government as those covered by the convention signed with it by Mr. Pinckney, on the 11th day of August, 1802, and which was not ratified by the Senate, because it embraced no more of the just responsibilities of Spain. On the subject of these claims you will hold a strong language. The Spanish government may be told plainly that they will not be abandoned any further than an impartial tribunal may make exceptions to them. Energy in the appeal to its feelings will not only tend to justice for past wrongs, but to prevent a repetition of them in case Spain should become a party to the present war.

In arranging the mode, the times, and the priorities, of paying the assumed debts, the ease of the Treasury is to be consulted as much as possible: less is not to be done with that view than was enjoined in the case of the French debts to our citizens. The stock to be engaged in the transaction is not to be made irredeemable without a

necessity not likely to arise; and the interest, as well as the
2169 principal, should be payable at the Treasury of the United States. The only admissable limitation, on the redemption of the stock, is that the holder shall not be paid off in less than about one fifth or one fourth of the amount in one year.

Indemnifications for the violation of our deposite at New Orleans have been constantly kept in view in our remonstrances and demands on that subject. It will be desirable to comprehend them in the arrangement. A distinction, however, is to be made between the positive and specific damages sustained by individuals, and the general injuries accruing from that breach of treaty. The latter could be provided for by a gross and vague estimate only, and need not be pressed as an indispensable condition. The claim, however, may be represented as strictly just, and a forbearance to insist on it as an item in the valuable considerations for which the cession is made. Greater stress may be laid on the positive and specific damages capable of being formerly verified by individuals; but there is a point beyond which it may be prudent not to insist even here; especially as the incalculable advantage accruing from the acquisition of New Orleans will diffuse a joy throughout the western country, that will drown the sense of these little sacrifices. Should no bargain be made on the subject of the Floridas, our claims of every sort are to be kept in force.

If it be impossible to bring Spain to a cession of the whole of the two Floridas, a trial is to be made for obtaining either, or any important part of either. The part of West Florida adjoining the territories now ours, and including the principal rivers falling into the Gulf, will be particularly important and convenient.

It is not impossible that Spain, in treating on a cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary, to that territory. Such an exchange is inadmissable.

In intrinsic value there is no equality; besides the advantage given us by the western bank of the entire jurisdiction of the river. We are the less disposed also to make sacrifices to obtain the Floridas, because their position and the manifest course of events guaranty an early and reasonable acquisition of them. With respect to the adjustment of a boundary between Louisiana and the Spanish territories, there might be no objection to combining it with a cession of the Floridas, if our knowledge of the extent and character of Louisiana were less imperfect. At present, any arrangement would be a step too much in the dark to be hazarded; and this will be a proper answer to the Spanish government. Perhaps the intercommunications with the Spanish government on this subject, with other opportunities at Madrid, may enable you to collect useful information and proofs of the fixed limits, or of the want of fixed limits, to western Louisiana. Your *injuries* may also be directed to the question, whether any, and how much, of what passes for West Florida, be fairly included in the territory ceded to us by France?

The treaties and transactions between Spain and France will claim particular attention in this inquiry.

Should no cession whatever be attainable, it will remain only for the present to provide for the free use of the rivers running from the United States into the Gulf. A convenient deposite is to be pressed as equally reasonable there as on the Mississippi; and
2170 the inconveniency experienced on the latter from the want of a jurisdiction over the deposite, will be an argument for such an improvement of the stipulation. The free use of those rivers for our external commerce is to be insisted on as an important right, without which the United States can never be satisfied; and without an admission of which, by Spain, they can never confide either in her justice or her disposition to cultivate harmony and good neighborhood with them. It will not be advisable to commit the United States into the alternative of war, or a compliance on the part of Spain; but no representation short of that can be stronger than the case merits.

The instruction to urge on Spain some provision for preventing or rectifying by a delegated authority, here, aggressions and abuses committed by her colonial officers, is to be regarded as of high importance. Nothing else may be able to save the United States from the necessity of doing themselves summary justice. It cannot be expected that they will long continue to wait the delays and the difficulties of negotiating, on every emergency, beyond the Atlantic. It is more easy, and infinitely more just, that Spain and other European nations should establish a remedy on this side of the Atlantic, where the source of the wrongs is established, than that the complaints of the United States should be carried to the other side, and, perhaps, wait till the Atlantic has moreover been twice crossed in procuring information for the other party, without which a decision may be refused.

The navigation of the bay of St. Mary's is common to Spain, and the United States; but a light-house, and the customary water marks, can be established within the Spanish jurisdiction only. Hitherto, the Spanish officers have refused every proper accommodation on this subject. The case may be stated to the government of Spain, with our just expectation that we may be permitted either to provide the requisite establishments ourselves, or to make use of those provided by Spain.

This letter will be addressed to Madrid; but as it is possible that you may not have left Paris, or may have proceeded to London, a copy will be forwarded to Paris, to be thence, if necessary, sent on to London. In case it should find you either at Paris or London, it must be left to your own decision how far the call for you at either of those places ought to suspend these instructions. Should you desire to go to Madrid, it may be proper first to present your credence to the French or British government, as the case may be; and to charge a fit person with the public business during your absence. Should you even be at Paris, and your commission filled up in Lon-

don, it may be best to proceed first to London, if the call to Madrid be not very urgent.

I shall write to Mr. Pinckney, and inform him that this letter is intended for his use jointly with yours; though addressed to you alone, because in part not applicable to him. Should you suspend, or have suspended, your visit to Madrid, you will please to write to him also, giving him your ideas as to the expediency of prosecuting the object of the joint instructions or not until you can be with him.

I have the honor to be &c.

JAMES MADISON.

(American State Papers (Foreign Relations), vol. II, p. 626.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 54 Filed Aug. 20, '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

2171 MISS. DOCUMENT NO. 55.

Extracts from another letter of instructions addressed to Mr. Monroe, April 15, 1804, as minister extraordinary, jointly with Charles Pinckney, Esq., to the court of Spain, with which was enclosed a draft of an agreement to be proposed and obtained if possible.

Sections 1 and 2 of article 1 of the proposed agreement are as follows:

Art. 1, § 1. Spain acknowledging and confirming to the United States the cession of Louisiana, in an extent eastwardly to the River Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the gulf of Mexico, together with *all* the islands annexed thereto, either whilst the Floridas belonging to Great Britain, or after they became provinces of Spain.

Or, if the article be unattainable in that form, Spain cedes to the United States forever all the territory, with the islands belonging thereto, which remain to her between the Mississippi, the Atlantic, and the gulf of Mexico.

§ 2. Possession of the said territory shall be delivered to a person or persons authorized by the United States to receive the same, within — days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, excepting ships and military stores, as also all public archives belonging to the provinces comprehending the said territory.

Then, in commenting upon these sections, the author continues.

The first form of article 1, § 1, is preferred, because it explicitly recognizes the right of the United States under the treaty of St. Ildefonso, and of April 30, 1803, to the River Perdido, which is con-

structively provided for only in the second form. It is indispensable that the United States be not precluded from such a construction, first, because they consider the right as well founded; secondly, and principally, it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish officers since the cession was made by Spain.

These illicit speculations cannot otherwise be frustrated than by considering the territory as included in the cession made by Spain, and thereby making void all Spanish grants of subsequent date.

It is represented that these grants have been extended, not only to citizens of the United States, but to others whose interests now lies in supporting the claim of Spain to that part of Louisiana, in opposition to that of the United States. It is conjectured that M. Laussat himself has entered into these speculations, and that he felt their influence in the declaration made confidently to our commissioners at New Orleans, that no part of West Florida was included in Louisiana.

In supporting the extent of Louisiana to the Perdido, you will find materials for your use in the extent above referred to, and the other documents annexed, to which you will add the result of your own reflections and researches. The secret treaty between France and Spain, ceding Louisiana west of the Mississippi to Spain, and which has never been printed, may doubtless be obtained at Paris, if not at Madrid, and may be of use in the discussion. From the references in the French orders of 1764, for the delivery of the province, it is presumed to be among archives at New Orleans; and Governor Claiborne has been requested to send a copy of it: but it may not be received in time to be forwarded for your use. In an English work, "The Life of Chatham," printed in 1793, for J. S. Gordon, London, No. 166, Fleet street, I find a memorial referred to
2172 but not there printed, with the other negotiations preceding the peace of 1762–'3, expressly on the subject of the limits of Louisiana, and, as sufficiently appears, with a view to give the province its extent to the Perdido. You will perhaps be able to procure in London or Paris a sight of this document: it probably contains most of the proofs applicable to the question, and will be the more important as proceeding from France; it will strengthen our lien on her seconding our construction of the treaty. The memorial will be the more important still, if it should be found to trace the western limits also of Louisiana, and to give it a corresponding extent on that side. In page 416 and sequel of vol. 1, you will see the fact established that the Floridas, including the French part, were ceded to Great Britain as the price for the restoration of Cuba, and that, consequently, the French part now claimed by the United States was a cession purely for the benefit of Spain.

The reasons, beyond the advantages held out in the arrangement itself, which may be addressed to Spain, as prompting a cession of her remaining territory eastward of the Perdido, will be found in the remarks in the extract aforesaid, in the instructions to Mr. Pinck-

ney and yourself of the 17th day of February last, and in those which have from time to time been given to Mr. Pinckney. The Spanish government cannot but be sensible that the expense of retaining any part of that territory must now more than ever exceed any returns of profit; that, being now more than ever indefensible, it must the more invite hostile expeditions against it from European enemies; and that, whilst in her hands, it must be a constant source of danger to harmony with the United States.

(American State Papers, (Foreign Relations) vol. II, pp. 628, 629.)

(Endorsed:) Louisiana *v.* Mississippi Miss. Doc. No. 55 Filed Aug. 20, '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2173 MISS. DOCUMENT No. 56.

Letter of James Madison to Messrs. Monroe and Pinckney, of Date July 8, 1804.

GENTLEMEN: Since the instructions given you on the 15th of April last, further views have been obtained with respect to the interior of Louisiana, and the value which Spain will probably put on such a limitation of our settlements beyond the Mississippi as will keep them for some time at a distance from hers. The President has accordingly become the more anxious that, in the adjustment authorized by those instructions, the terms may be made favorable to the United States. He does not, indeed, absolutely restrain you from yielding to the ultimatum therein fixed, in case it be required by the inflexibility of the Spanish government, and particularly by the posture and prospect of affairs in Europe; but he is not a little averse to the *occulsion*, for a very long period, of a very wide space of territory westward of the Mississippi, and equally so to a perpetual relinquishment of any territory whatever eastward of the Rio Brovo. If this river could be made the limit to the Spanish settlements, and the Rio Colorado the limit to which those of the United States may be extended; and if a line northwest or west from the source of whatever river may be taken for the limit of our settlements could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri, and thence, northward, parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner peculiarly satisfactory. The degree, however, in which you are to insist on these meliorations of the arrangement, must be regulated by your discretion, and by the effect which the probable course of events will have on the temper and policy of Spain. Should she be engaged in the war, or manifestly threatened with that situation, she cannot fail to be the more anxious for a solid accommodation on all points with

the United States; and the more willing to yield, for that purpose, to terms, which, however proper in themselves might otherwise be rejected by her pride and misapplied jealousy. According to the latest accounts from Great Britain, a revolution in the ministry, if not a change on the throne, was daily expected; and, from either of those events, an extension of the war to Spain, if not precluded by the less probable event of a speedy peace with France, would be a very natural consequence. It is to be understood, that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of — dollars paid without the entire cession of the Floridas; nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido. But a proportional sum out of the — dollars may be stipulated for a partial cession of territory eastward of the Perdido. If neither the whole nor part of East Florida can be obtained, it is of importance that the United States should own the territory as far as the Appalachicola, and have a common, if not exclusive right to navigate that stream. I must repeat that great care is to be taken that the relinquishment by Spain of the territories westward of the Perdido be so expressed as to give to the relinquishment of the Spanish title the date of the treaty of St. Ildefonso. The reason for this was before explained, and is strengthened by recent information, as you will find by the annexed extract of a letter from Governor Claiborne. Other proofs might be added. In any further cession of territory, it may be well so to define it, as to guard
2174 as much as possible against grants irregular or incomplete, or made by Spanish officers in contemplation of such a cession.

On entering into conferences with the Spanish ministry, you will propose and press, in the strongest manner, an agreement that neither Spain nor the United States shall, during the negotiation, strengthen their situation in the territory between the Iberville and the Perdido, and that the navigation of the Mobile shall not be interrupted. An immediate order from the Spanish government to this effect may be represented as of the greatest importance to the good understanding between the two countries; and that the forbearance of the United States thus long is a striking proof of their sincere desire to maintain it. If such an order should be declined, you will not fail to transmit the earliest information of it, as well as to keep up such representations to that government on the subject, as will impress it with the tendency of so unreasonable and unfriendly a proceeding to drive the United States into arrangements for balancing the military force of Spain in that quarter, and for exerting their right of navigation through the Mobile. This navigation has become important, or rather essential; and a refusal of Spain to acquiesce in it must commit the peace of the two nations to the greatest hazard. The posture of things there is already extremely delicate, and calls for the most exemplary moderation and liberality in both the governments. As a proof of it, I enclose a correspondence between Governor Claiborne and the Spanish govern-

ment at Pensacola, on the same subject as that of mine with the Marquis de Yrujo, already transmitted to you.

I have the honor &c. &c.

JAMES MADISON.

(American State Papers (Foreign Relations), vol. II, p. 630.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 56. Filed Aug. 20-'04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2175 MISS. DOCUMENT No. 57.

Extract from Message of Thomas Jefferson, President of the United States, to Both Houses of Congress, November 8, 1804.

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Soon after the passage of the act of the last session, authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations were immediately given, and assurances that, reserving our claims in that quarter as a subject of discussion and arrangement with Spain, no act was meditated in the mean time inconsistent with the peace and friendship existing between the two nations; and that conformably to these intentions would be the execution of the law. That government had, however, thought proper to suspend the ratification of the convention of 1802. But the *the* explanations which would reach them soon after, and still more the confirmation of them by the tenour of the instrument establishing the port and district, may reasonably be expected to replace them in the disposition and views of the whole subject, which originally dictated the convention.

Vol. 5 of State Papers, 1803-'7, second edition, published in 1817, page 27.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 57 Filed Aug. 20'04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2176 MISS. DOCUMENT No. 58.

Extract from Letter of Mr. Monroe to Mr. Talleyrand, of Date Nov. 8, 1804.

SIR: Before the conclusion of the late treaty between the United States and France, Your Excellency will recollect that it was an object of the President to acquire of Spain, by amicable arrangement, Florida; it being that portion of her territory which she held east-

ward of the Mississippi. It was also his object, after the conclusion of that treaty, not that it was pressed by such imperious considerations as before, but that, as it would contribute to remove all cause of uneasiness and jealously between the two powers, they might adopt and harmonize in future such a system of policy as might secure to them peace, and give additional protection to their possessions in that quarter, especially to those of Spain. In the conferences which produced the treaty above mentioned, the good offices of His Imperial Majesty were engaged to the United States in any negotiation which the President might commence with the Catholic King, for the acquisition of Florida. The same assurance was renewed after the conclusion of the treaty, though it was intimated that that was not a suitable time for the commencement of such a negotiation. It was, on that intimation, as Your Excellency will also recollect, at a moment when I was about to set out for Spain in pursuit of the object, (the then recent orders of the President permitting it,) that I postponed my journey thither, and took a different position. The proposed negotiation with Spain was, in consequence, and has since remained, suspended; and it was in obedience to late orders from my Government that I am now so far on my way to Madrid on that subject, and that Mr. Livingston has requested the good offices of the Emperor in support of it. It is proper here to remark, that, since the epoch referred to, the treaty then just concluded between the United States and France has been carried in effect, in its great points, with that scrupulous attention to good faith which does to both parties the highest honor. Their conduct in that transaction gives to each a pledge for the integrity which is to prevail in their future intercourse. I may be permitted to add, that, as I declined my visit to Spain at that epoch, the more readily to give an opportunity for the complete execution of that treaty, so, now that it is carried into effect, I undertake it with the greater pleasure, since it confirms me in the confidence, before entertained, of the support which would be given to it by His Imperial Majesty.

The President has been induced to adopt this measure at this time, by considerations the most urgent. As these are inseparably connected with the proposed negotiation, indeed, form, in part, the object of it, it is due to the friendship subsisting between our governments, and to the candor which the President will never fail to observe in his transactions with the Emperor, to give you a distinct idea of them. They will, I doubt not, satisfy you that the President has heretofore shown a sincere desire to cultivate the friendship of the Catholic King, and that the attempt which he now makes to preserve that relation is a new and signal proof of that disposition.

Since the treaty between the United States and France, whereby Louisiana was ceded to the former, a question has arisen between those States and Spain, relative to the boundaries of the ceded territory. It is understood that the government of Spain entertains an idea that that cession comprises only that portion of Louisiana
2177 which was ceded to it by France in 1762; that it does not comprise that portion also which was ceded by her, at the

same time, to Great Britain, distinguished, while in her possession, by the name of West Florida. This pretension of the court of Spain cannot, it is presumed, be supported by even the color of an argument. Had that been the intention of the parties in the treaty of St. Ildefonso, it would have been easy to have provided for it. The idea was a simple one, which a few plain words would have expressed. But the language of the article referred to conveys a very different sentiment. We find in it nothing which countenances a presumption that the emperor meant to retake from Spain only a portion of Louisiana, or to refer to it in a dismembered state. It was natural to suppose, in accepting a retrocession of that province from a power possessed of the whole, that he would take it entire, such as it was when France possessed it. Accordingly, we find that the terms of the article making the cession are as full and explicit to that object as it was possible to use. It is not stipulated that Spain should cede to France that portion of Louisiana only which she had received from France, or that West Florida should be excepted from the cession. It is, on the contrary, stipulated that she shall cede it such as it was when France possessed it; that is, such as it was before it was dismembered by the cessions afterwards made to Spain by Great Britain; that she should cede it with the same extent that it now has in the hands of Spain; that is, entire, which it became by the treaty of 1783, whereby West Florida was ceded by Great Britain to Spain; such as it is according to subsequent treaties between Spain and other powers: a stipulation which does honor to His Catholic Majesty, since it proves that, in making the cession to France, he intended to cede only what he had a right to cede; that he recollected the treaty which he had concluded with the United States in 1795, knew the extent of its obligations, and was resolved to execute them with good faith. Your Excellency will receive, within, a paper containing an examination of the boundaries of Louisiana, which, it is presumed, proves incontestably the doctrine above advanced, as also that the River Perdido is the ancient, and, of course, present boundary of that province to the east, and the Rio Bravo to the west.

(American State Papers (Foreign Relations) vol. II, p. 634).

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 58. Filed Aug. 20 '04 Wm. D. Bullard, commissioner Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

2178 MISS. DOCUMENT No. 59.

Letter of Mr. Talleyrand to General Armstrong, of Date December 21, 1804.

SIR: I had the honor, in Brumaire last, to inform Mr. Livingston that I would submit to the inspection of His Imperial Majesty the letters he addressed to me relative to the motives of Mr. Monroe's

journey to Spain, and some discussions between the court of Madrid and the United States.

Among the observations made on this subject by Messrs. Livingston and Monroe, His Imperial Majesty has been obliged to give particular attention to those bearing on the discussions, of which the object is peculiarly interesting to the French government. He has perceived that he could not have been a stranger to the examination of these discussions, since they grew out of the treaty by which France has ceded Louisiana to the United States; and His Majesty has thought that an explanation, made with that fidelity which characterizes him, on the eastern boundaries of the ceded territory, would put an end to the differences to which this cession has given rise.

France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to, cede any other; and, that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal ex-ressions of the treaty of St. Ildefonso, by which she has acquired that colony two years before.

Now it was stipulated, in her treaty of the year 1801, that the acquisition of Louisiana by France was a retrocession; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the River Iberville, the Lakes Maurepas and Pontchartrain; the same day France ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and could, therefore, give back none to France.

All the territory lying to the eastward of the Mississippi and the River Iberville, and south of the 32d degree of north latitude, bear the name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaties of limits between Spain and the United States; and, in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it.

According to this designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, this country ought, in good faith and justice, to be distinguished from Louisiana.

Your Excellency knows that, before the preliminaries of 1762, confirmed by the treaty of 1763, the French possessions, situated near the Mississippi, extended as far from the east of this river, towards the Ohio and the Illinois, as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name

Louisiana to the district of Mobile, as to the territory more to
north, on the same bank of the river, which formerly belonged
France.

These observations, sir, will be sufficient to dispel every
9 kind of doubt, with regard to the extent of the retrocession
made by Spain to France, in the month of Vendemiare, year
It was under this impression that the French and Spanish pleni-
entiaries negotiated, and it was under this impression that I have
e had occasion to give the necessary explanations when a proj-
was formed to take possession of it. I have laid before His Im-
ial Majesty the negotiations of Madrid which preceded the treaty
801, and His Majesty is convinced that, during the whole course
hese negotiations, the Spanish government has constantly re-
d to cede any part of the Floridas, even from the Mississippi to
Mobile.

His Imperial Majesty has, moreover, authorized me to declare to
, that, at the beginning of the year 11, General Bournonville was
rged to open a new negotiation with Spain for the acquisition of
Floridas. This project, which has not been followed by any
ty, is an evident proof that France has not acquired, by the
ty retroceding Louisiana, the country east of the Mississippi.

The candor of these observations proves to you, sir, how much
ue His Majesty attaches to the maintenance of a good under-
nding between two powers, to whom France is united by con-
ions so intimate and so numerous. His Majesty, called upon to
e explanations on a question which interested France directly,
suades himself that they will leave no ground of misunderstand-
between the United States and Spain; and that these two powers,
mated, as they ought to be, by the sentiments of friendship which
r vicinity and their position render so necessary, will be able to
e with the same facility on the other subjects of their discus-
.

This result His Imperial Majesty will learn with real interest.
saw with pain the United States commence their differences
Spain in an unusual manner, and conduct themselves towards
Floridas by acts of violence, which, not being founded in right,
ld have no other effect but to injure its lawful owners. Such an
ression gave the more surprise to His Majesty, because the
ted States seemed, in this measure, to avail themselves of their
ty with France as an authority for their proceedings, and be-
se he could scarcely reconcile, with the just opinion which he
rtains of the wisdom and fidelity of the Federal Government, a
rse of proceedings, which nothing can authorize, towards a power
ch has long occupied, and still occupies, one of the first ranks in
ope.

ut the Federal Government having entered the path of negotia-
, and the question which divided the two powers being cleared
there is reason to hope that they will easily agree on the other

points; and His Majesty, from the sincere interest which he feels for the equal prosperity of the two nations, ardently desires.

Accept sir, the assurance of my high consideration.

CH. MAU. TALLEYRAND.

(American State Papers (Foreign Relations) vol. II, p. 635.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 59 Filed Aug. 20 '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2180 MISS. DOCUMENT No. 60.

Extract from a Letter of Messrs. Monroe and Pinckney to Mr. Cevallos, of Date January 28, 1805.

There is another question which it is equally proper to adjust at this time. By the cession of Louisiana by His Majesty the Emperor of France to the United States, it becomes necessary to settle its boundary with the territories of His Catholic Majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration, as to leave no cause for any difference of opinion between the parties. By the treaty of April 30, 1803 between the United States and France, the latter ceded to the former the said province, in full sovereignty, in the same extent, and with all the rights which belonged to it, under the treaty of October, 1800, by which she had acquired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the treaty of St. Ildefonso, making the cession, is inserted in that of Paris. To a fair and just construction, therefore, of that article the United States are referred for the extent of their rights under the treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to Your Excellency a paper on this subject, which, we presume, proves, in the most satisfactory manner, that the boundaries of that province, as established by the treaties referred to, are the River Perdido to the east and the Rio Bravo to the west. The facts and principles which justify this conclusion are so satisfactory to our Government, as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. Aware, however, that the question of boundary was one in which His Catholic Majesty was also interested, the President was not unmindful of what was due to that consideration. In pursuing and supporting the just rights of the United States, he is far from wishing to interfere with, or encroach on, those of Spain. As neighbors, he was also sensible of what was due to that interesting relation; and as a power which claims respect in its intercourse with

nations, he was resolved to give a distinguished proof of that United States for His Catholic Majesty in the present case. o step has been taken since the territory was surrendered to States by France, otherwise than a strong expression by the ss of its sense of their rights; no portion of it has been gar-, or even possessed by their troops, which could involve any n of the kind adverted to, or manifested a disposition incom- with these just and friendly sentiments. His definitive ar- ents are yet to be taken. He seeks to adopt them in har- with the sentiments and interests of His Catholic Majesty—a which induced the measure of an extraordinary mission, and s this communication.

r, we have treated of the boundary which of right ought to blished between the two nations. It is proper, however, to e and treat the subject in another view.

he acquisition of Louisiana, the United States and Spain have d, in some respects, a new relation to each other. It is in its a very interesting one. It is practicable, at this time, to place ch a footing, by suitable arrangements, as to preserve their ip for ages. The importance of the subject merits their very ionate consideration, since a failure to adopt such may be pro- of much harm. Happily, it is an unquestionable truth, that, n consideration of the permanent and substantial interest of he two powers, there does not exist at present a single point f collision, an opposing interest between them. There are me topics of uneasiness and jealousy easy to be removed, but f suffered to remain, may engender animosities, embitter their rse, and finally prove the cause of much trouble, and even ne, to both nations. To remove them requires no sacrifice; ontrary, much will be gained, since, by so doing, their har- nd with it their permanent interests, will be secured.

effect does the acquisition of Louisiana by the United States on the interests of the two powers in reference to each and what ought it to produce in their policy? These ques- mit a ready answer. That province is bounded by Florida st, and Mexico to the west; hence, Florida is surrounded on de, that of the ocean excepted by the territory of the United It is, of course, an object with those States to possess it. Louisiana extends westward to Mexico, it is presumed to be t with Spain to retard the progress of their settlements in rter. Here, then, is the obvious ground of an accord be- e two nations, in an arrangement which seems to be well to accomplish an object which each deems of importance. ect which we have the honor to present to Your Excellency is to conciliate and provide for those interests. It is believed adoption will effectually do so. Your Excellency must be under existing circumstances and especially since the acqui- Louisiana, that that of Florida has become an object of ss importance to the United States. It is not from the want

of territory, because it is known not to be fertile, and without it they have enough to satisfy their growing population for ages to come. It is, in truth, suggested more by a desire to remove all cause of a future variance between them and Spain, than of any immediate advantage to be derived from it in other respects. While that province remains to Spain, it must be, in some degree, a cause of jealousy to the United States. Situated in their interior, and detached from the other dominions of His Catholic Majesty, it is probable, to render it secure, that he would be compelled to put a strong force there. Hence, the United States would be compelled to do the same. Thus the attitude of hostilities would be taken, which a thousand causes would tend to promote. The jealousy of governments so contiguously situated, the rivalry of governors and generals, and the conflict of commercial regulations, could not fail to produce that effect. In addition to which, it cannot be doubted that other powers would take a pleasure in seeing a rupture between the United States and Spain. It is presumed that they are interested in it. Remove, however, this obstacle, and establish on just principles their western boundary, and all cause of inquietude and misunderstanding will be at an end. Their territories and police will be distinct, and their military stations at some distance from each other. Each power will regulate its own concerns as it thinks best; neither will be interested in disturbing those of the other. Their governments, on the contrary, will find themselves, bound by their interests, their faith, and their character, to keep their citizens within their own limits, which it will take ages to fill. Should Spain not place a strong force in Florida, it will not escape Your Excellency's attention, that it will be much exposed to the danger of being taken possession of by some other power who might wish to hold it, with very different views towards Spain than those which animate the Government of the United States. Without a strong force there, it might even become an asylum for adventurers and freebooters, to the great annoyance of both nations. In this light, however, we forbear to press it.

2182 It is proposed, by the enclosed project, to establish a district of neutral territory between the two powers, on which neither party shall encroach, and with a view to accommodation, that it should be, exclusively, for a given term, within the supposed limits of Louisiana. We are willing that the term should amount to twenty years, to give time for ulterior arrangements relative to that object, and the establishment of a permanent boundary between them in that quarter. If the boundaries of Louisiana are, as our Government believe them to be, and as, we presume, is sufficiently proved by the enclosed paper, this arrangement cannot be considered otherwise than in the light it is intended. This proposition, however, is not offered as an equivalent for the cession of Florida. It is proposed to make a pecuniary compensation for the cession to an amount which is deemed equal to its value. To fix that value, in case His Catholic Majesty is disposed to make the cession, can-

not, it is presumed, be difficult, since, without regarding other considerations, the sum given for the whole province of Louisiana furnishes a just and suitable standard. By comparing the extent of the territory of Louisiana with that of Florida, and taking into consideration the immense advantages derived to the United States from the entire command of the Mississippi and all the waters emptying into it, which followed the cession of Louisiana, we are promptly led to a fair result. On this point we wish to confer in person, when it may suit Your Excellency's convenience. The sum which may thus be agreed on, it is wished to appropriate in the manner mentioned in the proposed convention.

In seeking to terminate amicably all subsisting differences between the two powers, and to place their future relations on a basis of permanent friendship, it is thought that a formal stipulation in behalf of each, not only to observe the limits which may be agreed on, but to cause them to be observed by their respective citizens and subjects, may have a very salutary effect. If such a stipulation is regarded only as a proof of the spirit in which the convention is formed, it will always have weight with both goverments to ensure compliance with it. But it merits to be received in a stronger light, since it makes it the duty of each government to be attentive to, and to enjoin it on her citizens and subjects, respectively, strictly to observe the same. As the convention of the 11th of August, 1802, has not been carried into effect, it is thought best to suffer it to fall, and incorporate its contents into the present one: on that principle the project is formed. There seems to be a propriety in accommodating all subsisting differences, and providing for the respective interests of the two powers, to comprise the stipulations which are necessary for the purpose in the same instrument. To this mode, however, we have no preference, and only submit the idea to Your Excellency's consideration.

To facilitate the communication, and promote dispatch in an object of so much importance to our Government, we have the honor to annex a translation into French of this note, and the papers which accompany it, to Your Excellency. They are as correct as they could be made by those attached to the legation to whom alone we could confide their contents. We beg leave, however, to observe, that we consider ourselves responsible only for the originals, which are in English.

1803 We beg Your Excellency to accept the assurance of our distinguished consideration, &c.

CHARLES PINCKNEY.
JAMES MONROE.

(American State Papers (Foreign Relations) vol. II, p. 637.)

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. 60. Filed Aug. 20/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

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2184 MISS. DOCUMENT No. 61.

Extract from Letter of Mr. Madison to Mr. Monroe, of Date May 23, 1805.

SIR: I have duly received the sevaral communications transmitted by Mr. Pinckney and yourself, under date of the 1st March last. I have also received from General Armstrong copies of his letters to you of the 12th and 18th of March. The passages in this last, in cipher, having not been copied into that used by this department with General Armstrong, remain locked up, but probably do not effect the general tenor of this letter.

From these communications, it appears that France has arranged herself on the side of Spain, in such a manner that Spain will neither be disposed nor be permitted to bend to our claims, either with respect to West Florida or the French spoilations. What past France may take in relation to the western boundary of Louisiana seems not to have been disclosed. From the silence on that point, in Talleyrand's note of November 8th, in answer to yours, in which the claim of the United States to the Rio Brave is expressly asserted, and from the confidential acknowledgment of that boundary by M. Laussat to Governor Claiborne and General Wilkinson, it might be expected that, on this important point France would side with us against Spain. Should this be the case, it is hoped, notwithstanding the unfavorable posture of the negotiation, that there will be room to give it some such result as was contemplated. But there is so little reliance to be placed on the temper and views of France, as lately developed, that a failure of your efforts ought to be anticipated. The alternative presented by this event is that of war, or a state of things guarding against war for the present, and leaving in vigor our claims to be hereafter effectuated. Against war, if to be safely and honorably avoided, the considerations are obvious and powerful. As it is a question which belongs to Congress, not to the Executive, that consideration alone forbids any step, on the part of the latter, which would commit the nation, and so a far take from the legislature the free exercise of its power. And it may be fairly presumed, considering the daily increase of our faculties for a successful assertion of our rights by force, that neither the nation nor its representatives would prefer an instant resort to arms to a state of things which would avoid it, without hazarding our rights or our reputation. The two essential articles in such a state of things are, 1st. A forbearance on the part of Spain, as well as of the United States, to augment their settlements, or to strengthen in any manner, their military establishments within the controverted limits; 2dly. Not to obstruct the free communication from our territories, through the Mobile and other rivers mouthing in the gulf of Mexico, or through the Mobile at least.

(American State Papers (Foreign Relations), vol. II, p. 633.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 61 Filed Aug. 20, '04 Wm. D. Bullard commissioner Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2185 MISS. DOCUMENT No. 62.

(12th Congress.) No. 296. (1st Session.)

Application to Annex West Florida to the Mississippi Territory.

Communication to the House of Representatives, November 20, 1811.

To the honorable Senate and House of Representatives of the United States:

We, the inhabitants of West Florida, your petitioners, represent to your honorable body, that, while we rejoice in the late event which has brought about our emancipation from the iron shackles of despotism, or rather released us from the more horrid calamities of anarchy, we still labor under the painful apprehension that your enlightened body will either continue us a separate Territory, or attach us to the Territory of New Orleans, instead of incorporating us with the Mississippi Territory, which we most ardently wish, for the following reasons:

The geographical and relative situation of West Florida and the Mississippi Territory, plead powerfully in favor of the measure. The climate, the soil, the people, the manners, and the politics of both countries, are the same, being only divided by an ideal boundary. We are all Americans by birth, and in principle; but if we are united with the Territory of Orleans, we will be subjected to all the inconveniences and miseries resulting from a difference of people, language, manners, customs, and politics. The safety, and indeed the political salvation of the Government of the United States, entirely depend on the unanimity of all its parts, which is best insured by combining persons and things homogeneous in their nature. If this be true, and if West Florida and the Territory of Orleans differ in every material respect, (of which there can be no doubt) it follows that a coalition of the two countries would be productive of discord, the evil genius of republican governments.

Your petitioners are aware of the policy suggested by some, of adding us, who are all Americans, to the people of the Territory of Orleans, who are chiefly French, in order to counteract the French influence. This may be sound policy, but to make us the instruments of effecting that object, at the same time that it might be advantageous to the United States in general, it would be destructive to our individual happiness; a sacrifice too great, we trust, to be required of us to make by a Government, wise in its Constitution, and just in its administration.

If, to counteract French influence, and subvert French politics, by populating the country with Americans, be the policy of the Government, your petitioners conceive that object will be shortly effected by the very great emigration of Americans from all parts of the United States. If those emigrants are subjected to all the inconveniences which we deprecate from a similar connexion, the case is not so hard with them as it would be with us, because they have voluntarily chosen that situation.

But waiving all objection on the score of dissimilarity betwixt us and the people of Orleans, nature herself seems to have thrown a barrier in the way to oppose the union. The city of New
2186 Orleans is, and in all probability will continue to be, the seat of government of that country; where, of course, all public business must be transacted, and which will, therefore, induce the necessity of the personal attendance of a great proportion of the people within the jurisdiction of that government, at the city of New Orleans, which will be extremely inconvenient to the inhabitants of West Florida, on account of the largeness and difficult navigation of Lake Pontchartrain, which completely insulates us from the city of New Orleans.

If, however, your honorable body should deem it unadvisable to attach us to the Territory of Orleans, in order to prevent a measure calculated to continue us under a separate territorial government we beg leave to state that, owing to the local situation of our country, it is not susceptible of a thick settlement; that, if it were settled with as many persons as the nature of the country will admit, yet we do not believe there would be wealth enough among us to defray the expenses of a government, without operating a very serious injury to us. But, admitting we are able to bear the expenses of a territorial government, if the Mississippi Territory, and the Territory of Orleans should become States, independent of us, we would forever remain a Territory; for, neither in point of numbers, nor in point of extent of country, would we ever arrive at the proud magnitude of claiming an admission into the Union, as a free sovereign, and independent State. Our only hope of participating with the rest of our brethren on the continent, in the rights and blessings of State sovereignty, is built upon the pleasing anticipation of becoming a part of the Mississippi Territory. By that means, independent of our own individual interests, the Mississippi Territory will derive the advantage of an extensive seacoast, of which she will otherwise be deprived.

For the for-going reasons, we humbly trust that your honorable body will grant our request, by adding all that tract of country, now in possession, by virtue of the President's proclamation of 1810, to the Mississippi Territory.

There is also another subject in which your petitioners are deeply interested, to which we beg leave to call your attention. Your petitioners have generally emigrated to this country since the cession of of Louisiana to the United States. When possession of New Orleans, and that of the country west of the Mississippi was taken, and the

province of West Florida left in possession, and under the exclusive jurisdiction of Spain, we took it for granted that the Government of the United States, either did not claim, or, if they did, meant to insist upon their claim to West Florida; we, therefore, have made settlements on lands, under the rules and forms of the Spanish government, expecting to hold our lands to ourselves and our heirs forever. We, therefore, pray your honorable body to confirm to us our settlement right, made between the time of the cession of Louisiana, until the time of taking possession of West Florida, wherever they have been made *bona fide*, and not with an intention to monopolise unreasonable quantities of lands, under such regulations as may best comport with the wisdom and justice of Congress.

We humbly trust that your enlightened body will grant this request, when you take into view all the circumstances which it involves. The consequences to us and our families are all important. If we are deprived of our possessions, we are deprived of our property; and, consequently, will be reduced to the extremes of
2187 want and wretchedness.

GEORGE PATTERSON,
And Four Hundred and Ten Others.

(NOTE.—See report No. 301.)

(American State Papers, vol. XXI, Miscellaneous vol. II, Executive, page 155.)

(Endorsed:) Louisiana vs. Mississippi. Miss. Doc. 62. Filed Aug. 20/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S Filed Mar. 13 1905, James H. McKenney, clerk.

2188 MISS. DOCUMENT No. 63.

Extract from a Letter Addressed to the Secretary of State by the Minister of Spain, of Date December 30, 1815.

The diplomatic relations between the king, my master, and the United States being happily restored, and both governments being disposed mutually to strengthen the ties of the most pure and perfect friendship, it is my duty to inform the President of whatever may contribute to so desirable an object, and remove the obstacles which may prevent it. On the important points on which this note must turn, I have written to you under other circumstances less favorable than the present. I will now confine myself to a plain and simple explanation of them.

The first of these points is, that the direct and official relations between Spain and the United States having been broken off since the year 1808, the affairs of both nations, as well as their respective frontiers, should now be placed in the same state and situation in which they were at that period; and that, in conformity to this

principle, the part of West Florida which the United States took possession of during the glorious insurrection of Spain, and have retained until this day, should be restored to His Catholic Majesty. This just and conciliatory measure, at the same time that it will convince the king, my master, of the purity and sincerity of the sentiments of the American Government, and of their disposition to arrange and terminate amicably the several points of negotiation, will not in the least impair the right which it may believe it has to the whole or a part of the territory occupied, since it will remain subject, exactly as it was before its occupation, to a frank and friendly discussion between the two Governments.

(American State Papers (Foreign Relations) vol. 4, page 423.)

(Endorsed:) Louisiana vs. Mississippi Miss. Doc. 63 Filed Aug. 20/04. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2189 MISS. DOCUMENT No. 64.

Extract from a Letter of the Secretary of State, James Monroe, to the Minister of Spain, of Date January 19, 1816.

You require that Spain shall be put into possession of West Florida, as an act of justice, before a discussion of the right of the parties to it is entered on.

It is known to your government that the United States claim by cession, at a fair equivalent, the province of Louisiana, as it was held by France prior to the treaty of 1763, extending from the River Perdido, on the eastern side of the Mississippi, to the Bravo or Grande, on the western. To the whole territory within those limits, the United States consider their right established by well-known facts and the fair interpretation of treaties. In a like spirit may the United States demand the surrender of all the territory above described, now in the occupancy of Spain, as a condition to the commencement of any negotiation for the adjustment of differences. When we consider how long your government has maintained what is deemed an unjust possession; more especially when we recollect that the injuries before received are still unredressed, and that others have been since rendered, there can be, it is presumed, but one opinion as to the great moderation of this Government in acquiescing in it. But why restore this province to Spain, if it is the intention of your government to make the title to it, in connexion with other differences, a subject of amicable negotiation and arrangement? May not such a negotiation be entered into as well while it is in the occupancy of the United States as if it were in that of Spain?

(American State Papers (Foreign Relations) vol. IV, page 425.)

(Endorsed:) Louisiana vs. Mississippi Miss. Doc. 64 Filed Aug. 20/04. Wm. D. Bullard commissioner. Office Supreme Court U.S. Filed Mar. 13, 1905, James H. McKenney, clerk.

Extract from a Letter of the Minister of Spain to the Secretary of State, of Date Feb. 22, 1816.

I will now pass to the second object of which your letter treats; that is to say, to the resolution which this Government has taken on the three points stated in my letters of the 30th December and 24 January.

The first was confined to a request that, in conformity to the principles I have stated, that is, that the affairs between the two nations should be placed on the same footing they were before the interruption of the diplomatic relations between them, His Majesty should be put in possession of that part of Florida which the troops of this Union had occupied. You were pleased to state, in reply, that this Government, believing that it had a well founded right not only on the part of West Florida, which their troops had occupied, but to a greater extent of territory, comprehended in the limits of the vice-royalty of Mexico, had judged that, with the same propriety that the king, my master, occupied those possessions, the United States might retain that part of West Florida they held, until it was decided by a friendly convention to whom it belonged.

Permit me to observe that there is no parity in the cases. The country to which you allude, extending to the Rio Bravo, or Del Norte, has been under the dominion of Spain, not only before and since France ceded Louisiana to His Majesty by the treaty of 1764, but from the time of the discovery and conquest of Mexico, without ever having passed by treaty to any other nation; whereas the Floridas ceased to be a French or Spanish possession, and passed into the hands of England, under the name of East and West Florida, in the year 1763. They remained under the power of His Britannic Majesty, as such, until the year 1783, when by conquest, the Spanish arms, and by solemn treaty, they passed under the dominion of His Catholic Majesty. From this you will infer that, be the interpretation which may be wished to be given to the treaty of retrocession of Louisiana, made between France and Spain in 1800, what it may, the two Floridas can never be directly or indirectly included in it; first, because these provinces being in the legitimate possession of England from the year 1763 to the year 1783, France could not cede them to Spain by the treaty of 1764—nor Spain retrocede them to France, not having received them from her, unless there should have been an article on this point, in which express and direct mention was made of the cession; and, secondly, because the two contracting parties (Spain and France) have declared in the most solemn manner, the first, that she did not cede to France any part of the Floridas—the second, that she had not acquired them by the treaty of St. Ildefonso, or of retrocession of 1800; nor had had the least intention to set up a claim to them. You know very well that, accord-

ing to all the acknowledged principles of justice, no one can be put out of the possession of what he holds until the right of the person who claims it shall be proved and recognized; and that, by a natural consequence of this principle, Spain having been in possession of West Florida when the United States laid claim to it, it is proper she should keep it until this Republic shows a better right, which ought to be done in a friendly negotiation between the two powers; and that it would be anticipating the negotiation to begin by taking possession of the territory, the right to which, so far as it respects the United States, ought to be the object of the negotiation itself. These are the ground- which support the first demand I made on you, in the name of His Majesty, in my letter of the 30 December;
2191 and I flatter myself that, reflecting on facts so well known, you cannot do less than consider them just.

(American State Papers (Foreign Relations), vol. 4, page 427.)

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 65 Filed Aug. 20 '04. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2192 MISS. DOCUMENT NO. 66.

Extract from a Letter to the Minister of Spain from the Secretary of State, of Date June 10, 1816.

You state that as that portion of Louisiana, which lies eastward of the Mississippi and the Iberville, had been ceded by France to Great Britain in 1763, and by Great Britain to Spain in 1783, it could not be comprised in the cession of Spain to France in 1800, nor of the latter to the United States in 1803; and you draw this conclusion from the supposed import of the term "retrocession" used in the two latter treaties; which, you say, applies to that portion only which Spain had received from France. My interpretation of these treaties, taking into view so much thereof as relates to this subject, is very different As to the term "retrocession," it is evident that it was not the intention of the parties that it should have any effect whatever on the extent of the territory ceded. The import of this term is too vague, and the term itself was used in a manner too casual, to admit such an inference, even had there been nothing else in the treaty, between Spain and France of 1800 to show that the construction you contend for is altogether inconsistent with the manifest intention of the parties. The import of this term would, in my opinion, be satisfied, if the whole province had passed in the first instance from France to Great Britain, and had been conveyed afterwards by Great Britain to Spain, and by Spain back again to France. In regard to France, this last conveyance would have been a "retrocession," as, by it, the territory would have been ceded back to her. It was very natural, therefore, that this term should be

sed, being applicable, in the most limited sense in which it can be aken, to at least nineteen-twentieths of the province, and, in a qualiied sense to the whole.

Had it been intended to exempt any portion of the province in he possession of Spain from the operation of the treaty of St. Ildeonso, it would have been easy to have done it, and in a manner to reclude all doubt of the intention of the parties. It might, for exmple, have been stated that Spain ceded back to France such parts f the province as France had ceded to Spain. A stipulation to this ffect would have been concise, simple, and very perspicuous; it ould have rendered useless and unnecessary the other provisions f the article in regard to the point of discussion, and for any purose whatever the first of those provisions; or they might have efined the extent of the cession by a natural boundary, which would ave been equally distinct and satisfactory. Had Spain ceded to rance all that portion of Louisiana which lies westward of the Missippi, the Iberville, and the Lakes Maurepas and Pontchartrain, o controversy could ever have arisen between France and Spain especting the eastern limits, as to what Spain had ceded in that uarter, and what she had retained, nor could there have been one etween the United States and Spain. By declining to define the oundaries of Louisiana, eastward, in some one of these obvious and erspicuous modes, it is just to conclude that it was intentional; that here was an object in it; and what that object was, is sufficiently pparent from a fair construction of the provisions of the article ready noticed.

By the treaty of St. Ildefonso, in 1800, the province of Louisiana ceded to France by Spain, "with the same extent it now has in he hands of Spain, and that it had when France possessed it, and ich as it should be after the treaties subsequently entered into beween Spain and other States." And by the treaty of 1803, between he United States and France, this article of the treaty between rance and Spain is inserted verbatim, by which the United States re placed precisely on the same ground on which France herself stood.

93 If we recur to the several provisions, we shall find that each has a distinct object, for which it would not have been necesry to provide, especially in that mode, if it had been the intention the parties that no portion of West Florida in question should ave been exempted from the cession. By stipulating first that the rovince was ceded "with the same extent that it now has in the nds of Spain," direct reference was made to that portion of West lorida lying between the Mississippi, the Iberville, the Lakes Maures and Pontchartrain, and the Perdido. This provision cannot be nstrued as alluding to any other part of the province, and its sole ffect was intended to be to include it in the cession to France. The cond provision is equally explicit—"that it had when France possed it." It is known that France had held the province to that tent before the treaties of 1763, by which she had ceded it to

Spain and Great Britain; and by this stipulation it was ceded back to her, in the same extent, so far as Spain could do it. The third provision has an object equally distinct, and is the more important because, by giving it its intended effect, the construction given to the others is fully confirmed "such as it should be after the treaties subsequently entered into between Spain and other States." By the treaty between the United States and Spain, in 1795 the boundaries as established between the United States and Great Britain in 1783, and the free navigation of the Mississippi, are confirmed, with the addition of the right of deposite at New Orleans. This provision applies to this treaty, and likewise to the treaty of 1783 between Great Britain and Spain, by which West Florida was ceded to the latter, whereby she was enabled to restore it, in the extent contended for, to France. In regard to its operation on the treaty of 1795 between the United States and Spain, it was a provision which the United States had a right to expect from the good faith of Spain.

This view of the subject, which was, in substance, taken by the ministers of the United States in 1805, in a negotiation with your government at Aranjuez, appears to me, as it then did, to be conclusive. You urge, however, against it, that the French government had stated that it was not its intention to cede to the United States that portion of Louisiana which France had ceded to Great Britain by the treaty of 1763. The same declaration was made to the ministers of the United States at Aranjuez, in 1805, for the same purpose that it is now repeated. A just regard to the rights of the United States, founded on the cession which France had made to them, with a thorough knowledge of all the circumstances attending the transaction, combined with a due respect to the government of France, dictated the answer. Your government was informed that the American envoys had proposed to the French government, in the negotiation which terminated in the cession of Louisiana by France to the United States, in 1803, that its boundaries should be defined by the treaty; to which the French government did not accede, preferring to insert in it an extract from the treaty of St. Ildefonso, by which the province had been ceded by Spain to France, with intention to place the United States, in regard to Spain, on the same ground precisely that France held herself under the treaty of St. Ildefonso, unprejudiced by any opinion of her own. Nothing had occurred in the negotiation with France to excite a doubt that the Perdido was the eastern boundary of Louisiana. It had been the boundary of the province when held by France, before the treaties of 1763, and it was made so again by the treaty of St. Ildefonso, which restored it to her. Such was the construction which the American ministers gave to that treaty, who were engaged in the negotiation with France; and such their representation of it to their Government, after the treaty with France was
2194 concluded. It merits particular attention that when your government was requested to cede to the United States such territory as they were desirous of obtaining prior to their acquisition

of Louisiana, it replied to their minister at Madrid, by a letter of the 3d of May, 1803, "that, by the retrocession made to France of Louisiana, that power regained the province with the limits it had, saving the rights acquired by other powers, and that the United States could address themselves to the French government to negotiate the acquisition of territories which might suit their interest." With the subject thus presented before the Government of the United States, the fair construction of the article of the treaty of St. Ildefonso, maintained by the American ministers in their official communication accompanying the treaty, sanctioned, as it evidently was, by the letter of your minister of state, the treaty of Paris of 1803 was ratified. It could not be expected that the United States would appeal under these circumstances, to France, for information as to the extent of the acquisition which they had made, or be governed by any opinion which her Government might express, in that stage, respecting it.

(American State Papers (Foreign Relations) vol. 4, 429, 430.)

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. 66. Filed Aug. 20, '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2195 MISS. DOCUMENT No. 67.

Extract from Letter of Don Jose Pizarro to Mr. Erving, of Date August 17, 1817.

Besides this, posterior to the year 1805, the extraordinary event has occurred of His Majesty's having been unexpectedly deprived, in the year 1810, during his captivity, of the pacific possession in which he was of that part of West Florida which is between the River Iberville, the Lakes Maurepas, Pontchartrain and Borgne, on the one side, and the River Perdido on the other. When the indisputable property of His Majesty in the said territory was demonstrated, it was proved that Spain did not acquire it of France in 1763; that she received it of England in 1783 by a solemn treaty; that it was not and could not, be comprehended in the "retrocession of Louisiana" made to France in the year 1800; that the government of France "has declared so officially," and in the most solemn manner, as well to Spain as to the United States; that the fifth article of the treaty of 1778 between France and the United States opposes itself expressly to the acquisition by France (though she had attempted it) of said territory from Spain in 1800; that the royal cedula of His Majesty, issued at Barcelona on the 15th October, 1802, for the delivery of Louisiana, (which royal cedula was in the hands of the French government before the United States thought of acquiring the colony,) did not contemplate the delivery of territory east of the Mississippi other than that of the "island of New Orleans."

To these grounds, which have established, and do establish, in the clearest manner, the property of His Majesty in the said territory, may be added those of his pacific possession without interruption. The delivery of Louisiana took place without the least idea having occurred to the French commissioners, who received it of His Majesty for the purpose of delivering it to the United States of aspiring to the possession of the territory between the Iberville and the Perdido; Spain continued, in the years following the delivery, exercising over it all her authority, and the United States respected this possession. A certain customhouse regulation of the United States, in the year 1804, which seemed to contain some expressions susceptible of an equivocal meaning as to the rights of His Majesty in the territory of Mobile, was declaimed against on the part of the king, and the United States agreed to give a satisfactory and honorable explanation as to the said expressions. Whatever might be then, in that state of things, the pretension of right which might be formed against it, it did not appear to conform to the principles universally acknowledged to enforce that pretension * * * by means of acts, and, in truth, it was a painful duty for the faithful ministers of His Majesty, on his return from his captivity, to explain to him by what means and circumstances he had been deprived of the peaceful possession of the greater part of West Florida without war, or any stipulation which could authorize, having preceded it.

The king, attributing this extraordinary event to the circumstances, also extraordinary, of the epoch which had intervened, flattered himself that the United States would not defer placing things in the state which they were in at the time he left his dominions, and the invasion of the peninsula by Bonaparte. The glory, and even the interest of the United States, might equally incline them to this restitution, for a recent and costly experience has made the world see that there are no acquisitions of territory, however extensive, which can compensate the advantages to result from the reputation which those governments acquire who regulate
2196 their operations by principles conservatory of order and justice.

With these ideas, the king directed his minister at Washington that, before he entered into the discussions which had remained pending, he should solicit the restoration of affairs in the state in which they were at the time of his absenting himself. This preliminary step appeared correspondent to the decorum of His Majesty, and the United States could not fail to acknowledge it to be so; it being very certain that the delicate honor of the American Government would not consent, in a similar case, to enter into other negotiations, finding itself inquieted in the pacific possession of even one mile of its acknowledged territory, without first soliciting and obtaining the due restoration.

Notwithstanding this, and that the answer of the Secretary of State, of 19th January, 1816, is far from containing the satisfaction

restoration which Spain had reason to expect, His Majesty, to unequivocal proofs of his moderation, and of his friendly dis-ions toward the United States, without renouncing, as he does o way renounce, nor will renounce, unless in the case of some promise, the right of property and possession which he has in aid territory, has judged fit not to insist on his demand for the ent, in the hope that this point, though in its nature it ought to reliminary, may enter into the general arrangement with the s; but your penetration will acknowledge readily that on this tial point, as in others, the state of the question is not what it in the year 1805, new occurrences of such importance having n place since that period.

ou ought not, then, to be surprised that Don Luis de Onis, see-himself in the necessity of omitting all discussion, as well on oint already discussed in the year 1805, as on the more recent rrences, and invited to give his judgment on plans of adjustment nted by one or the other party, should believe that the instruc-which he previously had were insufficient, and even the inti-on (*aviso*) conformable to the contents of your note of 26th ust, which was remitted to him with the powers; and that in state he conceived himself without instructions to treat in the e which, from the commencement, he knew would be agreeable at government: for, though you are pleased to say that it was ne note of the Secretary of State of 25th January that Señor might observe that it was desired to avoid all further discus-I observe, by the letters which I have from that minister, that ne 6th of January he received the powers of His Majesty, and on the 10th of the same month he advises that the Secretary of had already in verbal conference expressed his opinion that ssion was useless, and that he had desired proposals and plans rangement to be made out, which were already making out on 2th.

t leaving aside these incidents, which will be settled by the mission of competent instructions to Señor Onis, I go on to ose to you, as I have offered, the principal conditions of an gement which, in my opinion, may terminate with reciprocal action the pending questions. Although these will be sufficient plain my mode of thinking, you will probably notice that in points they are diffuse, where I have thought it necessary to le to the right from whence proceeds the proposal made; and in other places they are succinct, where I have thought that ls may be omitted for the present which it will be necessary to enter into afterwards, if it be agreed to put in form the trans-action, to clothe it with the correspondent authority; in which case we shall draw it out by common consent in terms appro-e to our purpose.

(American State Papers (Foreign Relations) vol. 4, page- 446–447.)

(Endorsed :) Louisiana *vs.* Mississippi Miss. Doc. 67 Filed Aug. 20 '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney clerk.

2198 MISS. DOCUMENT NO. 68.

Extract from Letter of Don Luis to the Secretary of State, of Date January 5, 1818.

SIR: In my note of the 29th of last month, I proved to you to a degree of moral demonstration which I think to be fully convincing, what are and ought to be the eastern boundaries of Louisiana; and I hope such incontrovertible, decisive reasons cannot fail to bring you fairly to acknowledge that Louisiana neither does nor can include any part of West Florida. As I have not yet received your answer to the said note, it was my intention to wait for it, and not proceed to the examination of the second point of the question of boundaries before we had agreed on and settled what relates to the first, in order to proceed methodically, and not to involve or embar-ass the plain and expeditious course of this investigation; but being desirous of not losing an instant in explaining every point relative to so important a matter, I anticipate the examination of the western boundaries of Louisiana, which is the second point of the question, thereby facilitating whatever may claim your attention as to both in their respective order, and enabling you to comprehend the truth at once.

(American State Papers, (Foreign Relations) vol. IV, p. 455.)

(Endorsed :) Louisiana *vs.* Mississippi Miss. Doc. 68 Filed Aug. 20 '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2199 (Miss. Document No. 69 is a map entitled " Mississippi Territory," taken from Carey's General Atlas—being a collection of maps of the world and quarters, their principal empires, kingdoms &c., published by M. Carey 121 Chestnut St. Philadelphia, 1816—See page 23 of leather covered atlas offered by defendant.)

2200 (Miss. Document No. 70 is a map—See atlas of maps offered by the State of Mississippi.)

(Miss. Document No. 71 is a railroad map of Mississippi published by Rand, McNally & Co., 1903. See atlas of maps offered by the State of Mississippi.)

201 MISS. DOCUMENT NO. 72.

THE STATE OF MISSISSIPPI,
Hancock County.

Board of Supervisors, January Term, 1898.

Be it remembered that a regular meeting of the board of supervisors was begun and holden in and for said county at the courthouse thereof in the city of Bay St. Louis, on the first Monday of January A. D. 1898 and on the 2" day of said meeting, the same being the 4" day of said month, an order was made by said board, which is in the following words and figures, to-wit:

Ordered by the board that the following ordinance be adopted to-wit:

An Ordinance to Prevent the Dredging of Oysters from the Public Oyster Reefs in Hancock County, Mississippi, and to Enforce the Same.

SEC. 1. It shall be unlawful for any person or persons to catch or take oysters from the natural oyster reefs known and declared by law to be public oyster reefs, in Hancock county, Mississippi, with a steam dredge or other dredge in less than fourteen feet of water.

SEC. 2. It shall be the duty of the sheriff or other lawful officer in Hancock county to arrest with or without warrant any person or persons violating this ordinance to take them before any magistrate or justice of the peace in said county for trial, and every such magistrate or justice of the peace shall have jurisdiction for a violation of this ordinance.

SEC. 3. Any person who shall violate this ordinance shall on conviction be fined not less than two hundred & fifty dollars for each offence or be imprisoned in the county jail not less than thirty days or both at the discretion of the court; and all persons so convicted shall stand committed until the said sentence is complied with and all costs be paid.

SEC. 4. When a prosecution under this ordinance shall be commenced and prosecuted to a conviction upon information or complaint of any private person, and the officer or justice of the peace trying the cause shall so certify on this docket, then and in that case, such prosecutor shall be entitled to one-half of the fine, to be paid him by the officer collecting the same, upon the order of the magistrate or justice of the peace trying the cause, and the other half of said fine to be paid into the treasury of Hancock county.

SEC. 5. That this ordinance take effect and be in force from and after this day.

(Signed) J. L. MEGEHEE, President.

Approved January 4, 1898.

I, Emile H. Hoffman, clerk of the chancery court and *ex-officio* clerk of the board of supervisors in and for said county, in the State aforesaid, do hereby certify that the above is a true copy of the order passed by the said board, at their meeting aforesaid, as fully as the same appears of record in Minute Book D, on pages 406 & 407, of said board.

Given under my hand and official seal, at my office in Bay St. Louis, Miss., this the 10″ day of August, A. D. 1904.

[SEAL.] E. H. HOFFMAN, Clerk.

(Endorsed:) Document Mississippi No. 72 Offered by State of Mississippi—Aug. 27 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

2202 MISS. DOCUMENT NO. 73.

THE STATE OF MISSISSIPPI, }
Hancock County. }

Board of Supervisors, September Term, 1898.

Be it remembered that a regular meeting of the board of supervisors was begun and holden in and for said county at the courthouse thereof in the city of Bay St. Louis, on the first Monday of September A. D. 1898 and on the 1″ day of said meeting, the same being the 5″ day of said month, an order was made by said board, which is in the following words and figures, to wit:

An Ordinance for the Protection and Preservation of the Public Oyster Reefs in Hancock County, Mississippi, and to Enforce the Same.

SEC. 1. It shall be unlawful for any person to take from the public oyster reefs within the waters of Hancock county any oysters between the first day of May and the first day of September of any year except for planting purposes and domestic use of the inhabitants of said State.

SEC. 2. It shall be unlawful to take from the natural oyster reefs in the waters of said county any oysters, the shells of which are less than two and one half inches long, except for planting purposes, and all oysters taken for any other purpose shall be culled so that there will not be more than five oysters in any one bunch, and they shall be culled without destruction to the oysters, free from all dead and empty shells and young and unmarketable oysters, and which culling shall be done & left on the reefs where the oysters are taken, provided however that such young and unmarketable oysters may be removed or disposed of for planting purposes only within the tide waters of Mississippi.

SEC. 3. That it shall be unlawful to buy, purchase or receive any ysters from any person or persons, except for the purposes set forth n section 2 of this ordinance that are not in conformity & culled as equired in said section.

SEC. 4. It shall be the duty of the sheriff or other lawful officers f & in Hancock county to arrest with or without warrant any per- on or persons violating this ordinance to take them before any agistrate or justice of the peace in said county for trial, and every ich magistrate or justice of the peace shall have jurisdiction for a iolation of this ordinance.

SEC. 5. Any person who shall violate any of the provisions of this rdinance shall on conviction be fined not more than fifty dollars r each offence or be imprisoned in the county jail not more than irty days, or both at the discretion of the court; and all persons convicted shall stand committed until the said sentence is com- lied with and all costs be paid.

SEC. 6. When a prosecution under this ordinance shall be com- enced and prosecuted to a conviction upon the information or mplaint of any private person, and the officer or judge trying the use shall so certify on his docket, then and in that case such prose- tor shall be entitled to one half of the fine to be paid to him by e officer collecting the same upon the order of the magistrate or dge trying the cause; the other half to be paid into the county easury.

SEC. 7. That this ordinance be published in the Gulf Coast ogress being the official journal of this board for three weeks & oof of publication to be filed.

SEC. 8. That this ordinance shall take effect and be in force from d after the first day of October, 1898.

Approved Sept'r 5, 1898.

Ordered that board adjourn until to-morrow morning 8 o'clock.

J. L. MEGEHEE, President.

03 I, Emile H. Hoffman, clerk of the chancery court and *ex-officio* clerk of the board of supervisors in and for said unty, in the State aforesaid, do hereby certify that the above is a ue copy of the order passed by the said board, at their meeting oresaid, as fully as the same appears of record in Minute Book D, pages 460 & 461, of said board.

Given under my hand and official seal, at my office in Bay St. uis, Miss., this the 10" day of August, A. D. 1904.

[Seal of Chancery Court, Hancock County, Miss.]

E. H. HOFFMAN, Clerk.

(Endorsed:) Document Mississippi, No. 73 Offered by State of ssissippi, Aug. 27, 1904 Frank H. Mortimer, commissioner. fice Supreme Court U. S. Filed Mar. 13 1905 James H. Mc- nney, clerk.

2204 Miss. Document No. 74.

The State of Mississippi, }
Hancock County. }

Board of Supervisors, June Term, 1900.

Be it remembered that a regular meeting of the board of supervisors was begun and holden in and for said county at the courthouse thereof in the city of Bay St. Louis, on the first Monday of June A. D. 1900 and on the 1st day of said meeting, the same being the 4th day of said month, an order was made by said board, which is in the following words and figures, to-wit:

Ordered that the following ordinance be adopted to-wit:

Be it ordained by the board of supervisors of Hancock county:

Section 1. That it shall hereafter be unlawful to take or catch any oysters from or upon any of the public oyster reefs in Hancock county by means of any steam vessel or any other appliance or device propelled managed operated or utilzed by means of steam.

Section 2. It shall also be unlawful to use any steam vessel, or vessel propelled by steam in fishing or taking any oysters from or upon any of the public reefs of said county.

Section 3. Any persons offending against any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction fined not less than twenty five nor more than five hundred dollars.

Section 4. This ordinance shall be published for three weeks in the Gulf Coast Progress and shall take effect and be in force from and after its third insertion in said newspaper.

(Signed) J. L. MEGEHEE, President.

I, Emile H. Hoffman, clerk of the chancery court and *ex-officio* clerk of the board of supervisors in and for said county, in the State aforesaid, do hereby certify that the above is a true copy of the order passed by the said board, at their meeting aforesaid, as fully as the same appears of record in Minute Book E, on page 124, of said board.

Given under my hand and official seal, at my office in Bay St. Louis, Miss., this the 10" day of August A. D. 1904.

[Seal of Chancery Court, Hancock County, Miss.]

E. H. HOFFMAN, Clerk.
—— ——, D. C.

(Endorsed:) Document Mississippi No. 74 Offered by State of Mississippi, Aug. 27, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

2205 MISS. DOCUMENT No. 75.

(Letter Head.)

STATE OF (Vignette) MISSISSIPPI.

Auditor's Department. T. M. Henry, Auditor. E. J. Smith, Dep. Auditor.

JACKSON, MISS., ——, 190–.

I, T. M. Henry, auditor of public accounts for the State of Mississippi, do certify that the subjoined amounts were paid into the State treasury on account of the oyster fund, as shown by the records in this department, for the years named:

From Oct. 1st, 1902 to Sept. 30th, 1903, inclusive.....	$14,020.45
From Oct. 1st, 1903 to date.....	17,106.34
Total for the time.....	$31,126.79

[Seal Auditor's Office, State of Mississippi.]

T. M. HENRY,
Auditor Public Accounts.

Jackson, Mississippi, Aug. 24th, 1904.

(Endorsed:) Document Mississippi No. 75 Offered by State of Mississippi. Aug. 27, 1904 Frank H. Mortimer commissioner Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2206 MISS. DOCUMENT No. 76.

(Letter Head.)

Board of Oyster Commissioners of Mississippi.

Commissioners.	Inspectors.	Officers.
J. B. Chinn, Biloxi, Miss.	R. Mendes, Bay St. Louis, Miss.	J. B. Chinn, president.
Duncan Minor, Ocean Springs, Miss.	Geo. J. Cronovich, Pass Christian, Miss.	F. S. Hewes, Jr., secretary.
D. T. Cassibry, Gulfport, Miss.	John Caillavet, Biloxi, Miss.	Jas. H. Neville, attorney.
F. L. Patnotte, Pass Christian, Miss.		R. M. Mosely, chief inspector.
Frank J. Ladner, Bay St. Louis, Miss.		A. E. Lewis, ass't inspector.

GULFPORT, MISS., May 25, 1904.

Mr. I. Heidenheim, chairman of committee on testimony, Biloxi, Miss.

DEAR SIR: Agreeable to yours of recent date, I beg leave to give you a statement of the amount collected from licenses since the creation of the board of oyster commissioners, as follows:

Collected from 15 Sept. 1902 to Sep. 1903	$3572.50
" " 15 " 1903 " May 1, 1904	3990.00
Total collections from Licenses 15 Sep. 1902 to 1 May, 1904	$7562.50

Yours truly,
F. S. HEWES, Jr.,
Secretary Board of Oyster Commissioners of Miss.

(Endorsed:) Document Mississippi. No. 76 Offered by State of Mississippi. Aug. 27, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2207 MISS. DOCUMENT No. 77.

(Letter Head.)

Board of Oyster Commissioners of Mississippi.

Commissioners.	Inspectors.	Officers.
J. B. Chinn, Biloxi, Miss.	R. Mendes, Bay St. Louis, Miss.	J. B. Chinn, president.
Duncan Minor, Ocean Springs, Miss.	Geo. J. Cronivich, Pass Christian, Miss.	F. S. Hewes, Jr., secretary.
O. T. Cassibry, Gulfport, Miss.	John Caillavet, Biloxi, Miss.	Jas. H. Neville, attorney.
F. L. Patnotte, Pass Christian, Miss.		R. M. Mosely, chief inspector.
Frank J. Ladner, Bay St. Louis, Miss.		A. E. Lewis, ass't inspector.

GULFPORT, MISS., May 25, 1904.

Mr. I. Heidenheim, chairman of committee on testimony, Biloxi, Mississippi.

DEAR SIR: Agreeable to yours of recent date, I beg leave to give you a statement of the two cent per barrel tax since the creation of the board of oyster commissioners, as follows:

Collected from the 15 Sep., '02, to 1 Sep., '03, on 522,397 brls	$10447.95
Collected from the 15 Sep., '03, to 1 May, '04, on 517,711 brls	10354.22
Total collections 15 Sep., '02, to 1 May, '04, 1,040,108 brls	$20802.17

We will collect for this season about $2,000.00 additional, last report from chief inspector not yet received, same not due till next regular meeting, which is 1 Monday in June.

Yours truly,
F. S. HEWES, Jr.,
Secretary Board of Oyster Commissioners of Miss.

(Endorsed:) Document Mississippi No. 77 Offered by State of Mississippi, Aug. 27, 1904 Frank H. Mortimer commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

BILOXI, MISSISSIPPI, October 2nd, 1901.

Hon. A. H. Longino, governor of Mississippi.

SIR: In pursuance of your request, dated February 9th, 1901, asking the following gentlemen J. I. Ford, Scranton, E. J. Bowers and A. Keller, Bay St. Louis, W. A. White and H. T. Howard, Biloxi, to act as a commission to confer with a like commission appointed by the governor of Louisiana to consider the determination of the water boundary line between the two States, and arrange for the easy location and identification by a proper system of buoys.

Your committee met in Biloxi, February —, 1901, electing H. T. Howard chairman, and J. I. Ford secretary.

The chairman was requested to correspond with the Louisiana commission and arrange for a joint meeting of the committee.

March 4th, the chairman issued a call for the commission to meet in New Orleans, Louisiana, at the office of John Dymond, Jr., the secretary of the Louisiana commission, 339 Carondelet street on 26th March, 10 a. m.

On the day appointed there were present Messrs. Albert Estopinal Jr., John Dymond Jr., Clem Story, Sidney Lewis and H. C. Cage of Louisiana, and Messrs. H. T. Howard, J. I. Ford, W. A. White and E. J. Bowers of Mississippi. Absent only one, A. Keller of Bay St. Louis.

The meeting was called to order by Honorable Albery Estopinal Jr. chairman of the Louisiana commission, who stated the purpose of the meeting and suggested that Mr. H. T. Howard should be elected chairman of the joint meeting.

Mr. Howard was elected chairman and Mr. John Dymond Jr., secretary.

Mr. Dymond, at the request of the gentlemen present, stated and explained the views of the Louisiana commission. On motion of Mr. Bowers, seconded by Mr. Cage, the Louisiana commission was requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which map should be presented to the Mississippi commission, and that the Mississippi commission should endorse their views thereon in black ink. Carried.

On April 8th, the Louisiana commission sent the map and their views, a copy of which is hereunto attached marked Exhibit "A," to the chairman of the Mississippi commission, who, after repeated calls for a meeting, finally succeeded in getting the Mississippi commission together at Bay St. Louis, at the office of the Honorable E. J. Bowers, on the 20th, of July 1901.

As the Mississippi commission could not agree to fix any lines upon the map sent them, the map was returned to the Louisiana commission, and a letter signed by the five Mississippi commission-

ers was sent to the Honorable Albert Estopinal, chairman of the Louisiana commission, a copy of which is hereunto attached marked Exhibit "B," notifying him that the Mississippi commission could not agree to the lines of the Louisiana commission, and asking that a friendly suit in the Supreme Court of the United States be instituted as the only course of settlement.

Having pursued the investigation for which we were ap-
2209 pointed, as fully as we could, we make this, our report, without suggesting anything more than has already been suggested by us to the Louisiana commission.

Respectfully submitted,

H. T. HOWARD, Chairman.
J. I. FORD, Secretary.
W. A. WHITE.
E. J. BOWERS.
AUG. KELLER.

STATE OF MISSISSIPPI, }
Hinds County. }

This is to certify that the above and foregoing is a true and correct copy of an official document now on file in the office of the governor of the State of Mississippi.

Witness my signature this 26th day of August 1904.

GEORGE R. EDWARDS, JR.,
Private Secretary to the Governor
of the State of Mississippi.

EXHIBIT "A."

To the honorable chairman and members of the Mississippi Boundary Commission:

The great State of Louisiana wishes to lay before the great State of Mississippi its desires as to the establishment of a boundary in the waters between the said States. The cause that necessitates this request on the part of one State of its neighboring State, is found in the fact of the existence of a difference in the laws of the two States over the waters thereof. It therefore becomes necessary that the two States should, if possible, come to an amicable agreement as to their water boundaries so that their respective court- would have jurisdiction in any matters that might subsequently arise.

The State of Louisiana feels that its boundaries, as well as those of the State of Mississippi, have already been fixed and determined by the United States Government, the parent and creator of both of the said States, and that all that is necessary in the premises would be a recognition of this already created boundary, yet a recognition in such terms and made in such manner as would free it from any possibility of confusion which end could be readily attained in the manner we now propose to present.

Recognizing the necessity of establishing the boundary between the two States, his excellency, W. W. Heard, governor of the State of Louisiana, appointed a commission on the boundary representing the State of Louisiana and presented to his excellency, A. H. Longino, governor of the State of Mississippi, the request of the great State of Louisiana that the great State of Mississippi should in turn appoint a commission on boundary which might confer with the Louisiana State Commission and thereby ascertain if it were possible to amicably settle any dispute that might exist in so
2210 far as the powers thereto were vested in such committee.

The conclusions of the Louisiana Boundary Commission will be presented to the legislature of the State of Louisiana, and we feel quite sure and in fact could confidently assert that if the Mississippi Boundary Commission were in accord with the views of the Louisiana Boundary Commission as to the boundaries that such action as these joint commissions might take would be carried into effect by the legislature of the great State of Louisiana.

Section 4, of the constitution of the great State of Mississi- as adopted November 1st, 1890, provides that the legislature shall have the power to settle disputed boundaries between the State of Mississippi and its coterminous States whenever such disputes arise. His excellency, A. H. Longino governor of the State of Mississippi, recognizing that any recommendations made by the Mississippi Boundary Commission would have great weight with the legislature thereof, appointed you gentlemen in compliance with the request of his excellency, W. W. Heard, governor of the State of Louisiana, and we now desire to lay before you the facts as appealing to our commission emphas-ing that the purpose of both commissions is to get at the facts and do justice to the parties and the rights, independent of a desire to aid by any action any interest that might be affected in the conclusions of the joint commission.

When we say that the boundary between the two States already exists, we mean by that that an interpretation of the acts of Congress creating respectively the States of Louisiana and Mississippi gives to each of them boundaries which do not conflict, provided the limits of the two States are separated the one from the other by the deep water channel beginning at the mouth of the Pearl river, extending north of Grassy island, southwest of Cat island, northwest of Chandeleur island to the sea. Any other construction of the acts of Congress creating the respective States would apparently make the boundaries of the two overlap, and if there be as we have stated, a definite line that harmonizes the two acts in question, we say that such boundary must have been in the contemplation of Congress rather than Congress would have been presumed to have laid down conflicting boundaries.

The State of Louisiana founds its boundary limits on the dimensions of the Louisiana Territory transferred by Napoleon, Emperor of France, to the United States Government. The United States Statutes at Large, volume 1, charter 1, page 245, approved October

31st, 1903, provides for the acceptance and taking possession of the Louisiana Territory thus ceded to the United States by the French people. By the same volume, page 283, chapter 38, approved March 26th, 1804, we find Congress dividing the Louisiana purchase into two Territories and providing for the government thereof. The whole subject of the dimensions of the Louisiana purchase is set forth in the recent work compiled by Binger Herman, Commissioner of the General Land Office and issued by the Government Printing Office at Washington, D. C., in the year 1900. According to the terms of the said purchase, the State of Louisiana claims that the Chandeleur islands belonged to it, in as much as they were part of the territory ceded by France to the State of Louisiana. The question whether they did or did not, however, is not necessarily a subject for settlement between the Louisiana and Mississippi Commission, as the limits of the State of Mississippi, under no circumstances could be construed to extend as far south as the Chandeleur islands, and for that reason we pass this phase of the subject by, except to state that according to the Louisiana purchase the eastern boundary of the territory extended from the Rigolets to the gulf of
2211 Mexico following the deep water channel to the sea to the eastward and inclusive of the Chandeleur islands.

When the State of Louisiana was admitted into the Union of the United States we find its boundaries defined in chapter 50 of the United States Statutes at Large, volume 2, page 701, approved April 6th, 1812 to be as follows:—

"Whereas the representatives of the people of all of that part of the territory or country ceded under the name of Louisiana by the treaty made at Paris on the 30th, day of April 1803 between the United States and France, contained within the following limits, that is to say; beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all the islands to the 32nd, degree of latitude; thence due north to the northernmost part of the 33d ? degree of north latitude; thence along the said parallel of latitude to the Mississippi river; thence down the said river to the River Iberville and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast.

There is no way to go from Lakes Maurepas and Pontchartrain to the gulf of Mexico other than by the deep water channel. To any one contemplating the trip no other course but the deep water channel would naturally suggest itself.

We find that in 1812 the State of Louisiana had additional territory added to it. This territory is what was commonly known as the Florida parishes, and was at one time a sort of free government. The legislature on the subject of this additional territory is found in the acts of Congress, United States Statutes at Large, volume 2,

page 708, chapter 57, approved April 14th, 1802 wherein we find the following language :—

"Beginning at the junction of the Iberville, with the River Mississippi; thence along the middle of the Iberville and of the River Amite and of the Lake- Paurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the eastern branch of the Pearl river to the 31st, degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana."

There was nothing taken away from the State of Louisiana by this act of Congress. On the contrary, the object and the result was the addition of the Florida parishes to the State of Louisiana. The water rights or boundaries were not affected or changed, except that the eastern junction of the water boundary line and the main land was moved from the channel of the Rigolets to the channel of the eastern mouth of the Pearl river. Immediately leaving the point where the boundary joined the shore it follows the main channel to the sea and in so doing joined in the main channel the former water boundary line separating the State of Mississippi, which line it followed till it separated from it at a point southwest of Cat island, where the boundary lines struck the sea.

In confirmation of his contention on the part of the State of Louisiana we need but to turn to the act of Congress creating the great State of Mississippi. It was known to Congress that there was a string of islands along south of, and running parallel to the main land of the State of Mississippi. The State of Mississippi was admitted into the Union by the act of Congress found in the United States Statutes at Large, volume 3, chapter 23, page 348, *provided* March 1st, 1817, wherein the inhabitants of the western part of the
2212 then Mississippi Territory were authorized to form themselves a State constitution, and to be admitted into the Union. The boundaries of the then to be created State were as follows:—

"That the said State shall consist of all the territory included within the following boundaries, to-wit:

"Beginning on the River Mississippi at the point where the southern boundary line with the State of Tennessee strikes the same; thence east along the said boundary line of the Tennessee river; thence up the same to the mouth of Bear creek; thence by direct line to the northwest corner of the county of Washington; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most southern junction of Pearl river with Lake Borgne; thence up said river to 31st, degree of north latitude; thence west along said degree of latitude to the Mississippi river, thence up the same to the beginning."

The State of Louisiana in adopting its present constitution that of the year 1898, did not fix boundaries *and* did the State of Mississippi in its constitution adopted November 1st, 1890, for we find in

the 3rd, section of the second article of the Mississippi constitution the following:

"The limits and boundaries of the State of Mississippi are as follows, towit: Beginning on the Mississippi river (meaning thereby the center of said river or thread of the stream where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and W. Petrie, commissioners appointed for the purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee river, six four-pole chains south of and above the mouth of Yel*b*ow creek; thence up the said river to the mouth of Bear creek; thence by a direct line to what was formerly the northwest corner of the county of Washington, Alabama; thence on a direct line to a point ten miles east of the Pascagoula river on the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake *Lake* Borgne; thence up said river to the 31st, degree of north latitude; thence west along said degree of latitude to the middle or thread of the stream of the Mississippi river, or thread of the stream to the place of beginning, including all islands lying east of the thread of the stream of said river, and also including all lands which were at any time heretofore a part of this State."

Taking the boundaries as determined by the constitution of the State of Mississippi we find that they conform with the contention of the State of Louisiana in that they begin at a point ten miles to the eastward of the Pascagoula river at a point eighteen miles out at sea. Thence the boundary line runs westwardly. It includes the several islands we have heretofore mentioned, viz: Petit Bois, Horn island, Ship island and Cat islands, the island contemplated by Congress. Thence it meets the Louisiana boundary in the deep water channel to the southwest of Cat island and follows this channel up through to the north of Grassy island to the mouth of Pearl river.

The State of Louisiana lays down the proposition that in all divisions of territory between States they are governed, where the same are separated by bodies of water, unless otherwise specified by the rule that the deed water channel makes the boundary lines. This is modern *porceedure*, and is illustrated by the action of the Canadian and American commissioners in settling the dispute
2213 as to the small island in front of the city of Detroit. This island having been found to be on the American side of the deep water channel was held to belong to the State of Michigan. This theory is confirmed by the very article of the Mississippi constitution, which we have just cited, where the Mississippi river and other streams separate the great State of Mississippi from its neighbors. We quote from the Mississippi constitution "and thence up the middle of the Mississippi river, or the thread of the stream to

he place of beginning, including all islands lying east of the thread of the stream of said river."

We therefore respectfully submit and urge that the great State of Mississippi, through the medium of your honorable gentlemen appointed for the purpose by his excellency A. H. Longino, governor of the great State of Mississippi, should declare to your legislature unanimously, that from the researches you have made, from the law you have examined, and from the arguments you have heard it is our opinion that the boundary line between the great States of Mississippi and Louisiana, separating them and their waters, begins at the mouth of the Pearl river and thence follows the deep water channel to the east of Grassy island, to the southwest of Cat island by the Cat Island channel to the deep water of the gulf of Mexico where the said lines diverge, that of Louisiana extending to the eastward of the Chandeleur islands, and that of Mississippi extending eastwardly, including Ship island Horn island and Petit Bois island to a point ten miles to the eastward of the Pascagoula river, where it extends north at right angles; and we do repeatedly urge that you may request of your legislature that they enact such laws as may carry into effect your finds.

Respectfully submitted,

JOHN DYMOND, JR.,
Secretary Louisiana Boundary Commission.
Composed, ALBERT ESTOPINAL, Chairman.
CLEMENT STORY.
H. C. CAGE,
S. F. LEWIS,
JOHN DYMOND, JR., Secretary.

New Orleans, Louisiana, April 6th, 1901.

214 EXHIBIT "B."

on. Albert Estopinal, Jr., chairman Louis-ana Boundary Commission:

The commission appointed by the State of Mississippi to confer ith a like commission appointed by the State of Louis-ana having et and considered maturely the claims advanced by the Louis-ana mmission, and having examined the line as delineated by that dy and submitted with said claims, are unable to concede the line claimed by the State of Louis-ana and as marked and set forth on e map of said claim.

The difference between the line marked between your honorable dy and that which we conclude is the true boundary, is so great at we have no hope of being able to reconcile them and therefore em it useless to submit any counterline or proposition.

The Mississippi commission considers as islands considerable terri-

tory which the Louis-ana commission claims as main land, and the difference over this question of fact appears to us to — past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that court.

Respectfully submitted,

H. T. HOWARD, Chairman.
J. I. FORD, Secretary.
E. J. BOWERS.
W. A. WHITE.
AUG. KELLER.

Bay St. Louis, Mississippi, July 20th, 1901.

STATE OF MISSISSIPPI, }
County of Hinds. }

This is to certify that the above and foregoing is a true and correct copy of an official document now on file in the office of the governor of the State of Mississippi.

Witness my signature this 26th day of August, 1904.

GEO. R. EDWARDS, Jr.,
Private Secretary to the Governor of Mississippi.

(Endorsed:) Document Mississippi No. 78. Offered by State of Mississippi Aug. 27, 1904. Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

2215 MISS. DOCUMENT NO. 79.

To his excellency A. H. Longino, governor of the State of Mississippi:

The undersigned members of the commission on the part of the State of Mississippi, appointed by Your Excellency to confer with a similar commission appointed by the governor of Louisiana "to consider the determination of the water boundary line between the two States &c." beg leave to report that after a joint conference the commissioners for Louisiana submitted to the commissioners for Mississippi a statement of what they claimed to be the boundary line, said line extending from the junction of the eastern mouth of Pearl river with Lake Borgne, through said lake, Grand pass, the Mississippi sound, South pass and Cat Island channel into the gulf of Mexico.

The commissioners for Mississippi declined to accept the said line as the boundary, and the undersigned members beg leave to submit to Your Excellency our reasons therefor as follows:

1st. The boundaries of the States of Mississippi and Louisiana are ed by the several acts of Congress relative thereto; towit: the s of April 8th, 1812, April 14th 1812 and March 1st. 1817.

2nd. The boundaries of the State of Louisiana as fixed by the act Congress of April 8th, 1812, constituting the State of Louisiana as follows: "Beginning at the mouth of the River Sabine; nce, by a line to be drawn along the middle of said river includ- all islands, to the thirty second degree of latitude; thence due th to the northernmost part of the thirty-third degree of north itude; thence along the said degree of latitude to the River Mis- ippi; thence down the said river to the River Iberville; and nce, along the middle of said river, and Lakes Maurepas and ntchartrain to the gulf of Mexico; thence, bounded by the said lf to the place of beginning, including all islands within three gues of the coast; and were enlarged by the act of April 14th, 2, by adding the territory included in the following boundaries: eginning with the junction of the Iberville with the Mississippi er; thence along the middle of the Iberville with the Missis- pi river; thence along the middle of the Iberville, the River ite and of the Lakes Maurepas and Pontchartrain to the eastern uth of the Pearl river; thence up the eastern branch of the Pearl er to the thirty first degree of north latitude, thence along said ree of latitude to the River Mississippi thence along the said er to the place of beginning."

n as much as it would be impossible to pass out through Mau- as and Pontchartrain to the gulf of Mexico proper without pass- through Lake Borgne, and the Mississippi sound of the Chan- eur sound, it is obvious that these three bodies of water, which are s of the gulf of Mexico, are referred to as the "gulf of Mexico," and t the term gulf of Mexico is used indiscriminately with reference Lake Borgne, Mississippi sound, Chandeleur sound and the Gulf per, and that Lake Borgne is referred to as the gulf of Mexico in phrase "thence along the middle of said river and Lakes Mau- as and Pontchartrain to the gulf of Mexico" and that Lake gne, the Mississippi sound and the Chandeleur sound are re- ed to as the gulf of Mexico in the phrase "thence bounded said Gulf to the place of beginning:

rd. That when the eastern boundary line reaches the northern re of Lake Borgne, the true boundary line, according to these of Congress, follows the shore in all its meanderings south south west to the mouth of the Sabine river, and therefore all islands within three leagues of this shore are Louisiana 6 territory but that no water, island or marshland not within three leagues of this main shore of Louisiana, as thus defined, ngs to the State of Louisiana.

th. The boundaries of Mississippi, as fixed by the act of Congress March 1st. 1817, are as follows:—"Beginning at the River Missis- pi, at the point where the southern boundary line of the State of nessee strikes the same; thence east along the said boundary

line to the Tennessee river; thence up the same to the mouth of Bear creek; thence in a direct line to the north-west corner of the county of Washington; thence due south to the gulf of Mexico; thence, westwardly including all islands within six leagues of the shore, to the eastern junction of Pearl river with Lake Borgne; thence up the said river to the thirty-first degree of north latitude; thence along the said degree of latitude to the Mississippi river; thence up the same to the place of beginning."

It will be seen from the above that the southern boundary of Mississippi runs from the point where the Alabama and Mississippi line strikes the gulf of Mexico to the eastern junction of Pearl river with Lake Borgne and that all islands within six leagues of the shore, and not within three leagues of the State of Louisiana as above described, are included in Mississippi territory.

5th. Our information is that the territory in dispute between the two States, all of which is within six leagues of the Mississippi shore, consists wholly of water and small islands, most of which in high tide are covered by water, and that little if any, of said territory is within three leagues of the Louisiana shore, but it is impossible to tell from the maps, just how much, if any, of said territory is within said limit, of three leagues, by reason of the fact that the main shore line of Louisiana is not distinctly defined on any maps to which we have had access, and therefore it is impossible to fix the true boundary line without a survey. Yet it is manifest that the greater portion of the territory in dispute is within the jurisdiction of the State of Mississippi, for the reason that it is within six leagues of the Mississippi shore, and not within three leagues of the Louisiana shore.

6th. By reason of the fact that the exact boundary line between the two States can not be ascertained without a survey, we agreed to submit no line to the commissioners appointed by the governor of Louisiana, but the commissioners of Mississippi suggested to them a friendly suit in the Supreme Court of the United States as the only method by which to fix the true boundary.

Respectfully submitted,

W. A. WHITE.
J. I. FORD.

October 1st, 1901.

STATE OF MISSISSIPPI, }
County of Hinds. }

This is to certify that the above and foregoing is a true and correct copy of an official document now on file in the office of the governor of the State of Mississippi.

Dated this 26th, day of August, 1904.

GEO. R. EDWARDS, JR.,
Private Secretary to the Governor of Mississippi.

(Endorsed:) Document Mississippi No. 79 offered by State of Mississippi August 27, 1904 Frank H. Mortimer, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905 James H. McKenney, clerk.

217 MISS. DOCUMENT NO. 80.

"Mississippi Boundary Commission.

On February 9th. 1901 I appointed the following named gentlemen as commissioners to confer with a like commission appointed the governor of Louisiana to consider the water boundary line tween the two States, and arrange for the easy location and identification of same by a proper system of buoys, towit:

Hon. J. I. Ford, Scranton, Miss.
Hon. E. J. Bowers, Bay St. Louis, Miss.
A. Keller, Bay St. Louis, Miss.
Hon. W. T. Howard, Biloxi, Miss.

This commission met at Biloxi and elected H. T. Howard, chairman, and J. T. Ford, secretary. Their report which is transmitted you, will acquaint you with the whole matter, and from which u will find that they suggest a friendly suit in the Supreme Court the United States as the best method to fix the true boundary bee en the two States.

I submit the matter for such legislation as in your judgment is t."

ATE OF MISSISSIPPI, }
County of Hinds. }

This is to certify that the above and foregoing is a true and cor- copy of that part of the governor's message to the legislature of State of Mississippi of 1902 relative to the Mississippi Boundary mmission, which message is now on file as an official document he office of the governor of the State of Mississippi.

Witness my signature this 26th day of August, 1904.

GEO. R. EDWARDS, JR.,
Private Secretary to the Governor of Mississippi.

Endorsed:) Document Mississippi No. 80 offered by State of sissippi Aug. 27, 1904. Frank H. Mortimer, commissioner. ce Supreme Court U. S. Filed Mar. 13 1905 James H. McKen- clerk.

2218 MISS. DOCUMENT No. 81.

Biennial Message of Gov. A. H. Longino to the Legislature of Mississippi.

WEDNESDAY, January 6th, 1904.

* * * * * * *

State Boundary Controversy.

I had the honor to bring to the attention of the legislature at its session in 1902 the question of the disputed boundary between Mississippi and Louisiana, wherein each State is claiming ownership of and jurisdiction over certain islands and waters in the gulf of Mexico. The legislature having taken no action looking to a settlement thereof, I took the matter up in person and tried in vain to effect an adjustment of said controversy with my ideas of the rights and merits of Mississippi's claim and interests in the premises, and I have now to say that since then the State of Louisiana, acting through its governor and attorney general, filed a bill against this State in the Supreme Court of the United States, styled: "The State of Louisiana, complainant, *vs.* The State of Mississippi, defendant," wherein the complainant seeks to have the disputed territory adjudged to be the property of that State and under the exclusive jurisdiction of its laws. The effect of such decree in favor of the complainant would, under the operations of the laws of the State of Louisiana, prohibit the citizens of Mississippi from taking fish and oysters from the waters in dispute. The said oyster reefs are to a very large extent the dependence for supply of fish and oysters to the people of Mississippi living on the southern border of the State, who are engaged in that particular line of industry. The property in controversy is of great value, extending perhaps into millions of dollars.

2219 Owing to the enormous consequences to the State, which are involved in the controversy, and because also of the multitudinous and complex duties already devolving upon the attorney general, rendering it impossible for that officer to give the necessary time, work and study which the importance of this case demands, it became imperative that assistant counsel should be employed therein. I secured therefore, Hon. Monroe McClurg, of Greenwood, Mississippi, and the firm of Dodds & Griffith, of Biloxi, Miss., to assist the attorney general in representing the State's interest in said case, and I recommend to your honorable body suitable recognition of their valuable services and that you appropriate for the payment of their fees respectively such liberal sums as your judgment approves.

The attorney general's report will acquaint you with the progress made in said cause to date.

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(Endorsed:) Mississippi Document No. 81. Filed Sept. 22, 1904. Wm. D. Bullard commissioner for the State of Mississippi. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, Clerk.

2229 U. S. Commission of Fish and Fisheries.

George M. Bowers, Commissioner.

Report on the Oyster Beds of Louisiana.

By H. F. Moore.

Extracted from U. S. Fish Commission Report for 1898, pages 45 to 100, plate 3.

Washington:
Government Printing Office.
1899.

* * * * * * *

Introduction.

WASHINGTON, D. C., June 29, 1898.

On May 6, 1897, the United States Fish Commission received a communication from Hon. Adolph Meyer, M. C., inclosing the following concurrent resolution of the legislature of Louisiana:

Be it resolved by the house of representatives of the State of Louisiana, and the senate concurring, That the United States Fish Commission be requested to investigate in the oyster-spawning season and report to this General Assembly before its next session the exact season of the oyster spawning in this State and all other facts respecting the same, and whether or not the present existing laws are not injurious to the oyster industry of this State.

S. P. HENRY,
Speaker of the House of Representatives.
R. H. SNYDER,
Lieutenant Governor and President of the Senate.
MURPHY J. FOSTER,
Governor of the State of Louisiana.

JOHN T. MICHEL,
Secretary of State.

21 Pursuant to this request, and in view of the importance of the Louisiana oyster industry, it was decided to undertake an investigation of the subject, and Dr. H. F. Moore, of this commission, was directed to visit Louisiana in August and September, 1897, for the purpose of making some preliminary inquiries, and the steamer

Fish Hawk, Lieut. Franklin Swift, U. S. N., commanding, was dispatched to the State in February, 1898, to conduct a more extensive examination of certain oyster grounds. The accompanying report, based on the investigations thus made, has been prepared by Dr. Moore, who accompanied the vessel and was charged with the consideration of the biological aspects of the work. It was the intention of Lieutenant Swift to write the report on the reconnaissance made by the Fish Hawk, but before he could do so he was detached from the commission and assigned to naval duty.

GEORGE M. BOWERS,
U. S. Commissioner of Fish and Fisheries.

Report on the Oyster Beds of Louisiana.

By H. F. Moore,
Assistant, United States Fish Commission.

Within recent years several investigations of Gulf coast oyster grounds have been made by the United States Fish Commission, but none of these related to the waters of Louisiana. Upon the receipt of the request from the General Assembly for information concerning the oyster-beds of that State, the writer was ordered to Louisiana for the purpose of determining certain facts relating to the question of close seasons, and to make an examination preliminary to a more careful and extended investigation by the steamer Fish Hawk later in the season. A period of about fifteen days in August and September was spent in the oyster regions of St. Bernard, Plaquemines, and Terrebonne parishes, and as a result it was decided to confine the contemplated survey to the St. Bernard region as offering better facilities for the character of work which it was desired to undertake. The Fish Hawk was not available until February 1, from which time until February 24, when she
2222 left in order to begin her regular work of shad-hatching, the field work was prosecuted vigorously and continuously, except when interrupted by stormy weather.

Owing to the shallowness of the water the Fish Hawk could not be used for active duty in the survey, and she was therefore anchored as close as possible to the oyster-beds and used as a base of operation for the launches, at first off the northern entrance to Grand pass, and afterwards, during the greater part of the work, off the mouth of Three-mile bayou. The work was often performed at a distance from the ship, and much time was unavoidably lost in running to and from the scene of the day's operations. Should a complete oyster survey of the region be attempted in the future, it could be much facilitated by employing several light-draft vessels, which could be worked into the marshes and used as quarters for the field parties on the launches.

It was originally intended to make a thorough and complete survey of the oyster-beds of St. Bernard parish similar to that which

as made by the Fish Hawk in Apalachicola bay, but this plan was abandoned when it was found that the time at the disposal of the party was to be so limited. Many of the stations established by the Coast Survey have been obliterated or washed away by the storms, and it would have required more time than was available for the entire work to erect and cut in the signals necessary to a proper survey. Contrary to expectations, it was found that the topography in general had not undergone many important changes since the survey upon which the Coast Survey charts were based, and the several points could be identified and located with sufficient accuracy to suit the purposes of a reconnaissance.

The plan finally adopted was to run lines of timed soundings from point to point, so as to cover the intervening waters by series of intersecting zigzags. As the lines were rarely over 2 miles in length, the position of any given sounding could be approximately determined by its time, the time of beginning and ending the line being noted, and the speed of the launch being nearly uniform on each series of soundings. Most of the important beds were also located by compass bearings, from charted points. The charted areas of the beds, as well as their positions, are but approximate; but it is believed that the aggregate is measurably near the truth, although individual beds might prove somewhat greater or less in extent than appeared from the hurried examination which it was possible to make. The soundings were made by means of the sounding pole devised and used by Lieutenant Swift in the survey of Apalachicola bay, and described in his report upon the oyster-beds of that vicinity. Owing to lack of time no effort was made to determine with exactness the number of oysters to the square yard, as is done in a regular survey, and the terms "dense," "scattering," and "very scattering" are relative in their application to this field only. Dense and scattering beds are such as can be worked with profit by means of tongs. "Very scattering" beds are shown on the chart with some ambiguity,—in a few places especially in the lagoons, denoting growth, which it hardly pays to work, sparsely distributed over the entire bottom; in other places, as in the northern part of West Karako bay, representing small beds more or less dense, distributed at irregular intervals, and in the text described as "scattered in patches," or in somewhat similar terms. Such beds can be worked with profit.

The investigation in St. Bernard parish was under the direction of Lieut. Franklin Swift, U. S. N., commanding the Fish Hawk. The hydrographic field work and the location of the oyster beds were carried on by Mate J. A. Smith, U. S. N., and by Mr. Eugene Smith, of the steamer Fish Hawk.

After the Fish Hawk concluded the reconnaissance in St. Bernard parish, the writer was instructed to make an examination of the oyster-grounds of Louisiana west of that region. In pursuance of the latter purpose, he left the ship at Bay St. Louis upon its departure for the north on February 25, and proceeded to several places in

Plaquemines parish, where boats were hired, and all the principal natural beds and planting-grounds were examined. At Grand isle, on Barrataria bay, a lugger was secured and an examination made of all the oyster-grounds in the vicinity, after which a cruise was made to the westward, under the guidance of men familiar
2224 with the region, as far as Morgan City, all of the oyster regions, with the exception of the upper waters of Terrebonne bay, being visited en route. No attempt was made to chart or locate even approximately the individual beds examined on this brief tour, but their general character, present condition and future prospects are reported upon in the following pages.

The writer acknowledges his indebtedness to Col. F. C. Zacharie, Hon. E. McCullom, Hon. Adolph Meyer, and Hon. S. P. Henry for valuable assistance and information and to Mr. F. F. Hansell for the use of his yacht in visiting the St. Bernard beds in August 1897.

The Natural Oyster-beds of St. Bernard Parish.

General description of the region.—The area embraced within the limits of the reconnaissance made by the Fish Hawk, and shown upon the chart accompanying this report, does not include all of the oyster-grounds within the parish of St. Barnard. Field work was pushed into the interior waters lying southwest of Indian Mound bay and Southwest pass, and known to the oystermen as Treasure bayou, Mussel bayou, Flat bay, etc., but the lack of a chart of this region approaching even approximate correctness has made it seem advisable to attempt to plot the oyster-beds found there, though they are described in general terms in the text. South of Drum bay, in which lie the southernmost of the charted beds, are extensive areas of good oysters stretching to the parish line at Mozambique point, but these were not examined owing to lack of time. We were informed that notwithstanding their extent and the good quality of the oysters they were not extensively worked, on account of their inaccessibility as compared with other beds of St. Bernard parish, and for this reason it was considered that, for the purposes of the investigation, it was not advisable to devote to their examination time which could be more profitably spent in the study of those beds which were in active use and which therefore presented problems of more immediate importance. In this connection incidental mention may be made of the gregariousness and the general lack of enterprise of the oystermen of this district, who, in the latter part of the season, often spent upward of two weeks in loading their
2225 boats in Three-mile bay rather than leave their fellows and familiar ground to sail 20 or 30 miles to the southward, where they claim they could secure their fares in three or four days.

The district covered by the field work extends from Mississippi sound on the north as far as Morgan harbor on the south, and from Chandeleur sound to the zone where the water becomes of such slight

salinity as to be fatal to oyster life. Within the limits of the reconnaissance this zone accords approximately with the meridian passing through Lake Borgne light-house in Mississippi sound the oysters extending a mile or two west of that limit, while in the marshes they are all east of the line. The area covered by the reconnaissance was about 200 square miles, comprising a large part of the "Louisiana marsh." The land is low, rarely rising more than 18 inches above the level of ordinary high water, but in a few cases shell-banks have been thrown up by wave-action, thus producing the maximum land elevations, in no case, perhaps more than 3 or 4 feet above tide. During storms the entire land area may be flooded, and in the disastrous hurricane of 1893 it was covered by from 8 to 12 feet of water. The soil is a stiff mud or blue clay, covered with a sparse growth of coarse grasses and scattered tufts of salicornia. Along the bayous there are clumps of mangrove bushes, but with the exception of several crab trees on Mudgrass island, there is probably not in the whole dreary expanse a plant reaching a height of 10 feet, nor is there a single human habitation.

The land constitutes a low-lying archipelago of irregular islands separated from one another by shallow bays, muddy lagoons, and tortuous bayous, the area of the water being somewhat greater than that of the land. The bayous are of two classes, rather broad, short, deep passes, like Nine-mile bayou, Three-mile bayou, and Deep pass, which serve as the main avenues of tidal flow to and from the interior bays, and long narrow water-courses which characteristically run lengthwise of the islands, as is seen in the cases of Door Point bayou, Dead Man bayou, etc. The bayous of the first class have generally a depth of from 18 to 42 feet, those of the second class from 5 to 12 feet, and all are more or less obstructed by bars across their mouths. The bottoms of the bayous are almost invariably composed of soft mud.

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The bays, with the exception of several of those opening into Chandeleur sound, communicate with the outer waters by narrow mouths. Their floors are comparatively level and, with one or two exceptions, are composed principally of soft mud, with scattered patches of hard mud and sand, usually so small in area as to be negligible in plotting the soundings. The depth of water is generally from 3 to 6 feet, although in some of the bays, particularly those to the eastward, there are channels through which a considerably greater depth can be carried.

The lagoons are very shallow, small-mouthed, blind bays, like Blind pass and Grecque bayou, with soft bottoms largely exposed as mud flats at low water.

Blind pass, Nine-mile bayou, and False Mouth bay.—Blind pass marks the western extension of the oyster in the marshes on the south side of Mississippi sound. It is a shallow lagoon communicating on the north with Mississippi sound, on the east by a narrow but deep cut, with Nine-mile bayou, while to the southward a tortuous bayou establishes communication with False-mouth bay. It

consists largely of a mud flat, exposed at low water, with oysters of rather inferior quality sparingly scattered over the bottom.

Nine-mile bayou is about two and a half miles long to its main entrance into False-mouth bay and has a width of from 100 to 300 yards. At its mouth there is a depth of about 18 feet, which rapidly shoals outwardly to 6½ or 7 feet. In the bayou the depth ranges from 17 to 39 feet, the average being about 24 feet. The bottom is soft, excepting that portion lying opposite the small island at the southern end, where hard mud was found. There are no oysters in this bayou.

False-mouth bay covers about 11.3 square miles. It connects with Mississippi sound by means of Nine-mile bayou, and to the eastward opens by a wide mouth into the passage between Raccoon and Mud-grass islands. The bottom is composed of hard mud of a somewhat clayey character, resembling that on the surrounding islands. The depth is almost uniform, in the northeastern part being from 3 to 3¾ feet and elsewhere from 4 to 5 feet. The density in the middle of February varied from 1.0048 to 1.0066 in the several parts of the bay, the temperature at the same time ranging between 16.5° C. (61.7° F.) and 19° C. (66.2° F.) The water is less saline than elsewhere in the marsh, owing to its proximity to the main sources of fresh water, the Pearl river and the discharge from Lake Pontchartrain.

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There are very few oysters in False-mouth bay, and those discovered by the reconnaissance were found fringing the three islands shown on the chart, as a scattering growth of single oysters of fine shape, round, deep, and about 6 inches long. The amount of young growth was small, a few oysters about 2 to 2½ inches long being found attached to the old ones, to clam shells and lying singly on the mud. A very small amount of spat was attached to the clam shells which fringe the northeast shore of the southernmost island. All of these oysters, both large and small, were extremely fat, but their flavor was insipid owing to the low salinity of the water. The oystermen state that the oysters are always fatter here than on the beds to the eastward, and that they are kept "cleaned up" by the boats which aim to carry the best oysters to the New Orleans markets. It is the custom of the oystermen to paddle around the shores when the water is clear and smooth and pick up with nippers the oysters which can be clearly seen. In December, 1897, a small bed was found in the northern part of the bay, but a number of boats went to work upon it and within a few days it was reduced to a state of practical extinction and we were unable to find any remnant of it.

An examination of the bottom by means of the dredge and tangles showed it to be remarkably clean and free from debris of all kinds. A few crabs of small size, several species of lamellibranchs, and numerous worms were the only living forms found on the hard bottom. Enemies are probably extremely rare, although it is possible that the drum-fish might cause damage upon beds of planted oysters. The conch was not found at all, although it is not uncom-

mon in the neighboring waters of Three-mile and Nine-mile bays.
The boring clam (martesia) is common, but it is less abun-
2228 dant than in the more saline waters, and in any case it would not prove detrimental to the oyster.

It seems probable that the scarcity of oysters in False-mouth bay is due in a large part to the lack of suitable places of attachment for the spat, and if this be so there is but little doubt that productive beds might be established by planting shells, together with a sufficient number of brood oysters to furnish fry. We found here the largest area of firm bottom discovered any where within the limits of the reconnaissance. In most other parts of the district the hard bottom is distributed in small patches, lying like islands in the midst of soft mud, but in False-mouth bay the shells and seed could be deposited almost anywhere without danger of becoming engulfed. The amount of oyster food is larger than almost anywhere else in the district the average number of diatoms in each liter of water 1 foot above the bottom being about 22,000. The extreme fatness of the oysters is also ample evidence of the abundance of food, although, of course, the amount available for each individual would become less if planting were extensively undertaken. The chief drawback to planting lies in the low salinity, which, as before stated, detracts from the flavor of the oyster, and if not corrected during the spawning season would also militate against the production of young. Without doubt, however, there is an increase in the density during the late spring and summer when fry abound. Material to serve as ultch or collectors for the attachment of the young oysters might e obtained from the island in the extreme southern part of the bay, here the shore is covered by a mass of clam shells, more or less nely broken up. The smaller particles of shells are too small for se, as the action of the storm waves in the shoal waters of the bay ould tend to carry them away; but many of the shells are entire, nd these, together with the larger fragments, should make excelnt cultch.

Nine-mile bay.—This body of water lies east of Pirate point and st and northwest of Raccoon island. It is continuous with Threele bay to the eastward, and in its northwest corner it communies with Nine-mile bayou by a channel in which the depth varies m 10 to 21 feet.

North of Nine-mile bay and in communication with it lies
29 South bayou, a lagoon-like body of water, very shoal and with no oyster-beds. The depth of water in the bay is between 4 and et, and the bottom is composed principally of soft mud. The sity on February 14 was about 1.0060, and the temperature at the e time was about 17° C. (62.6° F.) The oysters are obtained ncipally in the eastern part, between Raccoon island and the ning to South bayou, being generally single, much scattered, and ather good shapes. These beds, like those in Three-mile bay, much worked, and late in the season are composed principally ullings. There is a small bed of scattered oysters just off the

southeast point of Pirate point, which appears to have been established, or at least largely sustained, by artificial means as a result of bedding oysters for "fattening" purposes, the culled young growth and shells being carefully returned to the water to serve as seed and cultch, the product of which becomes available for market in subsequent seasons. This place is claimed by oystermen to possess remarkable properties as a fattening-ground, but as the oysters are brought from the denser waters to the eastward and exhibit their improvement within 24 hours from the time of bedding it is probable that the process is one of bloating rather than of fattening.

— small bed of oysters is found in the southeastern branch of Nine-mile bayou, about the middle of the second reach from Nine-mile bay, on the west side of the channel. It is from 30 to 50 yards long, and extends to about the middle of the bayou. It contains some single oysters of good shape and quality and many dead shells.

Three-mile bay.—Three Mile bay is the most important oyster region in St. Bernard parish, not because its beds are more extensive, than those of other parts of the Louisiana marsh, but because of its accessibility from New Orleans and the cities on Mississippi sound. Nearly all of the boats enter the marsh at Three Mile bayou, whatever may be their ultimate destination, and it is to this place also that oyster freighters resort to secure their fares from the luggers and other craft engaged in the active work of oystering.

Three-mile bay lies between Three-mile bayou (by which it communicates with Mississippi sound) on the north and Raccoon
2230 island on the south, its eastern and western limits being Nigger point and Shell point, respectively. It covers an area of about 7.3 square miles. In Three-mile bayou the depth of water reaches a maximum of about 40 feet, the channel gradually shoaling as it enters the bay, over the greater part of which the depth ranges from 4 to 6 feet. In some places a depth of 3 feet or less is to be found, but in general such shoal spots are less common than in West Karako bay. The average density of water during February was about 1.0065, and the temperature was about 17° C. (62.6° F.) The bottom is composed of mud of varying degrees of softness. There are a few small areas of hard bottom, but these are principally upon old oyster-reefs, and are now used by the oystermen as beds on which to deposit their catch pending the completion of their cargoes. The softest bottom is found in the southern part of the bay near Raccoon island, where the mud is entirely too soft to utilize for planting, but places in the center of the bay might be used, although on account of the danger of suffociation in the mud the oysters could not be planted very thickly. The amount of oyster food contained in the water is large, and, especially in the northern part of the bay near the inlet, the currents are comparatively strong. Originally, we were informed, the natural oyster-beds in this bay were dense and extensive, but as a result of the persistent "working" to which they have been subjected during the past few years the dense,

ell-defined reefs have entirely disappeared, and have been replaced
a scattering growth of more general distribution. The clusters
e kept broken up by the process of culling, with the result that
e separated oysters show considerable improvement in shape, con-
ion, and flavor over their original state. They are usually either
gle or in clusters of from two to four; they are rather elongate,
derately fat, of fair flavor, and comparatively free from extra-
us growths, such as mussels and algæ. On the very soft mud
r Raccoon island, in the southern part of the bay, the oysters
extremely long and in clusters overgrown with mussels.
Early in the season and until about January or February there
rather large proportion of marketable oysters, but later these
become caught up, leaving practically nothing except dead
l shells, spat and young growth. This was essentially the
condition of the beds at the time of our examination, and
r the middle of February it took about three times as long to
h a barrel of oysters as it did early in the season, and in the
r part of the month most of the fleet which had been oystering
e were forced to move farther into the interior. By the time
next season opens many of the young oysters which have been
d off will have reached a suitable size for market, and the
idence of one year thus ensures the plentitude of the next.
e it not for the moderate care with which the oysters are culled
he young ones and the dead shells returned to the beds whence
were taken, it is impossible that these beds should have so long
ined the demands made upon them. Were it the custom here,
is in certain other parts of the State, to carry off the young for
the phenomenon of the annual recuperation of beds previously
usted of their marketable stock would not be witnessed.
t all of the boats cull their catch as carefully as they should.
which carry their oysters to New Orleans and other markets
le as "shell stock," from motives of self-interest exercise due
for imperfectly cleaned and separated oysters bring a lower
than those which are well culled and free from extraneous
hs of barnacles, mussels and young oysters. The chief diffi-
is with those boats which catch oysters for the canneries, located
pally without the State, where the presence of small oysters is
jectionable.
s reported that dredges have worked in Three Mile bay, but
nditions are such that it is probable that this practice was
extensive.
t Karako bay.—West Karako bay embraces about 9 square
included between Crooked island and the land masses em-
g Johnson bay and its connections, and between the Raccoon
s and Shell island. Its greatest extent is east and west. The
resembles that of Three Mile bay, being composed princi-
f soft mud with patches of hard mud at wide intervals. The
depth over most of the bay ranges from 4 to 6 feet, but there
is a maximum depth of 8½ feet in the channel running from
Dead Man island to the cut north of Shell island, and there

are also a number of shoal spots upon which the depth is less than 3 feet, these shoals being usually covered with oysters. The average density of the water is about 1.0065.

The oyster beds in this bay are more extensive that in Three Mile bay, and there are also several well-defined reefs which can be characterized as dense. One of these lies south of Dead Man island and two others lie west of Shell island, about opposite its northern and southern points, respectively. The oysters on these reefs are of moderate size and in clusters of from 6 to 20. North, northeast and east of Dead Man island, as far as the mouth of Picnic bayou, are patches of scattered oysters in clusters. No attempt is made to indicate either their size or location on the chart, although they are shown in toto over the area mentioned. There are other beds of scattered growth, the limits of which are better defined, and these are plotted with some approximation to correctness. All of these oysters are of the same general character, being in clusters of from 6 to 20, rather thin-shelled and elongate, approaching in general the Raccoon type, and in some parts of the bay they appear to be more or less imbedded in the mud. They are to some extent clothed with brown alga, especially in that part of the bay lying east of Dead Man island, and many of the clusters bear a few mussels and barnacles. The amount of young growth is large. At the time of the examination most of these oysters were but moderately fat, and some of them were quite poor. They show many of the features exhibited by Virginia beds, and their quality would doubtless be improved by more extensive working, provided that proper culling methods were practiced. West Karako bay is resorted to by a number of boats, especially by those engaged in taking oysters for the canneries, and late in the season, after the beds of Three Mile bay become depleted of their more desirable oysters, some of the oystermen engaged in the "shell trade" also work there.

Johnson bay and Johnson bayou.—Johnson bayou is about 2 miles long, communicating at its southern end with an intricate series of bays and lagoons lying north of West Karako bay. At the entrance from Mississippi sound the depth of water is about 6 feet, but inside it deepens to 12 or 14 feet towards the west bank. The bottom is composed of very soft mud. It contains a very scattered growth of oysters throughout its length.

2233

Johnson bay is the easternmost and largest of the several bodies of water communicating with the bayou. It contains about 13 square miles. The bottom is principally soft mud, and the density was about 1.0062 during the first week in February.

There is a scattering growth of good oysters all around the shores, and a few also occur in the middle, where there is also an old, exhausted reef, the crest of which is dry at low water. It is about 150 yards long and 100 yards wide, and it constitutes the most extensive area of hard bottom in the bay. It could be utilized to advantage for planting. At the time when this bay was examined there were seven schooners oystering there, the captain of one of

hich stated that the oysters were much scarcer than formerly and at it took him from 10 to 17 days to get a load of 120 barrels. e oysters are gathered by small boats, of which each schooner s several, which go into the small bayous and alongshore, where y pick them up in the shoal water.

In the southern part of the irregular bays west of Johnson bay re is a bed of scattered oysters on the soft mud in a depth of from o 3 feet. They are generally in clusters of from 3 to 15, mostly nedium size, with a good growth of young oysters and some spat, more or less overgrown with mussels. It is stated that there is attering growth all over the irregular lagoons to the northward. density on the bed examined was 1.0066.

ast Karako bay, Northwest Jack Williams bay, and Picnic bay.—Karako bay lies between Shell island and Deep pass, the former rating it from West Karako bay and the latter placing it in munication with the waters of Chandeleur sound. It embraces t 7.4 square miles, its greatest extent being in a north-and- direction. In the northern half of the bay the depth varies 2½ to 4 feet, the bottom being composed principally of soft mud, often mixed with sand. Along the southern side of the island in the northern part, there is considerable hard mud and sand interspersed with soft mud, and also a few patches, or less limited in extent, in other places. In the southern half e bay the water averages somewhat greater in depth, being 4 to 7 feet. A channel runs from the northern point of Shell towards the mouth of Deep pass, the water reaching a maxi- depth of 16 feet near the point projecting into the southern the bay, and there is also some deep water near the upper ce to Deep pass. In this part of the bay the bottom is com- of soft mud almost exclusively. The amount of oyster food is reat.

East Karako bay there are about eight oyster reefs which are awash or exposed on their crests at low water. On and near rests the bottom is invariably hard, being composed of a mac- of sand and ground-up clam and oyster shells, closely com- with entire shells lying upon the surface. As a rule these are long and narrow in their exposed portions.

the crests of the reefs there is usually a scattering growth of oysters about 2 to 2½ inches long, together with a few large d considerable quantities of spat are attached to the dead which from the combined action of the sun and waves are bright and clean and admirably suited to serve as cultch. ung-growth oysters are usually single or in small clusters, well-shaped and flinty-shelled. Away from the crests of the bottom becomes gradually softer, finally merging with the ding mud, and as the bottom changes there is also seen a tion in the characters of the oysters. They occur in larger usually containing from 6 to 10 adult individuals; the se their flint-like appearance and become dark brown

and more or less overgrown by a dark-brown sea-weed, which appears to be especially abundant in the southern part of the bay. These oysters are invariably flat, thin-shelled, and the largest of them are usually not more than 5 inches long. Excepting a bed off the long point on the eastern side, all of the oysters in East Karako bay are inferior in fatness and flavor and are rarely taken by the oystermen. They mark the extreme condition toward which those in West Karako bay indicate a tendency,
2235 and no doubt represent the primitive state of most of the oyster beds of this region. If these beds were worked, there would doubtless result an improvement in the quality of the oysters, due to the breaking up of the clusters and the thinning out and better distribution of the individuals. It would be distinctly advantageous if many of these oysters could be gathered as seed and planted elsewhere, under restrictions advocated in the recommendations attached to this report, thus producing not only an improvement in the character of the plants, but also in the enviro-ment of those left upon the natural beds.

There are several places in the bay where the growth is quite dense, and over considerable areas there is an average of from 6 to 8 clusters of from 3 to 8 adult oysters each per square yard. Surrounding these, and more or less connecting one dense area with another, there are scattered clusters lying on the soft mud. The comparatively few oysters taken from the beds in this region are used exclusively for steaming, and the alga, which often grows in luxuriant tufts on the shells, detracts from the value of the oysters for this purpose, as it is extremely difficult to prevent its filaments from becoming entangled with the "meats."

Northwest Jack Williams bay is a northern extension of East Karako bay, and it bears the same general characteristics as are found in the northern part of the latter. Its density is about 1.0110, the depth of water is from 2½ to 3½ feet, and the bottom is composed largely of soft mud. Two beds of oysters were found—one in the center of the bay, where there are scattered clusters on the soft mud, and another around a shell island in the eastern part, the latter resembling the exposed reefs described above. There is also a scattered growth along the southwest shore.

Picnic bay extends westward from the bay just described, and at the strait connecting the two is a small bed of oysters which extends for some distance into the southern part of Drum bayou. There are also a few oysters scattered all over the bay, the mud there being very soft, with a number of dead shells imbedded beneath the surface. They are long, narrow, and sharp-edged, and grow in clusters, bearing mussels, barnacles and tunicates. The shells fre-
2236 quently contain dark vesicles filled with black muc. The density in this bay was several degrees lower than in the neighboring water, being but 1.0070. The depth rarely exceeds 2½ feet.

Drum bayou and Turkey bayou.—Drum bayou is a long, narrow

channel leading from Mississippi sound southward to Picnic and Northwest Jack Williams bays, and giving off a branch westward to Turkey bay. The depth of water ranges from 5 to 10 feet, with about 3 feet on the bar across the mouth. The density is about 1.0105 and the bottom is mostly soft mud. There are some large single oysters in the channel, together with many dead shells and some young growth, and at low water occasional large clusters of raccoon oysters are exposed along the banks. The oysters in the channel are rather long and narrow but at the time of examination were in fair condition and of good flavor. The creek leading into Turkey bayou possesses the same general features as the main stream, but has a depth of from 1 to 3 feet. It contains oysters of fair quality, both single and in clusters of from 3 to 10, some of them being very large.

In Turkey bay, the large lagoon discharging through Turkey bayou, the depth of water varies from 2 to 6 feet, the bottom being generally soft and muddy, and the density about 1.0076. There are three areas of scattered oysters, one lying in the channel between the eastern shore and a small island, and another being about a quarter of a mile from the entrance to Turkey bayou, and the third beginning opposite the channel opening to the westward and extending southward for about three-eighths of a mile. The latter bed is the largest of the three, and near the mouth of the creek there are some oysters, of good size and quality. This creek also contains a scattered growth of oysters, which becomes dense in the branch running to the northward, where the oysters are large and fine.

Grand pass, Bayou Grecque, and Shrimp bay.—Grand pass (Oyster bay) has an area of about 1.8 square miles. It opens on the north into Mississippi sound and on the southeast toward Chandeleur sound. The depth is generally between 2½ and 5 feet, but deeper water occurs on the west side of the small island in the northern part of the bay, where soundings of from 12 to 16 feet were found. Excepting in the vicinity of the oyster-reefs and in places along the shore, the bottom is composed of deep soft mud. The density during the first week in February averaged about 1.0100 and the temperature was about 10.5° C. (50.9° F.).

There are eight oyster-reefs in the eastern part of this bay, several of them being partially exposed at low water. A scattering growth of marketable oysters also occurs in the shoal water along the eastern shore, and on the middle third of the western shore we found a corresponding development of young growth. In the latter locality every shell or other hard body in the water has young oysters attached to it in clusters, and there is no doubt but that by exposing suitable cultch around the edge of the marshes, as is done at Bayou Cook and Whale bay, important and productive spatting grounds could be established and a supply of seed thereby secured which would be independent of the natural beds. It is stated that considerable quantities of oysters were to be found formerly in the

center of the bay, but that they had been exterminated by the dredges which operated there. At present there are practically no oysters and very few shells to be found away from the shores and reefs, but there is, of course, no indication of the means by which they were caught up if they ever existed in other parts.

Oystering here appears to be confined to the vicinity of the exposed reefs and the shoal water along the eastern shore. The oysters at the time of our examination were rather poor in shape, of moderate size, and inferior in flavor and fatness. They are usually found in small clusters. The conch is the most troublesome enemy with which the oysters have to contend in this vicinity. It is rather more common and destructive here than in the waters farther removed from Mississippi and Chandeleur sounds.

In the extreme southern part of the bay there is a very scattering growth and in the mouth of Jack Williams bayou there occurs a bar of raccoon oysters, partially exposed at low water. Raccoon oysters also occur along the shores between tide marks throughout the length of the bayou and in the small, muddy ditches opening into it, and in the channel are scattered clusters of oysters which are fairly fat and superior in flavor to those which are found on the beds of Grand pass.

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From the southwest part of Grand pass a tortuous, narrow, and in some places deep, bayou, leads south to a series of shoal lagoons, the entire chain constituting Grecque bayou. The lagoons have an average depth of about a foot, with a few holes 2 to 3 feet deep in places, and extensive mud flats around the margins. The bottom is usually very soft. The density varies from 1.0107 in the ponds near the entrance to 1.0119 in those at the end of the chain, the flow of water through the long, narrow communication with Grand pass being apparently insufficient to compensate for the increased evaporation on the shallow mud-flats. Over the greater part of these lagoons there is a very scattering growth of large and rather good oysters on the mud, and there is also a scattering fringe of raccoon oysters on the edge of the marsh. The oysters in Bayou Grecque are taken by small boats and carried to the schooners in Grand pass.

Shrimp bay and Southeast Jack Williams bay.—Shrimp bay lies southeast of Grand pass, with which it has direct communication by means of the upper part of Jack Williams bayou. Its depth varies from 1 foot in the northern and eastern parts to about 4 feet at the southern end, where it opens into Southeast Jack Williams bay, together with which it has an area of 1.7 square miles. Its density on February 3 was 1.0096. This bay contains five oyster-reefs, exposed at low water, with a scattered growth of oysters surrounding each. Near the reefs the bottom is hard from the accumulation of ground-up shells and sand, but elsewhere it is soft, and in the northern half of the bay with a hard substratum of dead shells about a foot beneath the surface. This portion of the bay appears to have been at one time an extensive oyster bed, which has been largely

destroyed by an accumulation of mud thrown down, some of the oystermen claim, by the great storm of 1893, and the reefs
229 which have already been mentioned, and several patches of oysters along the northeast shore, are now all that remain. There are also oysters in the bight on the eastern side of the bay, scattered more or less sparsely over the mud-flats, and near the small islands forming an exposed bar.

Upon the reefs the oysters are small and of the clustered raccoon type, but in the slightly deeper waters surrounding them there are some single oysters of good shape, but not very fat. In Southeast Jack Williams bay, which consists of a larger western and a smaller eastern arm, there are very few oysters, although the presence of shells beneath the surface of the mud indicates the submergence of beds formerly existing there. In the eastern branch there are a few shells lying on the surface of the mud, and in the lagoon at its southern end there are raccoon oysters along the banks and a few clusters in the channel in about 5 feet of water.

In the bay the depth is from 2 to 3 feet, the bottom being composed of soft mud. The density in the eastern arm was 1.0107 and in the western 1.0094.

Cranetown bay.—This bay which lies between West Karako bay and Southwest pass, has an area of 2.7 square miles, and a depth of between 3 to 6 feet, except near the mouth of Elephant pass, a broad bayou having a maximum depth of 30 feet, by which it communicates with Chandeleur sound. The bottom over most of the northern and eastern parts of the bay consists of soft mud, except upon and near the exposed crests of the reefs, but toward the middle of the west shore there is a considerable area of hard mud and sand. Being in such intimate connection with the outer waters via Deep pass and Elephant pass it is not surprising to find that the water here is denser than on most of the other oyster-beds of St. Bernard parish, ranging from 1.0139 to 1.0163. The amount of oyster food, as measured by the number of diatoms, is small. The currents are rather strong.

In the northern part there are several dense beds of oysters, which have their crests bare or awash at low water. Surrounding these, as well as on the west side, there is a scattering growth of oysters in clusters. In general character these beds resemble those of East Karako bay, the oysters being inferior both in shape and
230 flavor. Near the crests of the reefs there is a considerable quantity of young oysters in small clusters attached to dead clam and oyster shells.

On the northeast shore, in the small bay between Deep pass and Elephant pass, there is a bed of scattering oysters in small clusters. These are of fair size and fatness, and in general somewhat superior to the other oysters in the vicinity. A scattering growth of rather large oysters and many dead shells are found in the mouth of the bayou opening into the southwestern part of the bay. These are the fattest and best oysters in the vicinity.

Kerchimbo bay lies west of Cranetown bay, with which it communicates by the bayou just mentioned. It opens southward into Southwest pass, westward by an artificial cut into East Karako bay, and northward into the same bay by a bayou containing a few good-sized oysters and many dead shells. The depth of water is about 3½ feet, excepting near its upper end, where there are barely 2½ feet in the channel. It contains several old reefs, composed of dead shells and a scattering growth of rather poor oysters of medium size. According to the testimony of the oystermen there are good oysters scattered all over Kerchimbo bay, but the reconnaissance did not discover them.

Southwest pass.—This is a long, narrow body of water stretching from Cranetown and Kerchimbo bays on the northeast to the entrance to Drum bay on the southwest. It is about 9 miles long, and its width varies from ½ to 1¼ miles, the average being about ¾ mile. The area is about 7.9 square miles, and the depth is generally between 3 and 4 feet, although deeper water is found near the island in the center and some of the oyster-beds are in a depth of less than 2½ feet. There is considerable hard bottom, and in the southern two-thirds hard mud is the predominating characteristic. The density is somewhat greater in the northern part of the bay, where it averages about 1.0120 as compared with an average of 1.0085 in the southern part, this difference appearing to be due to the closer communication with the exterior waters in the north and with the interior bays and bayous, by way of Catfish pass, in the south. The water contains a fair amount of oyster food, more than Drum bay but less than either East Karako or Indian Mound bays,
2241 which lie to the north and west, respectively. There are good marketable oysters distributed throughout practically the entire length of Southwest pass. In most cases the growth is scattering, but north of the island, near the center of the bay, is a reef on which there is a dense growth of small oysters in cluster, together with a few good ones of medium size and some dead shells. This appears to be an old reef, from which the marketable oysters have been nearly all removed, but its condition is such that it will again be productive within a year or two. There is a scattering growth of oysters, in clusters of from 3 to 5, extending eastward from the denser portions of the bed.

A scattering growth also occurs near the shores of the island, and just south of it there are small patches distributed over the bottom, none of them being extensive enough to be called a bed, but constituting in the aggregate quite a large body of oysters. In the southern half of the pass there is a growth along shore on both sides of the channel, where the oysters are in clusters, much scattered, and all of fair quality. These beds appear to be rather extensively worked, and it is said that large quantities of oysters have been taken from there to the markets and that prior to the Atchafalaya crevasse in 1890 they had been almost exterminated by excessive tonging.

Drum bay.—Drum bay lies southeast of Southwest pass, with which it communicates by a broad pass at the western end. Including the waters as far east as Keelboat pass, the bay embraces about 12 square miles. North of Drum bay, and separated from it by a long, irregular island, there are two shallow bays, having together an area of about 1.7 square miles. The water in Drum bay is from 3½ to 6 feet, deep, the general depth being greater to the eastward, where, between the two islands lying northwest of Keelboat pass, there are 19 feet of water in one place. In the composition of the bottom hard mud predominates, but it is interspersed with areas of soft mud. The density varies from 1.0101 near the western pass to about 1.0150 in the eastern part, near Keelboat pass. The amount of oyster food, as determined by an examination of the water, appears to be small.

There are oysters scattered all over this bay as far as the entrance to Chimney bay. There is one very dense bed about ½ mile 2212 long and ¼ mile wide, lying near the center of the bay, and northwest of it lies a smaller reef, where the oysters are equally dense. Upon these beds the oysters are in clusters of from 3 to 10, of the raccoon type, poor in shape, condition and flavor. These reefs are not worked and there are about 18 inches of water on their crests at low tide. There is a scattering growth of oysters over a large part of the bay to the westward of the reefs just described, especially along the shores, and lying across the narrowest part is a reef of clustered oysters of fair quality. The best oysters, so far as flavor and condition are concerned, are found on a small bed northeast of the entrance to Chimney bay, but the growth there is very scattered and the bed is apparently nearly exhausted.

A dry shell reef lying north of this bed is now extinct as an oyster-ground, being composed entirely of dead shells, and it — stated that a bed of excellent oysters formerly existed between the two islands to the eastward, but that it was exterminated a number of years ago by tonging. No indication of it now remains.

In Julius pass, in some parts of Scow pass, and in Chimney bay there are, according to the statements of the oystermen, a few scattering oysters, but except the former these waters were not examined. There is a scattering growth in the two bays north of Drum bay, where the water is very shoal and the bottom muddy. The amount of young growth in Drum bay is fair. The clusters are overgrown to a slight extent with algæ, barnacles and mussels.

California bay.—In the head of California bay the depth varies from 3 to 5 feet and the bottom is composed almost entirely of hard shell. Excepting at the mouth of Dead Man bayou, there are no oysters, but several beds of dead shells were found. At the mouth of the bayou there is a scattering growth of fine, large, single oysters of excellent flavor and fatness. Formerly such oysters were found throughout the bayou and we were informed that in the winter of 1896–97 about 2,000 barrels were carried away from this place, and

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our soundings and examination showed that practically none are left.

Fox bay contains a few scattering oysters near its eastern end, and there is a small bed in Redfish bend near Elephant pass.

2243 Indian Mound bay.—This is the largest body of water in the Louisiana marsh, and it contains more good, marketable oysters than any other of the bays within the limits of this reconnaissance. It lies between Crooked island and Catfish pass, and between Mudgrass island and the long island forming the western side of Southwest pass. Its area is about 21 square miles and its depth averages about 4 feet and ranges between 3 and 5 feet. Its density is least in the northwestern part and greatest in the southern part, as may be seen from an inspection of the chart; the average for the entire bay was about 1.0070 somewhat greater than in West Karako bay and less than in either East Karako bay or Southwest pass, with all of which it is in communication. The amount of oyster food in the water is large.

Practically the entire shore of this bay is fringed with oyster-beds, and there is besides a scattering growth around the islands in the middle. In the northeastern part, between Crooked island and Mudgrass island, there is a dense bed about ¾ mile long by ⅜ mile wide. The oysters on this bed are of good size, single and in clusters, and quite fat, although the flavor at the time of examination was poor, owing to the low salinity of the water. In the northeast corner of Indian Mound bay, there is another bed of dense growth extending in a northeast and southwest direction for about 1½ miles, with a maximum width of about ⅜ mile, and running off westward into a scattered growth of considerable extent. This bed constitutes the largest single body of good oysters in the region covered by the reconnaissance. They grow principally on the mud bottom, in clusters of from 3 to 10, their upper valves being dark with broad coriaceous edges, which usually indicate rapid growth, the lower valves being flinty and sharp-edged. Notwithstanding the denseness of this bed, the oysters are generally fat and in good order, and the flavor is excellent. There is some growth of alga on the clusters here, but it is much less luxuriant than on the beds of Karako bay. Taking into consideration the abundance and character of the oysters on this bed, it is but little frequented by the oystermen, not more than two or three vessels being seen upon it at any time during our visit.

2244 South of this bed is another dense body of oysters of somewhat similar character, but smaller in extent. On both beds there is an abundance of young growth and spat.

Near the middle of the northern part of the bay lies another dense bed, fringing a long, narrow reef, exposed at low water. The oysters here are mostly in clusters and covered with a considerable growth of alga, mussels, and barnacles. Most of the other oysters in this bay are more or less scattering, but in the extreme southern part, just north of Catfish pass, there is a dense bed of good oysters

urrounded by a considerable area of more scattered growth. Sev-
ral vessels were oystering here, and a considerable quantity of
ysters is caught late in the season, after the beds of Three-mile
ay and vicinity have been somewhat exhausted.

North and west sides of Mudgrass island.—These shores are
rgely composed of very soft, deep mud, a condition which has a
ry palpable effect upon the character of many of the oysters,
hich assume an extremely narrow, elongated form, and grow in
verted pyramidal bunches, the lower members of which are im-
rsed in the mud. On the north shore there are three areas of
ise growth. Two of them are situated near the northwestern
nt of the island, on moderately hard mud, the oysters being
ge and single or in small clusters, with an abundance of spat
ched. The third bed lies in a deep bay near the western end of
north shore, close to the point the oysters being of fair shape
quality, but on the soft bottom which constitutes by far the
ter part of the bed they are long, narrow, and sharp-edged as
ribed above.

ear the middle of the west side of the island, lying in a cove, is
nse bed of rather good, large oysters on hard bottom. There
few barnacles here, but mussels are abundant. The rest of the
rs on the west side of the island are of the kind described as
cteristic of the soft bottom.

easure bay, Mussel bayou, and vicinity.—The waters included
r this heading, except a portion of Treasure bay, are not shown
upon the accompanying chart, inasmuch as a proper survey
has never been made. They embrace an intricate system of
shallow bays, and bayous lying southwest of Indian Mound
The bottom is almost everywhere composed of a very soft,
nud, and the density of the water is low. The oysters are
y long, narrow, clustered, and rather poor in condition and
The shells are covered with great clusters of large mussels
ne barnacles, the growth of the former being more luxuriant
any other place in the parish of St. Bernard. Immediately
f Dutchman pass there is a rather dense bed of oysters lying
ht behind a small island. Upon the denser parts of this bed
ters are rather small and are in clusters, but near the edges,
leeper water, there is a scattering growth of single oysters of
t shape and flavor and very fat. A limited amount of
growth is found upon these single oysters, but the denser
near shore is well covered with spat. The bottom in the
of this bed is composed of hard mud.

sippi sound.—There are probably beds of oysters scattered
there on the shoals throughout such parts of Mississippi
fall within the limits of St. Bernard parish, but with the
of those near the entrance to Lake Borgne and in the
f Isle à Pitre they are rarely or never worked by the oyster-
were not investigated by the Fish Hawk. Scattered
ver the whole stretch between Lake Borgne light and St.

Joseph island, but as they lie within the limits of the State of Mississippi they are not represented on the chart. In the deep waters lying between Lake Borgne light and Half-moon island many small beds of oysters are found in depths of from 7 to 25 feet, most of them being in less than 15 feet. These beds, being small and numerous, could not be definitely located without the consumption of more time than was at our disposal, and they are therefore indicated only in the most general way on the accompanying chart. Upon most of these the growth was a scattering one, but there was one bed lying in 8 to 10 feet of water which was quite dense. There is another dense bed lying on the northeast side of Half-moon island, close inshore and in a depth of from 3 to 7 feet, where all of
2246 the oysters were small, apparently the result of last year's spatting, and in dense clusters. They will probably be fit for use in the canneries next season, but unless broken up and transplanted they will never be suitable for the "shell trade." This is evidently an old bed recently rejuvenated.

About two miles east of Half Moon island lies a bed known as Grand bank. It is in from 9 to 13 feet of water and extends about north and south for about 1¼ miles, with an average width of about ⅜ mile. The oysters here are in bunches, rather scattering and of small size. It is stated that this bed was formerly very productive but that it has been ruined by steam dredges.

On the south side of Half Moon island, there is a scattering growth beginning near shore and extending out for a distance of about a mile. The oysters here are not uniformly distributed, but occur in patches usually of small size, although there is one large bed, triangular in shape and measuring about ½ mile in base and altitude.

South of Grassy island is a circular patch of scattering growth about ½ mile in diameter. About ⅜ mile southwest of the same island lies a smaller but somewhat denser bed.

A dense bed circular in shape and about ½ mile in diameter, occurs southwest of Round island, in about 6½ to 7 feet of water, and from the southwest side of the island a very scattering growth extends for about ½ mile, where it merges with a well-defined bed.

Off the north point of Le Petit Pass island is a bed of scattering oysters, and on the east side there is another bed, a portion of which is covered by a dense growth. About midway between Le Petit pass and Nine Mile bayou there lies a crescentic bed, beginning ¼ mile from the shore and stretching in a general northeast direction for about 1½ miles. Upon all of these beds the oysters are poor in size, shape and flavor, being in clusters of the raccoon type, and fit only for use in the canneries. At the time that these beds were visited there were a number of vessels working upon them with tongs, and between Half Moon island and Lake Borgne a steam dredge was engaged in scraping the bottom. The oystermen claim that the dredges have caused much harm in the vicinity. The water here is always comparatively fresh, owing to the discharge

from the Pearl river and Lake Pontchartrain, and apparently
2247 the oysters are sometimes killed by the low salinity, an explanation which would account for the existence of beds composed entirely of young growth on old, dead shells. In the latter part of February the average density of the water north of Half Moon island was 1.0012, and south of the island is was 1.0028. This was without doubt lower than normal, as the readings were taken immediately after a period of heavy rainfall. It is doubtful if the oysters could withstand such a low density for any considerable period and they probably do so for a limited time only by tightly closing their shells against the admission of the objectionably fresh water. It was noticed that certain marine animals, notably species of worms, were either dead or dying on the beds of Half Moon island.

There is a small bed of oysters just at the mouth of Turkey bayou, and a considerably larger bed, now almost exhausted, lies about ½ mile offshore, midway between Drum bayou and Grand pass.

Lying south and southwest of South Shell bank and stretching as far as the north of Grand pass there is an extensive oyster bed known as Cabbage reef. It receives its name from the abundance of the seaweed ulva, known to fishermen as "sea cabbage." The growth on this bed is very scattering and it appears to be rarely worked by the oystermen, although formerly it was an important oyster ground. It is stated that the oysters here were nearly exterminated by the conchs and that most of those not so destroyed were covered with mud and sand during the great storm of 1893. Practically continuous with this bed there is a moderately dense growth skirting the north shore of Isle à Pitre and extending more or less into the bayous, as far as the edge of the deep water lying to the westward of Deep-water point. Most of these oysters, both along shore and on Cabbage reef, are of moderate size and in clusters of from 5 to 5. There are but few mussels or barnacles, but there was in February a moderate growth of seaweed, which is said to become more extensive later in the season. Young growth and spat are abundant. East of Deep Water point there are no oysters excepting scattering growth in a salt pond, now closed, but formerly an open lagoon.

Chandeleur sound.—There are now according to the testimony of the fishermen, very few oysters to be found in Chandeleur
248 sound, although there were formerly beds of considerable extent in several localities. No detailed examination of this region was made, although the shores were explored in a few places. There appear to be a very few, if any, oysters on the outer shore between Isle à Pitre and Door point, but there were formerly some more or less extensive beds between Door point and Pelican point, as well as in the neighborhood of Brush island and outside of Deep pass. In Live Oak and California bays, around the shores of Martin, on Holmes and Mitchell islands, there are beds of old shells where there were formerly productive oyster reefs frequented by oyster-

men. The general opinion of oystermen is that these beds have been exterminated by the conchs.

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Endorsed: Mississippi Document No. 82. Filed September 22, 1904. Wm. D. Bullard, commissioner for the State of Mississippi. Office Supreme Court U. S. Filed March 13, 1905. James H. McKenney, clerk.

(The map referred to in the foregoing document is the same map made part of the bill of complaint as diagram 4. The copy attached to Document No. 82 will be found in Miss. Atlas of Maps.)

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First Annual Report
of the
Oyster Commission of Louisiana
to
His Excellency, the Governor, and the General Assembly of the State of Louisiana.
August 11, 1902, to January 31, 1904.

New Orleans, La.
May, 1904.

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First Annual Report
of the
Oyster Commission of Louisiana.

To his excellency Newton C. Blanchard, governor, and the General Assembly of the State of Louisiana:

In obedience to the provisions of act 153 of 1902, the Oyster Commission of Louisiana begs to submit this, its first annual report, covering the period from Aug. 11th, 1902, to Jan. 31, 1904, or the first 18 months of its existence.

The members composing this commission, to wit:

Mr. N. H. Nunez, of St. Bernard parish, La.
Capt. Ben Michel, of Plaquemines parish, La.
Mr. F. P. Parra, of Lafourche parish, La.
Mr. James M. Breaux, of Terrebonne parish, La.
Mr. Thomas Shannon, Jr., of St. Mary's parish, La.

having been appointed to their positions by his excellency, Governor W. W. Heard, and having taken their oaths of office, met in the city of New Orleans on Aug. 11, 1902, for the purpose of

2250 effecting an organization, and this they proceeded to do by electing the following officers, to wit:

President: J. M. Breaux, Terrebonne parish, La.
Secretary: J. R. Langridge, Jefferson parish, La.

Chief inspector: Harry Cage, Terrebonne parish, La.
Chief surveyor: Hugh C. Smith, St. Bernard parish, La.
Attorney: John Dymond, Jr., Plaquemines parish, La.
Official journal: The Plaquemines Protector, of Plaquemines parish, La.

For a moment trying to look back over the history of oyster legislation in our State, in order to appreciate the conditions that confronted this new board, we find that the first instance where an effort was made to control our oyster industry was by act 18 of the legislature of 1870, when the State fixed a close season, or determined certain points of time between which oysters could not be fished in the waters of this State.

By act 91 of 1871, this close season was shortened by one month.

It was in 1886, by act 106 of the legislature of that year that the State first undertook to legislate in any manner comprehensively on the subject of her oyster industry.

Owing to a lack of familiarity with our own requirements, but appreciating the necessity that something should be done, that legislature adopted bodily the then oyster law of the State of Maryland. It is but natural to suppose that an oyster law suitable to the requirements of the State of Maryland would not necessarily fulfill all our wants, yet the intention was most excellent. Under this Maryland law, the State was divided in three oyster districts, and the governor was authorized to appoint an oyster commissioner for each district. Boats and vessels were required to take a license before fishing oysters; oysters had to be culled on the natural reefs; a close season was established, and the police juries of the several parishes were authorized to lease bedding grounds, not to exceed three acres, to any one person, at an annual rental of 25 cts. per acre.

The above law continued on the statutes for six years, or until the act 110 was adopted by the legislature in the year 1892. The 2251 salient differences between this and the former law, consisted in the fact that the three oyster districts were abolished, the police jury of each coast parish was vested with exclusive jurisdiction of the waters within each parish, each police jury appointed its own oyster inspector, and boats and vessels desiring to fish oysters, had to get separate licenses for each parish in which they desired to fish. The area of barren bottom which could be leased by any one person, firm or corporation was increased to 10 acres, and the annual rental remained at 25 cts., per acre.

By act 121 of 1896, the law of 1892 was amended to the extent of exempting bedded oysters from taxation.

It was a notorious fact that these oyster laws, existing from 1870 to 1900, were recognized more in their breach than in their observance. This was due to the fact that there was no centralized, effective form of control of the State's industry, and no one, other than the oyster fishermen and those directly engaged in the industry, knew anything about the industry or the necessities for legis-

lation, although every one knew that the existing conditions were not satisfactory.

In 1900, the legislature of that year by act 159, concluding that it was time that the industry should be studied, and that some intelligent information should be gathered concerning the subject, so that adequate legislation might be enacted formed a legislative investigating commission, composed of two senators and three representatives, who studied the industry during the intervening two years and made their report to the General Assembly of 1902, which was amended and resulted in the adoption of act 153 of that year. The salient feature of this act was that the governor of the State was authorized to appoint five persons who should constitute the Oyster Commission of Louisiana, which body by the provisions of the act was vested with the control of the industry, and required to compile statistics, and to make recommendations which would be laid before the Legislative Assembly of 1904. The idea was an experimental one. The results under the former laws were entirely unsatisfactory. The new law generally remained the same as the old law, except that there was appointed this commission to study the in-
2252 dustry, compile statistics and make recommendations.

When your commission met therefore, on Aug. 11, 1902, it was confronted with a most difficult undertaking. It must first instill into the minds of those engaged in the oyster industry the necessity of ob-erving laws, which, as stated, the fishermen had been accustomed to recognize more in their breach than in their observance. They must evolve order out of chaos.

Whatever statistical data existed, consisted solely of the recordation of bedding grounds leases, scattered over the coast parishes of the State in the records of the respective police juries, and it at once became necessary to concentrate this data in systematic shape in the office of this commission. The season for the opening of the oyster industry was closely approaching; namely, on the first of September, for the purpose of fishing oysters for beading purposes; and it therefore became necessary to make herculean efforts in order to be prepared for the work as it came. Your commission established its offices at No. 339 Carondelet St., in the city of New Orleans, at which regular meetings were held on the third Wednesday in each month. It established its office force, equipped its office with furniture, circulated copies of the oyster law, published in the coast parishes the notices required by the law and prepared and circulated the necessary blank forms for systematically conducting its business. All boats and vessels engaged in the oyster business, some fifteen hundred in number, had each to be measured up so that licenses might be issued to them, and ports of entry had to be established where the taxes would be collected.

Your commission divided the ten coast parishes of the State into the following inspection districts, appointed therefor the following deputy inspectors and collectors at the salaries indicated and established the following ports of entry, to-wit:

Inspection district No. 1, to include the parish of Orleans, Joseph Jurish, deputy inspector, at $60.00 per month. Ports of entry at Lugger landing on the Mississippi river and at Old Basin.

Inspection district No. 2, to include the parish of St. Bernard, Alfred C. Ruiz, deputy inspector, at $60.00 per month. V. M.
2253 Guiterez deputy inspector at $40.00 per month. Ports of entry at the factory of Louisiana Oyster Co., Ltd., Rigolets, La., Dunbar, La., and the Ship Island canal locks, on the Mississippi river.

Inspection district No. 3, to include that portion of the parish of Plaquemines, east of the Mississippi river, Joseph A. Yuratich, deputy inspector, at $60.00 per month. Ports of entry at the factory of Neptune Canning Co., Ltd., Ostrica, La., Thomas Brophy, collector at $15.00 per month, Pilot Town, La., B. J. Williams, no salary.

Inspection district No. 4, to include that portion of the parish of Plaquemines, west of the Mississippi river, Gustave Shoenberger, deputy inspector, at $60.00 per month.

Inspection district No. 5, to include the parish of Jefferson, and that portion of the parish of Lafourche, east of Bayou Lafourche, L. Adam Bellanger, deputy inspector, at $60.00 per month. Ports of entry, Westwego, La., W. W. Osborn, collector, at $20.00 per month, Cutoff, La., Elie Ducos, collector, at $15.00 per month.

Inspection district No. 6, to include that portion of the parish of Lafourche, west of Bayou Lafourche and that portion of the parish of Terrebonne as far as the east bank of Bayou Little Caillou, and Last island, Thomas Prevost, deputy inspector, at $60.00 per month. Ports of entry, Houma, La., J. D. Brown, collector, at $50.00 per month.

Inspection district No. 7, to include that portion of the parish of Terrebonne, west of the east bank of Bayou Little Caillou, including Last island, Alidore Guidry, deputy inspector, at $60.00 per month. Port of entry, Houma, La.

Inspection district No. 8, to include the parishes of St. Mary and Iberia, to the west coast of Vermilion bay, James Furlong, deputy inspector, at $60.00 per month. Ports of entry Berwick, La., Alonzo Gilmore, collector, at $50.00 per month. Morgan City, La., Henry Wolf collector, at $50.00 per month.

Inspection district No. 9, to include the parish of Vermilion, E. W. Gaspard, deputy inspector, at $5.00 per month. Port of entry, Abbeville, La.

Inspection district No. 10, to include the parish of Cameron. Port of entry, Cameron, La.

2254 During the course of its two years' existence the employees of the commission necessarily changed from time to time. On Jan. 21, 1903, Mr. John R. Langridge, our secretary resigned to accept the position of clerk of the court of the parish of Jefferson. The commission regretted very much to lose the valuable services of Mr. Langridge. His position was at once filled by the election of Mr. Andrew G. Gugel, also of the parish of Jefferson. We give

herewith a roster of the officials and employees of the commission as follows:

Commissioners.

($10 per Diem.)

Jas. M. Breaux.
N. H. Nunez.
Ben. Michel.
Frank P. Parra.
Thomas Shannon, Jr.

Officers and Employees.

A. G. Gugel, secretary, $100.00 per month.
Wm. M. Jungblut, assistant secretary, $75.00 per month.
John Dymond, Jr., attorney, $100.00 per month.
H. C. Smith, chief surveyor, $150.00 per month.
Harry Cage, chief inspector, $83.33 per month.
C. M. Bourg, secretary to president, $60.00 per month.
Mrs. R. Cure, clerk to fin. com., $20.00 per month.
Joseph Jurisich, deputy inspector, $60.00 per month.
A. C. Ruiz, deputy inspector, $60.00 per month.
Joseph A. Yuratich, deputy inspector, $60.00 per month.
Gus Schoenberger, deputy inspector, $60.00 per month.
B. J. Williams, deputy inspector, no salary.
L. A. Bellanger, deputy inspector, $60.00 per month.
A. E. Guidry, deputy inspector, $60.00 per month.
C. A. Johnson, deputy inspector, $60.00 per month.
Elie Ducos, deputy inspector and collector, $15.00 per month.
J. D. Brown, deputy inspector and collector, $50.00 per month.
E. M. Farray, deputy inspector and collector, $5.00 per month.
2235 Wm. Dillard, engineer of launch Nita, $50.00 per month.
Two sailors, on schooner Majestic, at $30.00 each per month.

Certain of these employees whose services are not required during the closed season, such as deputy collectors, are laid off. During the first season the commission was compelled to reduce the salaries of all of its employees.

The oyster commission was absolutely without funds to carry on its work, and was compelled to collect its revenues in order to pay its employees. These revenues consisted of a license tax of 50 cts. per ton on vessels engaged in the oyster industry, a license of $2.00 for each tongman engaged in fishing oysters, a license of $100.00 on each canning factory, and $25.00 on each oyster shucking establishment and those who bought, shipped and resold oysters. The law levied a privilege tax of 2 cts. per barrel on each barrel of oysters fished for consumption, and stipulated a rental of $1.00 per acre for each acre of bedding ground leased. The deputy inspectors were instructed to see that the vessels and tongmen, as well as can-

nate and shuckers secured their licenses. Each one of the 1500 boats and vessels engaged in the oyster industry had to be individually inspected and measured in order to determine the tonnage upon which the respective vessel licenses would be paid. Each vessel was given a number, and it was the duty of the inspectors to see that these vessels displayed their numbers on their sails and hulls, as required by the law. Where a considerable amount of trading in oysters was done, it became necessary to establish ports of entry, and to appoint deputy collectors, in order to provide for the collection of 2 ct. tax levied on the oysters marketed.

Where the oysters were carried by regularly established lines of common carriers, the commission endeavored to arrange for the collection of the tax on the bill-lading, and succeeded in doing this with the New Orleans, Fort, Jackson & Grand Isle Railroad Co., and the Lower Coast Packet Company, in the parish of Plaquemines, both of these companies settling direct with the sheriff of the parish of Plaquemines. Where the commission has been able to arrange with the factories to submit sworn returns of oysters handled, 2256 and thus save the expense of collectors it has done so.

In addition to the above force of inspectors and collectors established by the commission, it was necessary that the commission should establish and maintain a separate patrol system in the waters of the Mississippi sound in order that the provisions of the Louisiana law prohibiting non-residents from fishing oysters in our waters might be enforced. The boundary dispute on hand with the State of Mississippi rendered the policing of this territory additionally expensive and difficult.

Being without funds at the initiation of this work, and having not only to provide for the payment of its several employees, the establishment of a systematic control of the oyster industry, but also to acquire the necessary patrol boats and vessels to make such control effective, it became necessary for the commission to borrow the money needed for its immediate requirements, and a contract to this end was made with the Louisiana national bank, which lent the commission the necessary funds, and which were repaid by the revenues of the commission as they were subsequently collected. Every existing oyster bedding ground lease had to be registered with the commission and a plan of survey furnished, so that the foundation could be laid for an oyster map of the State of Louisiana.

The official statement of the secretary approved by the finance committee will show the financial operations of the commission and the condition of the finances of the commission at the end of the period covered by this report.

This is the first instance where there has ever been any statistical data compiled in regard to the extent of the oyster industry of Louisiana. In making provisions for the expense incident to this and in calculating upon its possible revenues, the commission was compelled to guess at what its revenues would be and keep down its expenses as much as possible, as there were no statistics whatever

that it could turn to in order to get any more definite data. This of itself, was quite embarrassing, and although the commission got the best data it could from the sources available, the oyster crop which the legislative investigating commission estimated to be 700,000 barrels was found at the end of the year to be about 225,000 barrels less than had been estimated. Making its budget on a basis of the original estimate, the commission was, therefore, embarrassed by the failure of its revenues to meet expenditures, and having been compelled to go to an expense of about $4,000.00 in purchasing its two patrol boats; namely, the schooner "Majestic" and the launch "Nita" the greatest economy had to be practiced immediately after finding that the revenues would not come up to the expectations, and as a matter of fact, an insufficient patrol system had to be subsequently maintained, because there were not the necessary funds to carry on and maintain the patrol system as it should be conducted, and the salaries of all employees were reduced.

The oyster season in Louisiana extends from Oct. 1 to Sept. 30, and it is the intention of the commission that hereafter its reports should be made according to this period of time. The commission is pleased, however, to be able to report that while it has had a hard struggle to make both ends meet, it has, as a result of its efforts, notwithstanding the restrictions of the present law, met all of its obligations, come out more than even on expenses, and still has on hand its patrol boats, office furniture, and that character of permanent investment, representing an available capital of about ($5,000.00) five thousand dollars, including the cash on hand. During the first season, extending from September 1, 1902, to August 31, 1903, the commission issued licenses to 1574 boats and vessels, 1953 tongmen, 27 dealers, 3 canners. The quantity of oysters marketed during that period equaled four hundred and seventy-two thousand one hundred and ninety-one (472,191) barrels, or one million six hundred and seventeen thousand and forty-four (1,617,044) bushels valued at over seven hundred thousand dollars ($700,000.00). From August 11, 1902, to January 31, 1904 the total revenues of the commission were $36,816.15, and its disbursements during the same period of seventeen and one-half months were $36,148.96, which included the cost of a permanent investment of about four thousand dollars ($4,000.00) now on hand in the shape of patrol boats and other equipment. In 18 years under the old laws there had been made 512 oyster bedding grounds leases aggregating 2820.52 acres, or an average of 7.6 acres per lease. In the 18 months of the 258 commission's existence 238 leases, aggregating 2677.10 acres were made. In other words, the commission has leased in 18 months nearly as many acres as was leased in the previous 18 years.

As previously stated, the commission caused all existing bedding ground leases to be registered in its office. A limit of time was fixed within which tenants should so register their leases, and as a

of this registration it developed that from 1886 to 1902, there
en as stated 512 continuous leases of oyster bedding ground
covering a total area of 2820.52 acres, or an average of 7.6
er lease. The commission found that the State owns between
d six million acres of water bottom more or less suitable for
cultivation. Of these, less than 50,000 acres are covered by
here oysters grow naturally. About 2800 acres were under
nd the balance of over five and one half million acres were
dle. The leases made by the police juries and registered
e commission are shown in detail in the secretary's report.
ds whatsoever were under lease in the parishes of Orleans,
y, Iberia, Vermilion or Cameron. The commission has done
to increase the area of bedding grounds rented for the pur-
oyster cultivation, as it recognized that each acre rented
an increase of the State's revenue of at least $3.00 per annum,
owing to the restrictions of the present oyster law, it has
ed in leasing since Aug. 11, 1902, less than 3,000 acres, al-
it is reliably informed, and has every reason to believe that
ense quantity of this idle barren lands could be leased and
into cultivation, if legislation were had which would tend
rage the investment of capital in this industry and protect it
ce invested.

ommission finds that the oyster industry as it is carried on
onsists almost exclusively in an absolute dependence on the
of the natural oyster reefs for our oyster supply. The expe-
other States, as found in the studies made by the commis-
icate this to be a most unwise policy. We know of no in-
ustry where dependence is had entirely upon the natural
ild product. We know that one acre of water bottom under
ltivation will, at the very minimum, produce 100 barrels
s per annum, and we know further that the last annual
op was less than half a million barrels. From this it con-
follows that the total oyster crop of Louisiana for the past
uld have been produced on a 5000 acre oyster farm properly
d. The oyster commission is alive to the immense possi-
oyster production possessed by Louisiana. We know that
ill grow in our warm southern waters about three times as
s they will grow on the Atlantic coast.

ing these natural advantages, the only thing that stands
ur oyster industry and development, the commission finds
illogical restrictions, which for twenty years past have been
in our successive oyster laws. These restrictions have
ough an ignorance of the true facts, and now that we know
se these provisions are, they should immediately be re-
m the statutes. Your commission, during the past two
ts existence, has necessarily been compelled to take the
as it is, no matter how imperfect it has found it to be.
he chief aims of the commission has been its desire to aid
way it could those engaged in the oyster industry, and

wherever complaints or suggestions have been made they have had our earnest consideration.

Learning that vessels entering the Mississippi river en route from Texas were accustomed to pump out their bilges and discharge fuel oil in the river, which, during periods of high water, was carried over the banks of the river into the oyster fields on each side, the co-operation of the Secretary of War of the United States was sought, and a stop was put to this injurious practice.

The assistance of the United States Coast and Geodetic Survey was secured in the matter of establishing township and range points on our coast in order that our oyster bedding grounds, as surveyed, might be connected up with these well established points. This service has been of great value to the commission.

2260 As an excess of fresh water is fatal to oyster life, we sent our attorney, Mr. John Dymond, Jr., to St. Louis, to appear before the Mississippi River Commission in June, 1903, in order that the value of the oyster interests protected by our levee system might be laid before that body and fully explained. The result of Mr. Dymond's visit was an increased allotment of twenty thousand dollars ($20,000.00) in two years for the levees below the city of New Orleans, which will prove of incalculable benefit to the oyster growers of that section, where, by the high water of 1903, over one million dollars ($1,000,000.00) worth of oysters were killed in a period of ten days.

Your commission appreciates the importance of the litigation now pending in the Supreme Court of the United States between the States of Louisiana and Mississippi as to our State's boundary in the waters of the parish of St. Bernard. The area in dispute has a value of between five million and ten million dollars. We have been offered the sum of two hundred thousand dollars ($200,000.00) per annum rental for the exclusive use of the oyster waters there. The area undoubtedly belongs to Louisiana and we have been rendering all the assistance we can to the State's attorneys to win the case.

In connection with the matter of boundaries and in obedience to the provisions of the oyster law, the commission had devised and adopted a set of rules for the purpose of settling boundary disputes between the lessees of oyster bedding grounds in the State.

We cheerfully endorse the recommendation presented by Mr. John Dymond, Jr., which forms a part of this report. Any implement or labor-saving device should be permitted on a man's own oyster farm. In water too deep and too exposed to be fished by hand-tongs, other means should be permitted to make these oysters available to man. There need be no fear of the law being violated. This commission will take care of and prevent that. That is its business.

It has been the common understanding of students of the oyster industry that in the deep and exposed waters of our State there existed many undiscovered acres of natural oyster reefs, more particularly in the gulf of Mexico. In some instances parties are known

to have trailed a rope over the stern of their boats to which a
61 piece of iron chain would be attached, and as the boat sailed
along the chain would show that the boat was passing over
ster shells. It is known also, more especially on the east bank of
e Mississippi river, when a crevasse occurs and the oysters are
lled by an excess of fresh water, the shells of the dead oysters are
on covered by a new set of young oyster spat. So much is this
e case that it is the common belief among the oyster fishermen
at these young oysters are reproduced or brought into being by the
esh water, and they laugh at the idea that oysters lay eggs and are
different sexes, contending that the fresh water is a spontaneous
ency of oyster life. As a matter of fact, the true explanation of
is physiological phenomena is found in the existence of oysters in
e deep water where the excess of fresh water does not reach. The
ore favorable surroundings produced by the fresh water on these
ep water reefs stimulate the reproductive or genital organs of
ese oysters and the increased quantity of oyster spat thrown off
ttles on the shells of the dead oysters and the reefs are replenished
d reëstablished.

These oysters are in water too deep and exposed to be fished by
e only means of fishing allowed under the present law, namely
and tongs. The commission, however, was authorized by the
ster law to procure and experiment with the more modern and im-
roved implements necessary for deep water fishing and purchased
scraper, or what is commonly but erroneously, called a dredge. A
icture of the implement will be found in Mr. Dymond's article,
ade a part of this report. This scraper was placed aboard the
atrol schooner Majestic, which was sent to the west Gulf coast, off
e parishes of Iberia and Vermillion, and a committee from the
ommission, composed of Messrs. James M. Breaux, N. H. Nunez,
nd the chief inspector, carried on the investigation during the
nonth of April. These gentlemen report that new o-ster reefs,
ever before known, were found to exist, that thousands of acres of
atural reefs extend along the coast, and that these oysters are at
resent perfectly useless and doing no one any good, because under
e present law they can not be fished with the only legal imple-
ment we have, viz., hand tongs. It is the opinion of the com-
262 mission that these oyster reefs should be opened to commerce,
that it is a great source of wealth for our people that at present
es idle, and it recommends that the use of modern oyster
rapers should be permitted, so that these oysters in deep and ex-
osed waters could be fished and made available under proper con-
ol of the commission.

Another of the illogical restrictions of our present oyster law is
e limitation to twenty acres as being the maximum amount of
arren water bottom that any one person, firm or corporation may
ase for the purpose of cultivation. In any other locality, and in
ny other industry, the residents of the locality and the citizens of
e State would hail with gratification and delight the development

or bringing into cultivation a large tract of unreclaimed and barren lands.

We have more territory available for oyster production than is now used in the whole State in any one agricultural crop, either cotton, sugar cane or rice, and yet we have less than 6,000 acres, less than one-tenth of one per cent. of the total area, under lease. Twenty years of experience has proven conclusively that, on the basis of maximum units of three, ten or twenty acre oyster farms, no development will result, and it would appear to the commission from the studies it has made as to this limitation, that it has been repeated in the previous oyster laws for the purpose of preventing any oyster development, with the result that the State is deprived of her just revenues from her large holdings of barren oyster bottom. It is true that the excuse has been given that such legislation was enacted for the purpose of preventing the formation of an oyster trust. Experience shows that trusts never control the raw product, and consequently we have no cotton trust producing cotton. We have no sugar trust producing sugar. We have no rice trust producing rice. Where a trust is formed, when it is formed, it is for the purpose of handling the crop produced by some one else, and no restriction on acreage will have any effect upon the handling of the product, except as it may absolutely prevent the raw material from coming into existence and being.

The practical result of this, therefore, is that the fear of
2263 *of* an oyster trust has heretofore paralyzed any possible development of the oyster industry. The fear is unquestionably and absolutely unfounded. If we should judge by the experience of the other States where no limitation is placed upon the acreage that may be leased, we find that in the State of Connecticut, for instance, the oyster farmer, with three acres successfully does business along with the oyster farming company controlling over 10,000 acres, and in no State where extensive areas are subject to leases, has the complaint arisen that an oyster trust has been formed. Let us for a moment look at the opposite side of the picture, and see whether those who cry "Trust" are justified in their cry, or whether it is not due to some other cause that they make these pretensions. Carried on as this industry is today, the oyster fisherman gathers his crop from the natural reefs for which he pays nothing, other than the small tax exacted by the State, and the expense of going to the reef and gathering his product. He does not fear a trust, but he fears that if there be any considerable development in the oyster industry he may lose by increased competition the oyster market which he has all along regarded as his own. The commission feels that the operation of the law, as it stands today, practically stifles and prevents any development of the industry, or any increased competition which would naturally come as a result of that development and be of benefit to all.

We have as a result of our studies of the industry, positive knowledge that people desiring to raise oysters on an intelligent basis and

nodern means and appliances are prevented from doing so, ne State is losing the revenue it should justly receive. This is sult of the unfounded fear and prejudice that has previously d, and the commission feels that it is its duty to lay the facts the legislature, so that these restrictions may be removed.

ts control of the oyster industry, and its patrol of the Gulf vaters, the commission has found itself seriously embarrassed want of sufficient and suitable patrol boats. Its deputy in- rs were required to furnish their own boats, where they could, as the funds of the commission did not permit it to purchase more than its schooner and gasoline launch. The boats fur- nished by the deputy inspectors were not well suited to the because they are required to move quickly to overtake a vio- of the oyster law and in their tours of inspection they are re- l to travel long distances. What is needed is a number of nation sail and gasoline boats, suitable sail boats, with ary gasoline engines, and these boats should be the property commission.

atrol boat will be required constantly on the boundary line en the States of Louisiana and Mississippi and our patrol ner is now used for this purpose. The commission should have er large-size gasoline boat with auxiliary sails, for the use of ef inspector, and this vessel should be of a size and character would permit her to navigate the open waters of the Gulf. additions to our oyster fleet are absolutely necessary, yet the ission has not the funds to procure them.

re is, however, in the State treasury, lying idle, the sum of .71, collected by the State under the former oyster laws, and um could be used for the purpose of acquiring the necessary s. The commission, therefore, urgently recommends that and sts the legislature to appropriate this fund to be disbursed by mmission, for the purchase of additional patrol boats, the dis- ment to be with the advice and approval of the governor of ate.

reproduce the report made to us by our chief inspector, con- g recommendations, the report of Mr. J. B. Baylor of Virginia, ne study of the oyster industry as prepared by our attorney, ning recommendations, all of which, with the result of our we have embodied in an oyster bill, which we respectfully t for consideration by the legislature, and earnestly urge its ge, feeling that we will, with intelligent and conservative legis- be soon depositing in the State treasury funds in quantities dreamed of.

Respectfully submitted,

JAMES M. BREAUX.
N. H. NUNEZ.
BEN. MICHEL.
F. P. PARRA.
THOS. SHANNON, JR.

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2265 Report of Chief Inspector.

To the honorable Oyster Commission of Louisiana.

GENTLEMEN: In accordance with your instructions, I have the honor to submit my report as your chief inspector from the time of my appointment August 1902 to date, together with such recommendations as my experience suggests.

The earliest white settlers in Louisiana found oysters growing naturally on natural reefs, and from the first settlement these were gathered by those persons living in the vicinity of the reefs, and used for local consumption.

Gradually these persons, in answer to the demands of the people who lived too far from the reefs to personally fish the oysters, began to bring up the bayous and rivers in their boats these oysters, and to sell them, in small quantities, to the people living along the banks of these streams for immediate use.

As the city of New Orleans increased in size, population and wealth, it became the principal market for this trade and absorbed, by far, the greater portion of the oysters gathered and fished in the State.

The methods of fishing and culling were of the most crude and wasteful character, and as the demands grew larger, and more and more people engaged in the business, of filling the demand, it was soon found that the reefs to which the fishermen resorted, were one by one being exterminated and that the fishermen had to go further and work harder, and consume more time in gathering the same quantity of oysters.

This created dissatisfaction and engendered discussion. It was the consensus of opinion that the whole trouble was caused by the fishing and taking of oysters during the spawning season and that if this could be forbidden and prevented, that all the reefs would be restored to their pristine productiveness.

2266 Accordingly, for the first time in the history of the State the legislature was appealed to and in 1870 it passed act No. 18 of 1870, which made a closed season from April 1st to September 15th, and provided penalties for the taking or fishing oysters during this time.

In 1871 by act No. 91 of that year, this closed season was made from May 1st to September 15th.

So far as I am informed these acts were "more honored in the breach than in the observance," and both became practically "dead letters," and the depletion and destruction of the reefs went on rapidly.

The fishermen who resided in the parish of Plaquemines were those who supplied the demand for the New Orleans market. About this time, also, it was found that the oysters could be opened or "shucked" and being placed in wooden buckets with lumps of ice, renewed from time to time in transit, could be shipped by express

interior points and sold at a large profit, and this business was arried on in that city, the oysters therefor being supplied by the Plaquemines fishermen.

These two demands under the destructive system of fishing, soon xterminated the supply of oysters in that parish, and its fishermen ound that they could go into the parishes of Jefferson, Lafourche nd Terrebonne and gather the oysters from little used reefs, deposit hem on beds in Plaquemines convenient to the market, where they ould grow and thrive and in due time take them up and supply he New Orleans market demand for local consumption and for hipment to the interior.

The natural reefs of Jefferson parish, were, under this system, oon depleted and destroyed. The Plaquemines men then went urther west to the reefs of Lafourche and Terrebonne and the oyster nen of these two parishes soon found that the reefs which had eretofore abundantly supplied their needs for their limited local lemands were being depleted and destroyed.

An outcry arose. The fishermen in each parish regarded the ysters in each particular parish as the exclusive property of the nhabitants of that parish and they looked on the fishermen of other parishes, and particularly those from Plaquemines who 2067 were supplying the New Orleans market as strangers, invaders and robbers.

So in 1886, the legislature was again applied to for relief and act No. 106 of that year was passed.

Its salient provisions were to recognize the practice of gathering ysters from the natural reefs and bedding them for future use, to rovide that not more than *three* (3) *acres* could be taken by any one erson, firm or corporation for this purpose; to provide that no one ould fish oysters in any parish without having first obtained a liense from the police jury of that parish for the privilege; imposing icenses and taxes therefor on the boat and tongsmen, providing that ne-half of the net amount arising from these rents, licenses, and axes should be equally divided between the respective parishes and he State, and placing the oyster industry of each parish within the bsolute control of the police jury of each parish.

This law accomplished little, and in 1892 was superseded by act No. 110 of that year, which made little change beyond increasing he amount of bedding ground which could be leased by any one erson, firm or corporation from three (3) to ten (10) acres.

In 1896 this act was superseded by act No. 121 of that year, and he only material change which I can find in this latter act was to elieve from taxation the oysters bedded on the leased bottoms.

All these laws were loosely administered, their provisions were isregarded, and the laws themselves fell into contempt.

In the meantime, the population of the State increased; an era f prosperity ensued, and the people became better-to-do, more prosperous and more wealthy. The local demands for oysters for local consumption became larger, the interior demands for "shucked oys-

ters" packed in ice tremendously increased, and individuals firms and corporations to carry on this business not only multiplied in New Orleans, but sprang up in Houma and Morgan City, and canneries were established on the Mississippi shore, in New Orleans, Plaquemines parish and elsewhere.

The demand for oysters from these various sources could not be filled; the cry arose that the natural reefs were being destroyed and that further legislation must be had to cure the evil.

2268 The matter was discussed in the legislature during the sessions of 1900. The consensus of opinion was that the previous legislation was hopelessly faulty, but that no one had given that study to the subject which would enable the General Assembly to intelligently take up the matter and formulate the necessary laws.

The sense of the legislature was expressed in house concurrent resolution No. 31, which appears in the records as act No. 159 of 1900, and reads as follows:

"Be it resolved by the house of representatives, the senate concurring, That an oyster commission be formed to be composed of three (3) members of the house of representatives and two (2) members of the senate, to be appointed by the respective presiding officers thereof, who shall examine into the oyster industry of this State, and formulate a bill for its improvement and present the same to the next session of the General Assembly of the State of Louisiana."

There were appointed on this body Senators Dymond and Cage, and Representatives Leopold, Jacobs and Bonvillain.

These gentlemen visited the various oyster parishes, and oyster waters of the State, sought and obtained the views of numerous persons interested in this industry and investigated and searched the statistics, reports and literature throwing light on the subject matter.

They were of unanimous opinion that the existing laws were radically wrong, and inefficient, and that the natural reefs were being rapidly depleted and destroyed. They also agreed that the control should be taken from the respective police juries and confided to a State commission and that some legislation should be enacted which would increase the amount of oysters produced in the State. But as to the measures necessary to produce this effect the members widely differed and their differences are set forth in the majority and minority reports of the General Assembly. These differences were radical. The minority held that the proper protection of the natural reefs was a practical impossibility and that the only way in which the oyster output of the State could be increased, and a revenue provided for the State was to allow the barren grounds to be rented in large quantities to those who had the inclina-

2269 tion and capital to take and work them.

The majority took the view that if these barren bottoms were leased in large quantities, the supply of oysters would be so greatly augmented, and the quality so improved that these cultivated oysters would supply the whole demand, and that those persons who fish

ers on the natural reefs could not compete and would be driven
of the business. They thought that the enormous revenues which
ld, under this system accrue to the State, would not warrant or
ify the injury which they thought would be caused to the natural-
fishermen.
he view of the majority prevailed, and the law enacted, act No.
of 1902, limited the area which could be leased by any one indi-
ual, firm or corporation to twenty acres.
he act of 1902 being the only law that was enforced might be
idered the first oyster law of the State.
hile this law is not all we need to encourage and develop the
stry, its effects have been far reaching in that it has called the
ntion of our people to the possibilities of the industry and has
acted the attention of outsiders as evidenced by inquiries to our
e for information from parties from Chicago, Maryland, and
from the State of Washington.
is unreasonable to expect any development in the oyster indus-
while the State refuses to lease to any one person, firm or cor-
ation more than twenty (20) acres of water bottom. To lease so
ll a tract of land is attractive only to the fisherman who owns
boat and fishes his own oysters. The leases now existing show
the fisherman does not care to avail himself of even this limit.
that his traditions or his habits teach him is to have a small
of bedding ground where he can plant the oyster he takes from
natural reefs. Three or four acres would be ample for this pur-
, so the present law does not meet the requirements of any class.
ompels the fisherman to take ten acres, which is more than the
rage of them want, and refuses to lease in sufficiently large quan-
s to be an inducement to capital to invest.
here is a reluctance on the part of the fishermen to see the oyster
oms of the State leased in large tracts, as they fear a trust might
be formed and that lands would be taken in such quantities
by big concerns as to shut out the small men, but as long as
the State holds the ownership of her lands and leases them,
is impossible. Again: We know that trusts never strive to pro-
e the raw material, but satisfy themselves with controlling and
ng it; so if we are ever to have an oyster trust we will not see
wning and working the lands but controlling the product, and if
is to come it will come whether Louisiana leases her lands in
e or small tracts, or whether she leases them at all.
ur State is rich in her soils but her agriculture was not de-
ped by her plowmen, nor were her sugar-houses, rice mills and
on gins erected by the day laborer. She is rich in her forests,
it was not the axman who developed her lumber industry. She
ch also in her oyster lands but it is not to the fisherman that
must look to develop her oyster industry.
e must enact laws that will enable every man so inclined to
st according to his means, his money, his energy and his abili-
The fishermen will soon learn that the big operator does not

interfere with him any more than the big sugar and cotton planter does with his less fortunate neighbor who works his little farm.

No man without a boat or the means of buying one, and about $2,000.00 capital could ever be the lessee of oyster lands. Grant that every one of these fishermen who own boats could be induced to lease twenty acres of land it would amount to thirty thousand acres. According to Dr. Stubbs the State owns 6,000,000 acres of coast waters running out into the Gulf to a depth of 20 feet, this would leave 5,970,000 acres on the State's hands. My duties have taken me all over the coast where oysters are fished and I have become as familiar with conditions there as it is possible in a two years' experience over so vast a territory, though I do not profess to know it all.

In the discharge of my duties I am brought in close contact with our fishermen, and I find them as a class to be law-abiding, generous, hospitable and hard workers while they are at it.

Most of them favor just laws to regulate the fishing and protection of the reefs. The feature of our present law most objectionable to the fishermen is the tongsman's license. He regards this as
2271 as a tax on his labor and it is hard to reason with him or persuade him to the contrary.

Our coast parishes are St. Bernard, Orleans, Plaquemines, Jefferson, Lafourche, Terrebonne, St. Mary, Iberia, Vermilion, and Cameron.

The principal oyster reefs of the State are in the parishes of St. Bernard, Plaquemines, Lafourche and Terrebonne.

Formerly some of the best reefs in the State were in Jefferson parish, but from some cause these reefs have become unproductive. Some claim that the waters of Grand lake, where these reefs principally are, have become too dense or salty to produce oysters. Others claim that the reefs were so completely cleaned of oysters by the fishermen that there were none left to produce spawn. Of these two theories I am not prepared to judge, but it is a fact that these once magnificent reefs show no disposition to become productive again.

West of the Atchafalaya river there is no oyster fishing except around Southwest pass and Marsh island in the parish of Iberia. From the fact that that coast is well watered by rivers and bayous bringing down fresh water and creating the conditions which produce oyster life I am led to believe that there are good reefs along that coast which are unknown to our fishermen. I regret that I have been able to devote so little time to investigations there, but circumstances have prevented.

It may be well to state right here that my principal drawback in the discharge of my duties has been the want of a suitable boat.

The only boats owned by the commission are the Majestic, a fine schooner, and the Nita, a small gasoline launch used as a tender to the schooner. These boats have more than they can do thoroughly to patrol the vast territory of the parish of St. Bernard and could not be taken from there to be used in general tours of inspection and

investigation. The other oyster districts are patrolled by deputy inspectors who are required to furnish their own boats. I could not use these for my purposes without leaving those districts unguarded.

It is absolutely necessary, in my opinion, that the commis-
2272 sion furnish their chief inspector with a suitable boat, and if the revenue of the commission will not permit of this then the legislature should be asked to assist you by an appropriation of the $8,958.71 now to the credit of the "oyster fund" in the State treasury.

I have watched the process of dredging oysters in what is called the "neutral grounds" with keen interest, and I am induced to the conclusion that there is very little in the cry that dredges destroy the reefs. *Excessive* dredging and improper culling will destroy a reef, but this can be accomplished with hand tongs, and while I do now know it of my own knowledge, it is claimed that reefs in this State have been destroyed by tongs.

When the question of whether or not the dredging of oysters should be permitted in this State came up, I had never seen an oyster dredge, but I had seen dredge boats. I saw them dredging canals and unloading coal barges, and thinking that an oyster dredge was built on the same order my horror of them was so great I thought the fisherman would be justified in taking his gun and driving them out of the State. But as you gentlemen know, the oyster dredge so called, is not a dredge at all. It is misnamed. It is *a drag*. If you take a common garden rake, attach a wire net behind it to catch the trash and then hold the handle perpendicular and in this position move it along the ground you have a very good representation of the working of an oyster dredge. Some contend that the dredge passes over the oysters and forces them into the mud where they die. But the dredge or drag is intended to pass *under* the oysters and gather them up and it *does* the work it is intended to do. Compare the process of dredging as done by the Mississippi fishermen and the tonging as done by our fishermen and let us see which is the most destructive process.

When dredging the boat is under sail and in motion. As the oysters are dumped on deck there is a force at work culling the oysters, depositing the good ones aboard and throwing back the shells and small oysters. This of necessity scatters the culls over practically the same area from which they were taken with
2273 the exception that when the boat passes beyond the reef some culls are thrown beyond and consequently the tendency is to constantly extend the area of the reef.

When fishing with tongs the fisherman casts his anchor and ties his boat up short. He then fishes such oysters as are within the length of his boat, when he lets out his cable until another length of his boat has been gained, and so on until he has fished his decks full. He then proceeds to cull and all the oysters he has gathered in one or more lengths of his cable he culls without moving his boat an inch. These culls go overboard in two piles on each side

of his boat and he has smothered more young oysters one with the other than a dredge would have buried in fishing ten times the amount.

It is useless to say that the inspectors should put a stop to such practices. The inspector can only be on one reef at a time and has under his eye the boats fishing on that reef. While he may force them to cull properly for the time being, hundreds of other boats are doing as they please in other parts of his district. Nor can the commission ever assign an inspector to each reef for then the expense of maintaining such a police force would be enormous and our oyster industry would become a burden instead of a profit to the State.

Human nature is such that men take but little interest in what does not belong to them and our fishermen are not different from others when they fail to spend their present time and cut off their present profit, that a natural reef may be in better condition in the future and perhaps for the benefit of some one other than themselves. Every one reasons, "The other fellow is not doing it, and why should I?"

We are therefore forced to the conclusion that the State can never successfully protect her natural reefs and build up an industry thereon. Strict laws and good officers may retard the process of depletion but they cannot prevent it.

In conclusion, and with your permission, I would make the following recommendations:

1st. That you recommend to the legislature a law that
2274 would prohibit dredging on the natural reefs in shallow and unexposed waters, because the present day fisherman wants it so and under liberal leasing of lands he will soon be the principal patron of the natural reefs.

2nd. That lands be leased with some limit named, but with such a liberal limit as to let in any-size firms or corporations as might desire to invest, and at the same time throwing such safeguards around the leases as to make capital secure. Allow any and all appliances and implements to be used in private planting grounds in the cultivation and fishing of oysters, as you can safely trust the lessee not to do anything that would injure what is his own. And further because he must be allowed this privilege if he is to compete successfully with his rivals in the open markets. He must be allowed to use his own judgment and to control his oyster farm as absolutely as if he were renting land from the State on which to plant cotton or cane.

3rd. Add the month of September to our open season because Texas on one side of us and Mississippi on the other both open their seasons before we do and our dealers claim they are thereby placed at a disadvantage.

4th. Abolish the tongman's license and increase the tax on oysters from 2 cents to 3 cents, because, first, we have a great many men who work in the fields during sugar grinding or at other jobs and

h oysters the latter part of the season. It is unequal to charge
em all alike while the tax falls in proportion to the length of time
man fishes; second, captains are often hampered in making up
eir crews because otherwise available men have no licenses; third,
large number of green boys are deterred from taking to the cull-
g because the small wages they earn at first do not justify them
taking out licenses, and thus the making of a good fisherman is
st; fourth, the license is hard to collect while the tax on the oysters
hich will produce the same result is easy to collect; and finally,
ermit me to say that in my opinion *that* a liberal leasing law, with
beral dredging laws, permitting dredging on the natural reefs in
water over fourteen feet in depth or in exposed waters and in
75 dredging in any depth on leased bottoms, would soon result
in an oyster industry in this State greater than that in any
tate in the Union, indeed greater than any other in the world. I
lly believe that under such laws, millions would be invested in
e industry in this State, and I am satisfied that the revenue that
ould accrue to the State would be measured in hundreds of dollars
nd, eventually, in millions.

Respectfully submitted.

HARRY CAGE,
Chief Inspector.

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2076 The honorable Oyster Commission of Louisiana:

By formal resolution, your commission has requested me to pre-
pare a written report, and in this connection to recommend such
changes in the present oyster law of Louisiana as would seem to me
to encourage the development of the oyster industry of your State.

Your present oyster laws creating the Oyster Commission of Louisi-
ana in many respects are admirable. As your laws stand today you
are in advance of many of the oyster States.

About twelve years ago, the writer made a complete survey of the
natural oyster reefs of the State of Virginia. This survey for the
first time clearly defined the natural oyster reefs, and an oyster
planter's title to his oyster beds in that State cannot now be ques-
tioned.

In connection with this survey, the oyster question became promi-
nently before the people of Virginia.

With other speakers and writers, the writer, as a citizen of Vir-
ginia, took an active part in encouraging oyster culture in Vir-
ginia.

It will be instructive to note what has been the effect of this
agitation on the oyster industry of Virginia. In 1891, Virginia
realized $2,524,348.00 from the sale of 6,074,025 bushels of oysters.
An insignificant sum was obtained from planted oysters in Virginia
at that time. This product came from the natural oyster reefs. In
1901, Virginia realized $2,923,357.00 from the sale of 7,885,357

bushels. Of this product 3,076,525 bushels were obtained from private planted oyster beds.

In 1891 Maryland was far in advance of Virginia and of every State, in the production and sale of oysters. She can no longer claim this honor, as to production, having produced only 5,085,561 bushels of oysters in 1900, valued at $3,031,518.00. Of this amount $2,732,274 was realized from natural reef oysters, and only $299,244 from planted oysters. (Report United States Commissioner of Fish and Fisheries, 1903, pages 495 and 518.)

2277 The State of Virginia, after supporting an expensive oyster navy of three steamers and two sailing vessels, now receives a net annual revenue of fifty thousand dollars from her oystering territory, where she formerly had an annual deficiency.

Yearly the area of native oyster grounds grows less in Maryland and Virginia, as the result of this over-working of the reefs. The splendid increase in the production of oysters in Virginia, as compared with the production in Maryland, is the direct result of the agitation of the oyster question in Virginia, and the encouragement of oyster culture in that State.

What has been accomplished in oyster culture in Virginia is strikingly exemplified in Elizabeth City county, one of the smallest oyster counties in Virginia.

Before oyster culture was started in this county, only a few hundred bushels of oysters were sold annually, where there — now sold annually 350,000 bushels of oysters.

Messrs. Darling & Son, oyster planters of Hampton, Elizabeth City county Virginia, now give profitable employment to large numbers of people in working the profit of what was at one time a *barren* oyster area.

Louisiana has a coast line following the indentations of the bays and of over 1200 miles. According to figures carefully compiled by so eminent an authority as Dr. Wm. C. Stubbs, your State has *seven* thousand square miles of tidal bottoms, over *four millions* of acres, not covered by more than twenty or twenty-five feet of water. This is far in excess of the area of the oyster bottoms claimed by either Virginia or Maryland.

It is a striking fact that most of the tidal bottoms of the whole coast of Louisiana, including the bays, sounds, inlets and bayous, is composed of a fine, light black sediment, known to the naturalist as *oyster mud*.

Your tidal bottoms afford opportunities for the cultivation 2278 of the oyster almost unparallelled in other countries.

You have not the destructive shifting sands, far too common in the bottoms of Chesapeake bay and its tributaries.

Unquestionably a very large percentage of your soft mud bottoms which now smother both shell and oyster, can be converted into prolific oyster grounds by the application of sufficient sand and shells, wherever these bottoms can be adequately protected from an

excess of fresh water from the Mississippi, through its numerous crevasses.

A beneficent Providence has so ordered things, in this great valley of the Mississippi and its tributaries, that there seems to be a complete harmony of interests amongst all the industries which center here.

The same locks and dams which are necessary to protect the valuable paddy rice fields, all along your coast, from the salt water, are also necessary to protect the valuable oyster beds, in your numerous bays and bayous, from destructive fresh water floods.

The same levees which protect the lands adjacent to the Mississippi—an agricultural region which can only be compared to the valleys of the Nile and the Ganges and other great rivers—unquestionably tend to improve the navigation of this great highway of commerce.

The great reservoirs which are being built at the headwaters of the Missouri and Arkansas rivers to retain the destructive floods produced by the rapidly melting snow, to be used in the season for converting the marvelously rich arid land of the West into productive agricultural regions, unquestionably tend to diminish the force of the floods, sometimes so destructive to both the agricultural and oyster interests of the State of Louisiana.

The great national forest preserves it is proposed to establish in the Appalachian mountains at the headwaters of the Ohio, Tennessee and Cumberland will unquestionably tend to protect from destructive floods the rich valleys of all the rivers which rise in these mountains, and at the same time preserve, under scientific government control, a valuable timber region, whose preservation means so much to so many States. Many of the great floods of the
2279 Mississippi came from the Ohio, largely the result of the clearing of timber on the precipitous mountain sides at the headwaters of the Ohio and its tributaries.

The writer has had frequent occasion to observe the terrific force of the waters on the sides of these denuded mountains.

He has known your coast for over a quarter of a century, as a Government surveyor, and he is convinced your oyster interests can never be highly developed until your bays and inlets are *effectively protected* from the destructive crevasses of the Mississippi river.

Cubits gap has entirely destroyed the once valuable oyster reefs of Bay Rondo.

The crevasse at the Jump has rendered Grand pass and a large percentage of the extensive bottoms of Grand pass and West bay useless for oyster culture.

Pass à Loutre crevasse has not only destroyed the once very extensive oyster reefs of Garden Island bay, but the sediment from it seems to be a constant menace to the safety of navigation at the mouth of the jetty at South pass, upon which the ocean commerce of New Orleans to-day depends.

On the contrary, in some of the bays and inlets of Cameron parish

which have been protected by the dams and locks of the rice planters you now have oyster beds where oyster beds were unknown before.

What has already been accomplished in oyster culture, in the bays and bayous of your State, where these bays and bayous are effectively protected from crevasses, is best illustrated in Whale bay and Grand bayou, just west of the South pass of the Mississippi river.

Messrs. McLaughlin & Lobrano are said to be the pioneers in the culture of oysters from the shell in Louisiana.

These gentlemen who own about twenty-five acres of planted ground in Whale bay, have sold daily during the past season over one hundred barrels of oysters. They sell these oysters on their shore for $1.30 per barrel to the canning factories. One man
2280 gathers and prepares for market ten barrels of oysters a day, gathering them in about two feet of water. This firm will sell, during the present oyster season *eight thousand* barrels of oysters from about twenty-five acres of oyster ground planted from shells, an annual yield of over four hundred dollars. ($400.00) an acre. These oysters are unsurpassed in quality and size and are marketable in about two years from the time the shells are deposited in the water.

It is only a question of time when such valuable tidal lands, millions of acres in extent, will be protected and utilized, if every crevasse has to be closed, and tons of sand and shells have to be deposited on your soft mud bottoms to make them productive oyster grounds.

In this age, a territory which, with so little labor, will yield annually four hundred dollars an acre, will not be permitted to remain idle. Your warm waters are marvelously rich in microscopic plants—the products of a continent—the very microscopic plants upon which the oyster feeds. Here frosts are almost unknown, and the oyster under scientific culture flourishes everywhere even above low water.

As requested, by formal resolution of your honorable commission, the writer would respectfully recommend some changes in your present oyster law. He has made a study of the oyster laws and oyster interests of the different oyster States, and is convinced that these changes will tend to improve your oyster industry, and the condition of a majority of those engaged in it will in the end be benefitted. You should change your 20-acre limit. The maximum acreage which can now be rented to one person for bedding or cultivating oysters is twenty acres. In Virginia, the limit of bottoms which may be rented to one person is two hundred and fifty acres. This does not apply to Chesapeake bay where there is no limit to the acreage.

I find in your State, under present laws, that only on a *narrow strip* of territory, along the shores of many of your bays and bayous are the bottoms hard enough to be used, in their present condition, to plant shells and cultivate the oyster.

Your law reads:

81 "All leased bedding ground must be square where the water surface will permit of such shape."

If this law were enforced, an oyster planter could utilize only a all fraction of his 20-acre lease, in many of your bays and bayous. om my observation in your State, I am convinced that this law s to be violated, by leasing ground in other people's names, in der to make oyster culture profitable.

This must tend to discourage capital.

In large open bays, such as Chandeleur sound, oyster culture can ver be made profitable, except in large areas, and by the use of bor-saving appliances.

There are vast areas of soft mud bottoms, in your State, which ay be made just as productive in oysters as is the ground of essrs. McLaughlin & Lobrano and others, but not until vast quanies of sand and shells are deposited upon them, and they are fectively protected by locks and dams from fresh water floods, and is fresh water is *regulated* and utilized either in fattening the oyster in protecting the beds from an excess of salt water after a severe orther." This can never be successfully done with a 20-acre nit.

In leasing your lands, I would recommend the adoption of some the features of the New York law.

Your natural oyster reefs are scattered, and not nearly in as well fined and in as large areas as are those of Chesapeake bay and its butaries.

Your commission, in my opinion, has been wisely authorized by w to determine in each case what is a *natural oyster reef*, and may t be rented. In this you follow the New York law.

Your commission will find that, in defining your natural oyster efs, you must give and take—you cannot define your natural ster reefs and not let them contain some barren area. You cannot fine your barren oyster rentable area and not let it contain some tural oyster reefs. It must be a question of honorable compro-se, with due regard to the rights of the "fisherman."

82 Your natural oyster reefs are so scattered, and in such *shoal* water that a complete survey of them would, indeed, be a *costly* undertaking. Fortunately, under our existing laws, ere is no necessity for such a complete survey of the natural ster reefs as was made in Virginia.

I would recommend that every survey of a planter's oyster ounds be *connected* with the adjacent *section corners*, and the same ctangular system of record, giving the township and ranges, be ed as is now used in your land surveys.

Along your whole coast line, points should be accurately deterned by the same systems of triangulation as has been used in the rvey of the coast.

This work should be gradually done wherever it is most needed. gnals should be built and the points should be securely marked. hen the latitude and longitude of these points are known, the sec-

tion corners, on the even minutes of latitude and longitude, can be correctly located from them. You will have endless trouble, in connection with your oyster surveys and oyster bedding-ground titles, unless you do adopt and execute some such system of surveys.

It is impossible to accurately trace out the section lines and establish the section corners, across the impassable bogs and "floating prairies," which skirt your entire coast line by any other system than by systems of triangulation. The corners of your rice farms and oyster planted beds can then be accurately restored in every dispute as to boundary lines.

The New York law reads:

"Before a lease is made, notice thereof must be posted for at least three weeks in a conspicuous place, in the office of the commission, in the office of the town clerk, and in the postoffice nearest the land applied for. The letting shall be at public auction for not less than twenty-five cents an acre annually, and for not more than fifteen years."

Your oyster grounds are radically different from those of New York. It will require much more labor and capital to convert the soft mud bottoms of your coast into productive oyster bed-
2283 ding areas. They have to be protected from the floods of fresh water by expensive levees, and vast quantities of shells and sand will have to be deposited in order to utilize them.

It seems to me leases should be for *twenty-five* years, and at the end of twenty-five years the lessee should be paid for the cost of his improvements if he has to vacate his land in favor of some other person. Thus only can you induce capitalists to utilize your soft oyster bottoms.

No one knows the ultimate value of the vast oyster and tidal bottoms of your State. They are the property of the people of the *whole State.* It would be folly for the State to sell them absolutely. Wise public policy demands that the State should rent her oyster ground to the *very best* advantage.

The New York law is a good one; but here your leases should be made for twenty-five years, and your oyster planters, present and prospective, should be paid for any expensive improvements made on their bottoms, in re-renting to the highest bidder. At the end of their lease, in every case, they should have the refusal of their ground.

Where there is no maximum rental, your oyster land will be more rapidly taken up. This has been strikingly exemplified in New York. On her limited coast and oyster area she sold, in 1901, $1,972,540 worth of oysters. In the same year from the natural oyster reefs, to which the public resorted, only $20,104 worth of oysters were sold. The rest came from rented ground, *rented* to the highest bidders. (Report of the United States Commission of Fish and Fisheries, 1903, page 422.)

Your oyster planters, when they have paid their rentals to the

State, should be perfectly *free* to work their oyster grounds, as their own interest and experience dictate.

By law they should be authorized to use dredges, steam or gasoline, on their private beds, if they so desire.

Your commission should be vested by law with authority to confiscate these dredges and to impose a heavy fine if they are ever used on your natural oyster reefs or at night.

Your planters should be authorized to use the same labor-
2284 saving appliances as their competitors are to-day using on the Atlantic coast. In Connecticut, on 64,907 acres of rented grounds, one hundred and two steam and gasoline dredges are in use. Some of these dredges take up 3500 bushels of oysters a day, in twenty-five feet of water.

Oyster culture, in fifteen or twenty feet of water, along your coast, can never succeed, unless your planters are authorized to use these dredges and have large areas.

There should be no "closed season" for the oyster planter. He should have the right to ship, in and out of the State, the products of his *own oyster farm*, whenever he so desires.

From my observations, in your State, I find there is much just ground for friction between the buyer and the seller, owing to the sale of oysters in bags, etc.

"At no place on the Louisiana coast is a standard measure used for handling oysters." (Report United States Commission of Fish and Fisheries, 1899, page 1477.)

I would strongly recommend the adoption of the Virginia law. It reads:

"It shall not be lawful, at any time, for any person to buy or sell oysters in this State, in the shell, by any other than the metallic measure adopted by the State, and *bearing* the seal of the State. These metallic tubs must be filled with a slight rise above the top. *Any person* violating this law shall be *fined* not less than $10.00 nor more than $100.00 for each offense."

These metallic tubs should be sold by your commission at the contract price, plus the cost of delivery, with a small charge for the official seal.

When oysters are sold out of the shell, the Virginia law reads: "All oysters sold out of the shell shall be by uniform wine measure. Any person violating this law shall be fined not less than $5.00 and not more than $50.00 for each offense."

Some of your planters find that it costs as much to bag their oysters for sale, as it does to cull them.

2285 It is interesting to note what is the annual yield of oysters in Louisiana, from its extensive oyster areas.

Your 2-cent barrel tax, on every barrel of oysters gathered in the State, should be a fairly correct measure of your present annual yield of oysters.

From these figures, you produced annually 1,617,044 bushels of oysters to September 1st, 1903.

The United States Commission of Fish and Fisheries have furnished me with no later data than 1897. You then sold annually only 959,190 bushels of oysters, valued at $432,668, the largest sale of any State south of Virginia. Your oyster industry is, indeed, in its infancy, but it is showing a gratifying increase since the establishment of your commission.

There is every reason why Louisiana should *encourage* oyster culture. The fishermen and oyster men of Louisiana are largely of foreign birth, moving from place to place, according to the productiveness of your natural reefs and fishing grounds. They have little attachment to the places where they camp.

This is not conducive to good citizenship. It is a well recognized fact among all political writers that a common need of good citizenship is that labor have a settled place of abode.

A nomad population can hardly be called a highly civilized one. Only a firmly settled laboring population which desires and expects to pass its life in one spot can be truly happy and produce good citizens.

The best friend of the working man is that State which encourages the working man to help himself and have a fixed home.

The State of Louisiana has a *princely inheritance* in her more than four millions acres of tidal bottoms. It will require *persistent labor, intelligence* and *capital* to properly utilize and develop this area.

Let your State by long leases, encourage your oyster man to have a fixed home near his bedding ground, which he rents from the State.

Your State should also encourage capitalists to engage in
2286 oyster culture, *wherever* large capital is *necessary* to properly develop your vast oyster territory.

You have an unlimited market for your oysters, in the great middle West, which is adjacent to you. The Pacific Coast region is open to you. Their oysters are poor and there is a constant demand for the Atlantic and Gulf Coast oyster. Our oyster does not produce fertile spat in the cold waters of the Pacific.

Chesapeake Bay oysters are shipped to the Pacific in shells, and deposited in the bays of California, Oregon and Washington until ready for use. You should have here a good market for your oysters shipped in the shell.

There is a good trade in oysters, from New York and Long Island sound, to Europe via New York city. Louisiana can build up a trade here with your great lines of steamers direct to Europe with their refrigerator plants.

The Superintendent of the United States Coast and Geodetic Survey has authorized the writer to determine, by triangulation, a series of points along your coast, to be used in strengthening your oyster and rice land surveys, and in noting changes in our coast charts.

Signals are being built over these points, and their latitude and longitude are being accurately determined. The points are securely marked, and from these section corners can be correctly located.

This work is being done so far without cost to your State.
Last year a series of points were determined in the marshes, adent to the Mississippi sound, and this year along the bays, east of Mississippi river, near its mouth.
This work should be gradually extended, by State as well as nanal aid, if necessary.
The geographical position of all triangulation stations so far demined will be furnished so soon as the computations can be rised in Washington. The distance of each securely marked trianlation station, in a north and south line and east and west line, om the adjacent section corner, will also be furnished your honorable commission.

87 Tall, substantial observing towers have been built over each of these marked triangulation points.

The State of Louisiana has at present an extremely valuable and mparatively unproductive asset in the ownership of her estimated ster territory of 4,631,152 square acres. It is the property of the ople of the whole State. The highest acre of land in your State s to be taxed to protect your lowlands. Your extensive levee stems will have to be strengthened and enlarged. Your common hool system will demand larger State expenditures, if your State pes to compete with the great manufacturing States. Your highys must be improved, if you would build up the remote sections your State. Large sections of your oyster area can only be utild in one of two ways. Either, under a community of interest, the ate must authorize large sums of money to be spent in oyster lture for the benefit of those of her citizens who live adjacent to em, or else she must rent or sell these barren oyster areas to individuals or companies.

Respectfully yours, J. B. BAYLOR.

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88 The Oyster in Louisiana.

By John Dymond, Jr.,

Attorney Oyster Commission of Louisiana.

The coast line of Louisiana bordering the gulf of Mexico comprises e ten parishes (counties) of Orleans, St. Bernard, Plaquemines, fferson, Lafourche, Terrebonne, St. Mary, Iberia, Vermillion and meron. Their shores are largely indented with bays, lakes and yous, where the tide ebbs and flows daily, mixing the salt water the gulf of Mexico with the fresh waters of the Mississippi river d the bayous and smaller rivers leading therefrom. The area of is water surface, calculated out to a 20-foot depth of water in the lf of Mexico, has been found by Prof. W. C. Stubbs, director of r State experiment stations, to equal seventy-two hundred and enty-six (7226) square miles, or four million, six hundred and irty-one thousand one hundred and fifty-two (4,631,152) square

acres. If, in place of limiting the area to a 20-foot depth of water, we extend it to a seventy-five-foot depth of water in the gulf of Mexico, it would add probably a million more square acres to the above figures, and for the purpose of studying our oyster industry, we could readily do this, as will now be shown. Dr. Stubbs' calculation stopped at a 20-foot depth of water, because he considered that that was the limit of depth in which oysters could be profitably fished and cultivated by means of the extension shafts or tongs, with which he was familiar, as a one-time Virginia oyster planter. We know, however, that oysters in other States, on the Atlantic coast, are found, fished and cultivated in water seventy-five feet deep; so there is no reason why we should not be able to do the same thing in Louisiana; and for the purposes of this article, showing the possibilities of Louisiana's future oyster industry, we may base our ideas and calculations on Louisiana's coast waters containing possible oyster fields equal to nearly six million square acres. When we consider that the whole State of Louisiana contains but twenty-five millions, two hundred and three thousand, two hundred (25,203,200) square acres of land above water, we see what an immense
2289 area these oyster fields cover, being equal to over one-fifth of the total area of the State. In the matter of oyster production, this coast water area is competent to produce, with the prevailing high prices of food stuffs, untold wealth for the people of our State.

However, since the year 1886, it has been the policy of our State, under the guise of developing her oyster industry, through her oyster laws, to have in fact unconsciously and unwittingly retarded its development by ridiculously restricting and limiting the area of barren water bottom that could be leased by her citizens for the purpose of oyster cultivation, so that there are now, to-day, but seven hundred and fifty (750) oyster-bedding-ground-leases in existence, covering an area of five thousand four hundred and ninety-seven, and sixty-two hundredths (5,497.62) square acres, when the area leased from the State should, under intelligent and liberal oyster laws, by now have reached up into the hundreds of thousands. Part of this vast water area, above mentioned is now and has been occupied by what are called natural oyster reefs, where oysters grow wild, unaided by man. There are no accurate data as to the area covered by the natural oyster reefs of Louisiana, as they are scattered all along the Gulf coast, but it is estimated that they will not exceed fifty thousand (50,000) square acres. Returning, therefore, to the foregoing figures, and deducting the leased bottoms and natural oyster reefs from the total area just mentioned, this would leave over five and one half millions acres of barren oyster bottoms, at present unproductive, but which, with the expenditure of money and labor by our citizens in private enterprise, as will be hereinafter shown, could be made to produce millions of barrels of oysters, or millions of dollars of money through the oyster business. The reason this has not been done heretofore is due, as we have just said, to the fact that the State oyster law, shaped in the past by the oys-

ishermen, alone, has been calculated to restrict and retard all elopment in the oyster industry. The fishermen were content et their oysters for nothing from the natural reefs, the only cost g the expense of gathering them, and they wanted to keep every one else out of the oyster business and prevent its development, because they feared they might lose their markets through an over-production.

Property of the State.

he Supreme Court of the United States has repeatedly held that bottoms of the navigable waters of a State are the property of State within which the water bottoms are situated. In the case ames W. McCready *vs.* Commonwealth of Virginia, 94 U. S., p. the court used the following language:

"Each State owns the tide waters and beds of all tide waters in its jurisdiction. Subject to the paramount right of naviga-, fisheries remain under the exclusive control of the State.

"A right of fishery is a property right, and not a mere privi- or immunity of citizenship.

"The citizens of one State are not invested by the Constitution he United States with any interest in the common property of citizens of another State.

"A State can grant to its own citizens the exclusive use of lands ered by water for raising oysters, and may prohibit, under a alty, their use for such purposes by citizens of other States."

he power of a State over these water bottoms is, therefore, abso-, except that the right of navigation, controlled by the United es, must not be impaired; and, as to these lands, each State is a reign. According to the law of nations, this sovereign right of State extends a distance of at least three miles off shore into high seas, and the mouth of a bay, opening into the sea, must ed six miles in width for any part of the bay to be considered a sea, although a State may claim jurisdiction as far out in the for police and other purposes, as she chooses to enforce her ts.

ll of this vast water area, therefore, belongs to Louisiana as a e, just as do her public swamp or high lands, and may be rented ier to her citizens or sold, as she does her other lands. They e an enormous future value. A comparatively small portion of e oyster fields is in dispute, as to ownership, between the States of Louisiana and Mississippi, and a suit to determine this issue has been instituted by *by* the State of Louisiana in the Supreme Court of the United States at Washington. One he large Mississippi oyster canning concerns recently stated to writer its willingness to pay two hundred thousand dollars 0,000.00) per annum net to the State for the exclusive right to oyster product of the disputed area, for such number of years as ht be agreed to. This gives a rough idea of the value of these

water bottoms. Although it is but a small part of Louisiana's total oyster fields, this offer would mean four (4) per cent. interest on a value of five million dollars ($5,000,000.00).

The Duty of the Legislature.

All State property is managed by the legislature. It provides for such management by appropriate laws. To intelligently manage an interest so important as these oyster fields which belong to the State, one should have knowledge of that which one manages, as otherwise the best results will not be obtained. It is, therefore self-evident, if we are to have good oyster laws, that the members of our legislature should be fully informed of our oyster industry. We have ten coast parishes out of a total of fifty-nine parishes. Heretofore it has been the custom of our legislators to leave to the members from the coast parishes the entire formation of our oyster laws. They were not aware of the fact that there were two interests to be considered, namely, that of the State, as well as that of the fishermen. The fishermen erroneously thought that their best interests lay along the line of preventing any development of the oyster industry, while the State's interests would certainly best be subserved by encouraging the development of the industry, because it would enable her to get a revenue from her large holdings of barren oyster bottoms by securing their rental. There heretofore being no objection from the State at large, the members from the coast parishes, not being themselves as well informed as they are to-day, in regard to the oyster industry, were naturally influenced by the desires of the local oyster fishermen. These local oyster fishermen wished to keep the oyster industry for themselves, and prevent new labor and capital from becoming interested therein; and
2292 they therefore dictated oyster laws that have proven themselves to be admirably calculated to prevent any development in the industry. That development which has occurred in the last few years has been due to the utter inability of the oyster law to prevent it, a natural development that has burst through the narrow restrictions and absurd limitations of the law.

As the State owns the natural oyster reefs also, the legislature should know what these natural reefs are, and what they need, so that the annual oyster crop from this source may be maintained and if possible increased, for the benefit of the fishermen who have neither the money nor inclination to cultivate oyster beds for themselves, and for the benefit of the general consuming public.

The State also owns the oyster bedding grounds now leased by it to private parties. The legislature should know the needs of this more progressive class of people so that their interests may be encouraged and protected, because the State gets one dollar ($1.00) a year rental for each acre of oyster bedding grounds, leased for this purpose.

There are, then, in addition to the above, over five and one-half

illion acres of oyster bedding ground now barren and unproductive, hich also belong to the State. If the State could rent this area at ne same rental as the bedding grounds already under lease, the tate's annual revenue from this source alone would amount to more han five million dollars ($5,000,000) per annum, or more than nough to pay the annual expenses of the State government. It is, herefore, the duty of the legislature to see that local labor and local apital are encouraged to take up this industry and rent these barren ottoms, thousands of acres of which could be made profitably pro- uctive on a handsome scale at a very small expense. In one way his is not a remarkable thing. It is not the dream of a visionary. The province of Ontario, Canada, never levies any taxes. It has mmense areas of timber lands and annually makes up its budget, nd sells enough stumpage rights to lumber men to meet the ex- enses of its budget, which makes it unnecessary for the province o levy any taxes.

2293 Natural Oyster Reefs.

The oyster crop of Louisiana for the year ending September 30, 1903, and amounting to four hundred and seventy-two thousand, one hundred and ninety-one (472,191) barrels, or one million, six hundred and seventeen thousand and forty-four (1,617,044) bushels, came almost entirely from our natural oyster reefs, which are the property of the State. It will be remembered that the area of these natural oyster reefs is estimated not to exceed fifty thousand (50,000) square acres, and as they are the source of a delicious food product, it behooves us to know something of their natural history, so that by its knowledge we may profit in our legislation for their benefit and improvement. Let us note, therefore, that the oyster has no power of locomotion, and where he once settles, whether placed by nature or by man, there he stays until he is removed by man. As in other animate life, the oyster is of two sexes, male and female, but with the peculiarity that the same oyster may be one year male and the next year female. The breeding season extends generally from May 1 to September 1, the months without the letter "R" when the oysters are commonly said to be milky. This milk is given off by both the male and female, and under a microscope, the milk of the female will be found to be a fluid composed of innumerable eggs, while the milk of the male is made up of innumerable *spermatoza*. It has been calculated that a single oyster each year lays the enormous number of from forty million (40,000,000) to sixty million (60,000,000) eggs, and the male oyster a similar quantity of spermatoza. The eggs of the female and the spermatoza of the male are brought together and mingled by the tides and currents. In order to develop oyster life, it is necessary for one of the spermatoza to attach itself to an egg. When this happens fertilization and oyster life at once begin. This elemental fact in the natural history of the oyster has been demonstrated by the following

experiment conducted at the Johns Hopkins university at Baltimore, Md.: A well developed male oyster and a well developed female oyster, both in the milky condition, were selected, carefully opened,
2294 and with the gentle pressure of a glass rod over the egg ducts, the milk from each oyster was expressed into separate glasses of sea water, a teaspoonful of the liquid from one glass was then poured into the other glass, and the results heretofore described were observed and followed with a microscope. Each spermatoze selected and attached itself to an egg. The eggs at once began to swell, the transformation was quite rapid, and soon the young oyster *spat*, for they are so called at this period, had formed and developed a few *cilia* or hairs, by means of which they are, for a brief space of time, able to swim about. These oyster *spat* are now in search of some clean, hard surface, where they may stop and affix themselves, and where they may take up their permanent abode, as once *set* they lose all powers of locomotion. They are still microscopic in size and very delicate, for if covered by any silt or sediment in the water, they are at once smothered and die. The process here described goes on annually on the oyster reefs. The most available hard clean surface is generally the shells of other oysters lying in the locality. To these the young oyster *spat* attach themselves, and when these young oysters become adults, the cycle of reproduction begins again. Thus are the natural reefs formed, and we find oysters that have grown on top of oysters until they have formed themselves into large bunches. Of course the natural reefs had a beginning, but they can be increased by the spreading of oyster shells, and private bedding grounds can be made as productive as the natural reefs in exactly the same way. These reefs are generally of limited area, individually. The bottom is made hard by old shells, so that the oysters cannot sink in the mud; and the young oysters build themselves on top of the old ones, and the reefs extend no further than the oyster shells are scattered. In New York recently the oyster crop measured in dollars was as follows:

Product of cultivated oysters on rented bottoms.....	$1,972,540
Product of natural reefs.....	20,104

Showing how much more productive cultivated bottoms are. In Louisiana, as we have said, our crop is almost entirely a natural reef crop. How much greater our crop will be when we begin to intelligently cultivate oysters will be seen at once from the above figures.

2295 In order to bring about the most prolific oyster life in any given locality, we must have a proper mixture of fresh and salt water. The oyster gets its food from the *diatoms*, a low order of vegetable life, found in the fresh water, and it gets its lime to make its shell from the salt water. From investigations made it has been found that oysters live best in water ranging in density from 1.0011 to 1.0022 with pure water at 1000 as the basis. A great excess of either fresh or salt water is fatal to oyster life, determined to a great

extent by the age or size of the oyster, for the larger the oyster the greater the change in density it can stand. This has been clearly demonstrated by our experience with crevasses, expecially those occurring above the city of New Orleans, on the east bank of the Mississippi river. For instance, the water from the Nita crevasse killed all the oysters in the parish of St. Bernard. The point of proper mixture of fresh and salt water was, by this excess of fresh water, extended or pushed much further out into the salt water of the Chandeleur sound, and at this new point of proper mixture, at once oysters were found to begin to grow. When the crevasse was closed the old conditions gradually re-established themselves; the oysters in the sea were in time impoverished or made thin and of little value by the excess of salt water, and the oysters grew again on the old shells and reefs in St. Bernard, the proper line of water mixture gradually moving backward to the shore.

From this exposition of the subject, it appears that in order to develop oyster life to the best advantage, we must have:

1st. A proper mixture of fresh and salt water, ranging in density from 1.0011 to 1.0022.

2nd. Oysters, both male and female, present or in proximity in the adult stage, to make the oyster *spat*.

3rd. A bottom hard enough to keep the oyster shells from sinking in and being covered by the mud.

4th. Oyster shells, or some other hard clean material, scattered over the bottom to act as *cultch*, to which the young oyster
2206 spat may attach themselves.

These conditions exist naturally on the natural reefs; where they are found, there you find natural oyster reefs, and as long as they continue to exist the reefs will continue to produce annual crops of oysters. Where they do not exist naturally they can be brought into existence by the expenditure of labor and capital, in supplying the missing conditions, that is, in bedding adult oysters and spreading old shells on the bottoms, and this is what is done on the private bedding grounds. To insure a continuance of the existence of these favorable conditions on the natural reefs, or private bedding grounds, three things must be observed by the oyster fishermen that are absolutely necessary, and for the following reasons to-wit:

(*a*.) The fishermen, when fishing oysters from the natural reefs should *cull* their oysters and scatter the dead shells back on the reefs, because they become the *cultch* or attaching place for future young oyster *spat*, which would otherwise be smothered by the soft mud of the bottom, as they would have no other hard surface to which to attach themselves.

(*b*.) The small oysters under two and one-half (2½) inches in size from hinge to mouth, should also be returned by the fishermen to the natural reefs when they are fishing. The fishermen always take all the adult oysters, and it is necessary to return these small oysters

to the reefs so that they may in time become adult and produce young spat to keep the reefs alive.

(c.) No oysters should be removed from the natural reefs while the oysters are spawning *or* in their milky period, that is during the closed season from May 1st to September 1st, as this will then give the young spat a chance to set and replenish the reef.

Human nature is such, however, that the ordinary fisherman will not follow these simple natural laws even when they are for his own benefit. An effort is made to compel the fishermen to obey these natural laws by requiring them, under positive law, to do so; but our own experience and the experience of our sister oyster States shows that the task is almost, if not quite, hopeless, and sooner
2297 or later the natural oyster reefs are doomed to destruction.

That this may be appreciated let us take the fishing system in vogue with our oyster fishermen to-day. A fisherman will anchor his boat by pushing his pole in the bottom and fastens his rope or cable to it. He will then begin to fish over the side of the boat with his oyster tongs, depositing his catch on deck and gradually letting out his rope as he gathers up the oysters from the water bottom around him. After he has changed the position of his boat once or twice, he will have gathered up a deck load. He will probably have removed the oysters and dead shells from over one thousand (1,000) square feet of surface. He will now begin to clean or *call*, which consists in knocking the small oysters and dead shells from the marketable oysters. He does this sitting on the deck, without moving his boat, and the shells and small oysters *and* thrown overboard into two small piles in the water, on each side of his boat, covering scarcely twenty-five (25) square feet of bottom. In this way the size of the reef or the hard surface of the shells to which the young spat may attach itself is being reduced from 1,000 to 25 square feet, and no oysters will grow on the remaining 975 feet of bottom because all of the shells have been removed from it. To prevent this would require an inspector on each boat, an expense to the State out of all proportion to the benefit received by it, and our only hope for the oyster in the future lies in the direction of the encouragement of private bedding grounds, where it will be more to a man's interest to take care of his private reefs made by himself in such a way as to keep them annually productive to their fullest capacity, than is the case with public property where every one is interested solely in present results, and all are generally regardless of the future.

The Oyster Industry as It Is.

This is the first year during which we have ever had any statistics as to our annual oyster crop, or as to the number of those engaged in the industry. It is true that the oyster industry has been
2298 subject to legislative control, on a comparatively comprehensive basis, since 1886, yet that law and the laws of 1892 and 1896 were recognized by the fishermen more in their breach

than in their observance. There was no effective way or means provided to enforce the law until the act of 1902, when the present oyster commission was created. Even as it is, the present law is not designed to immediately develop the oyster industry. All that can be hoped for under its operation is to compile statistics, to have the benefit of a thoughtful and careful study of the industry by the gentlemen composing the oyster commission; and with that to educate our people to an appreciation of the true importance and possibilities in the development of the Louisiana oyster.

Under the present oyster law the waters of the State are regarded as a common, and all residents of Louisiana may enter thereon and fish oysters from the natural reefs upon the condition that they procure from the State, through the oyster commission, annual oyster licenses for their vessels, on the basis of fifty cents a ton; a license of two dollars per annum for each man using oyster tongs with which the oysters are fished, and the payment to the State of a privilege tax of two cents per barrel of oysters fished. It is possible that the amount of oysters marketed this year was slightly larger than the results of last year. This, however, does not mean that we have had a better or bigger crop. It means simply that a few more people were employed in depleting the natural reefs, which are at present practically the sole source of our oyster supply. Some one may, however, suggest that some of our oysters come from bedding grounds. This is true, but these bedding ground oysters, as the business is carried on to-day, have been merely transplanted, and are the identical oysters that came from the natural reefs only a few months, or perhaps a year, before, so no matter how you look at it, it comes right back to the proposition that we are at present dependent on the natural reefs for our oyster supply.

Now comes the serious problem. The crop on the natural reefs is getting scarcer and scarcer every year, the fishermen have to go further and work harder to get oysters from the natural
2269 reefs and in a given length of time are able to tong fewer oysters than they used to. This subject will receive further attention under the head of recommendations, as there is a ready remedy for it. Under the present law, also each dealer and shipper of oysters must pay an annual police license of $25.00, and each canner of oysters an annual police license of $100.00 The records of the oyster commission show the following licenses to have been issued for the several purposes during the year ending September 30, 1903, to-wit:

1574 vessels aggregating	$2,710.50
1,953 tongmen aggregating	4,882.50
27 dealers aggregating	689.00
3 canners, aggregating	301.50

It will appear from the above that the average vessel employed in the oyster industry has a tonnage of 2.44 tons, or an oyster carrying capacity of a little less than fifty (50) barrels of oysters of three and one-quarter (3¼) bushels per barrel.

The last annual oyster crop to September 1st, 1903, as we have heretofore stated, was one million, six hundred and seventeen thousand and forty-four (1,617,044) bushels. Under the oyster law of 1886, a citizen of the State could lease from the State for the purpose of oyster cultivation a part of the water bottom, not a natural reef, not to exceed three acres. Here he could deposit the oysters which he had fished from the natural reefs and when so deposited they at once became his private property, protected by the laws governing same. Oysters deposited anywhere other than on private bedding ground, leased from the State, belonged to whomsoever might wish to come along, find them a second time and take them. Under the oyster laws of 1892 and 1896, this area that any one person, firm or corporation could lease for the above purpose was increased to ten acres, and by the act of 1902 was further increased to twenty acres as a maximum. Some fishermen fish their oysters direct from the natural reefs to the market, and this is particularly the case with those who fish for the canning factories. The same practice has also been largely in vogue in Terrebonne and St. Mary parishes, where heretofore the natural reef
2300 oysters of marketable size were plentiful. Others fish on the natural reefs, and temporarily deposit their catch on provate leased bedding grounds where the oysters are increased in size and improved in shape and flavor, better fitting them for the counter trade, for which they are intended, where oysters are opened and sold on the half shell. It is this latter class of oyster fishermen who are the only ones who have heretofore made what little use has been made of the water bottoms belonging to the State. They wanted, however, individually but a small area for this purpose. They were even unwilling to spend money in improving this small bedding ground, and usually selected a part of a natural reef which was already a hard bottom, and leased it, notwithstanding that this was against the law. They did not try to make more oysters grow. They simply improved the oysters they had caught on the natural reefs. During the past seventeen years only a limited quantity of the water bottoms was leased from the State for the above purposes, and not an acre was leased for raising new oysters like other farmers make their crops. The new oyster law required the lessees of these previously leased bedding grounds, belonging to the State, under penalty of forfeiture of their rights, to register their leases, with the oyster commission within a designated length of time. This time has now elapsed, and the records of the oyster commission show the following data:

Five hundred and twelve leases made under the oyster laws previous to 1902, aggregating 2,820.52 acres distributed among the parishes as follows:

	St. Bernard.	Plaquemines.	Jefferson.	Lafourche.	Terrebonne.
No. of leases...	12	359	7	24	110.
Total acreage..	120	1547.07	70	120.68	962.77
Average.....	10	4.30	10	5.02	8.75

When we stop to think that in seventeen years the State has leased less than three thousand acres out of the five and one-half million acres that the State has to lease, and that we still have these five and one-half millions acres to lease, it strikes one at once that there must be something radically wrong with the system we heretofore followed and still follow, which prohibits any one per-
2301 son from leasing more than 20 acres of barren bottom, especially when one compares our results with that of other States.

Since the creation of the oyster commission, that body, as representing the State, has itself leased twenty-six hundred and seventy-seven and ten hundredths (2,677.10) acres to two hundred and thirty-eight (238) different people in the past year. This is more encouraging when we see how little was done in former years but it —still far from satisfactory, when we consider that we have still over five and one-half million acres that we wish to have become productive, and which can be made to grow oysters as profitably as the natural reefs.

Effect of Existing Conditions on the Future of the Oyster Industry.

The oyster commission at considerable expense, is policing the natural oyster reefs in the several parishes along the Gulf coast, and is endeavoring to enforce the provisions of the oyster law, prohibiting the removel of small oysters and dead shells from the natural reefs and preventing the fishing of oysters from the natural reefs during the closed season, or while the oysters are milky. To do this the commission has inspectors equipped with boats in all the coast parishes, and maintains two police boats, one a schooner and the other a gasoline launch, on the boundary to the eastward between the States of Louisiana and Mississippi. The commission is in this manner doing a great deal of good in a negative way, by trying to prevent any decrease in the natural reef supply, but it is at the same time endeavoring in a positive way to benefit the industry by encouraging the cultivating of oysters by private enterprise, as it is through this means and this means alone that there will ever come any material and permanent improvement in the oyster industry or any substantial benefit to the State. Protection of the natural reefs helps, but a much more effective means to produce results would come from increasing the oyster producing area. We have nearly six million acres of water bottom, hundreds of thousands of acres of which are now barren and unproductive, but which could be made to yield annually at least one
2302 hundred barrels of oysters per acre at but a small expense, if the law was designed to encourage this. Most of the people who are in the industry to-day, do not desire to see any increase or development in it. In fact, with few exceptions, they regard every new comer as an intruder into a business that belongs entirely and exclusively to them. That the State's water bottoms remain idle

and the State loses hundreds of thousands of dollars yearly in rentals is no concern of theirs, just so long as there is no development in the oyster industry. They get their oysters from the natural reefs for nothing, except the expense of going there and getting them, and the small tax of two cents a barrel they pay the State. They must know that it is yearly more and more difficult to find oysters on the natural reefs, and yet they are opposed to the leasing of the barren bottoms of the State on any liberal basis, because they fear that something might happen which would injuriously affect them. They do not know what this something is. Their fears are, in fact, entirely unfounded, and yet the best interests of the State are sacrificed to an alarming extent. The fisherman's influence has caused the law to be so framed as to restrict to twenty (20) acres the area of barren bottoms that any one can lease from the State and improve and plant in shells and oysters. The effect of this is to paralyze any development. On the basis of units of twenty acres and hand labor to work them, there are not and never will be in Louisiana sufficient people, without means, voluntarily willing to go into the cultivation of oysters in this way. Twenty years of experience has shown that the present oyster fishermen won't do it, and yet they do not want any one else to do it. It takes labor and money to change an acre of barren bottom into a condition as permanently and profitably productive as a natural reef. It can be done, has been done, is no experiment, and its development means the coming into the State treasury of an immense revenue from the leasing of these barren bottoms owned by the State, a revenue to the State that in the next ten years should easily reach a million dollars a year.

2303 One of the first things necessary to do to change the existing condition of things and to encourage the cultivation of oyster beds in this way is to remove this ridiculous limit placed in the law as to the area that any one person may lease. The State itself owns more barren oyster bottoms than there are high lands in cultivation in any one industry of the State, in which its citizens are engaged, yet how absurd it would be to say that no citizen should cultivate more than twenty acres of cotton, sugar, rice or corn land which these citizens own. Nevertheless, we find the astounding provision in the oyster law in which the State says that no person, firm or corporation can lease more than twenty acres of the State's own barren oyster bottoms, though she has six million acres to lease and in the past twenty years has not succeeded in leasing six thousand acres. The folly of this policy, from this point of view, appears with the mere statement of it. But it will be said, if the State does not put a limit on the area, a trust will get hold of the industry and the small fishermen will be crowded out. To any one who has given the subject any thought, this is manifestly impossible; it is nothing but a cry gotten up for a purpose. To make an American oyster trust it would be necessary to control and consolidate the oyster industries of the States of Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, North Carolina, South

Carolina, Florida, Alabama, Mississippi, Texas and Louisiana. The steel trust would not be a circumstance. To control the oyster bottoms of Louisiana alone, such a trust would have to pay into the State treasury of Louisiana the enormous sum of five million dollars ($5,000,000) annually, in rentals, besides ten million dollars ($10,000,000) in the two cent ($.02) tax, not considering what it would have to pay into the treasuries of the other States. *No trust could be formed when the title to the water bottoms was founded on a lease, as the law that permitted the lease could, by special provisions, prevent a trust.* Be that as it may, if a limit is needed and desired, place at five thousand (5,000) acres the maximum amount any one person, firm or corporation can lease. It would take twelve hundred persons to take up all of the water bottoms, and then there need be no fear, as any combination of these elements would be prohibited by the law itself, and we have many sugar plantations and cotton farms with as many as this. Connecticut and Rhode Island have no limit, and yet have no oyster trusts. Virginia, in Chesapeake bay, has no limit and she has no trust.

The reason that those who are in the oyster industry oppose any development or utilization of the great natural resources of the State, the reason they regard each new comer into the oyster industry as an intruder, is due to the mistaken idea that there will be so many oysters produced that it will hurt the market values now existing. This conclusion is absolutely unfounded when the facts regarding the real and future oyster demand are known, for the following among other reasons:

The people who are at present in the oyster industry, with the exception of the parish of Terrebonne, almost entirely depend upon the city of New Orleans for a market. Generally the fishermen have neither time, money nor ability to build up markets elsewhere. The result is that at times the New Orleans market is glutted, and then it is devoid of oysters. Houma, in Terrebonne parish, and Morgan City, in St. Mary parish, are largely engaged in the shipping of oysters outside of the State of Louisiana. Raw oysters, removed from the shell, are called shucked oysters, and these have been shipped by express successfully from Houma to the State of Washington, in the northwest corner of the United States, and she to-day is shipping raw oysters daily through Texas, California, to Salt Lake City, Utah, to Phœnix, Arizona, to Denver, Colorado, and, in fact, to twenty-six States. There is no reason, with liberal oyster laws in Louisiana, why this and the canned oyster business should not be built up to unlimited proportions, and there is no reason why we should not compete with the Atlantic Coast oyster, and successfully supply our superior southern oysters to the hotels and large consumers throughout the whole of the United States, at least west of the Mississippi river, and through a great part of said territory east of said river.

In order to be able to do this, we must be in a position to make

contracts for delivery, and this we cannot do unless we can get sufficient oysters to fill the contracts with certainty, and we have not enough oysters now to justify one in making a large contract for continued delivery. It will be five or six years before we
2305 would be able, even with liberal laws, to supply the demand as it exists to-day, not considering to what proportions the demand may be built up by industry and money, and this can be readily done. At one time the parish of Plaquemines produced more rice than all the other Louisiana parishes put together, and even then her product was comparatively small. Calcasieu, Acadia, and a number of western parishes started into rice, and it was feared by the Plaquemines planters that this extra supply would glut the market, that prices would consequently fall, and they would have to sacrifice their rice. How mistaken they were is shown by the fact that with a bigger rice crop this year than ever before, nearly 3,000,000 barrels from the western parishes, prices for rice for a time rule higher than ever before. This is explained by the fact that each new rice farmer as soon as he got into the rice business, at once began to look for and build up new markets. Such an increased demand has grown from the greater use of rice brought about through *by* advertising, by *rice kitchens*, and other means throughout the country, that the greatly increased crops are not only readily absorbed, but they are disposed of at greater advantage than ever before. It is true that the rice market is presently slightly depressed, but this will adjust itself. Thus we may confidently count upon the fact that a development of our oyster industry and an increase of our annual crops will carry with it an enormous increase of the already large demand brought about by new brains and new money in building up and establishing new markets.

The present demand from outside the city of New Orleans for the Louisiana oyster is many times greater than the supply. I know of one firm, perhaps the largest shipper of Louisiana oysters, who received two separate orders for a daily supply, either of which, if accepted, would have taken every oyster this shipper received, and all of the firm's other customers would have gone unsupplied.

These orders, however, carried with them a necessity of fill-them, a contract obligation which the firm was unwilling to assume, because it could not be sure of getting the oysters in the Louisiana market, owing to the insufficiency and irregularity of the supply.

This belief of the fishermen, that oyster development will
2306 hurt them, is very unfortunate, but it is equally unfounded, and it is the duty of our people to educate our fishermen to a true knowledge of the future consequences of these changes in the State's policy toward her oyster industry. This fear of the fishermen is nothing unusual; it is part of the history of the oyster industry of every State that has or ever had an oyster industry, and we can therefore profit by the mistakes of these other States and avoid them ourselves.

A Comparison with Other States.

Maryland, they have practically no private bedding grounds
lepend for their supply of oysters upon the natural reefs, which
ommon property and open to everyone. They endeavor to
ct these reefs by a most elaborate police patrolling system,
oying fourteen regular patrol boats and six extra vessels during
eason. In its time Maryland has produced more oysters than
ther oyster center in the world, yet depending on her natural
and not encouraging the production of oysters on barren bot-
by private enterprise, they have been killing the goose that
the golden egg, as exemplified by the following table of the
al oyster output of the city of Baltimore, which shows a won-
l but gradual falling off in production, to-wit:

Seasons.	Bushels.	Seasons.	Bushels.
-1886.....	7,405,963	1899–1900.....	4,062,665
-1889.....	6,559,733	1900–1901.....	3,502,114
-1890.....	5,925,400	1901–1902.....	2,877,861
-1894.....	4,913,060		

aryland has 31,543 persons directly engaged in her oyster in-
y. The above data were taken from the report of the bureau
atistics and information of Maryland, 1902, and a recent visit
at city shows a general feeling of depression and despair in re-
to the future of the Maryland oyster industry, and it is the
there now that the legislature will encourage private enter-
on leased bedding grounds. Dredging is authorized in this
, and enables the oyster fishermen to fish their oysters more
ply than we can, and they are therefore able to undersell
us.

In Virginia we find, on the contrary, that they have broken away from the ill-advised policy of Maryland as to leases, having adopted a more liberal policy towards the development e oyster industry, that State has now about 50,000 acres of her ing ground leased to her citizens, and the State and its citizens eaping the reward.

ne reports of the Virginia Oyster Commission show the follow-
expenses and net profit to the State for the following years:

Season ending—	Gross revenue.	Expenses.	Net profit.
30, 1900.....	$48,392.32	$21,534.71	$26,858.05
30, 1901..... ..	53,506.50	21,248.04	32,258.46
30, 1902.....	58,576.95	25,205.66	33,371.29

redging is extensively practised in Virginia, under wise legal
ations, to the advantage of all concerned.

Connecticut, we find the most liberal and logical laws in effect the oyster cultivating industry carried to its highest point of

development. According to the report of the oyster commission of that State for the year 1902 there were leased by the State to private parties sixty-six thousand, four hundred and eighty and eight-tenths (66,480.8) acres of water bottoms among 185 tenants. There is no limit in the Connecticut oyster law to the number of acres of oyster bedding ground that any one person, firm or corporation may hold. Notwithstanding this, there are 185 separate tenants, showing that no trust can control the oyster industry even when there is no limit as to area. The average holding is 359.30 acres, the smallest being one (1) acre, and the largest being ten thousand, five hundred and forty and two-tenths (10,540.2) acres. There are sixteen different firms and individuals with over one thousand (1,000) acres each. There were 102 steamers used to fish oysters in Connecticut waters, not including 79 sailing vessels.

In Connecticut no rent as such is charged for the use of the oyster bedding grounds, but annually, on November 1, grantees of oyster beds must make a report to the Connecticut Oyster Commission of the value of their beds, and an annual tax of one and one
2308 half (1½) per cent. is levied on this value. Connecticut's oyster industry is small as compared to the possibilities of Louisiana. The State does not strive for a direct revenue for herself, yet her net profit for the year ending September 30, 1902, was nevertheless $3,570.42. Dredging is extensively practised in Connecticut, and many of the private bedding grounds are covered by water seventy-five (75) feet deep, where oysters could not be cultivated unless the use of modern implements was permitted.

In Rhode Island, we find them using dredges wherever the water is over fifteen feet deep. This State puts no limit on the area any one may lease, and had on January 1, 1902, 102 leases, ranging in area from .03 of an acre to 987.40 acres. The annual rental ranges from $5.00 to $10.00 an acre, and the State's revenues for the last four years are as follows:

1900.....	$20,973.08	1902	$38,216.75
1901.....	25,767.38	1903	45,000.00

and the industry is prospering there, though it is composed largely of temporarily bedding seed oysters grown in other States, and brought to Rhode Island to increase in size and improve in shape and flavor.

In New Jersey we find them using modern implements in fishing and cultivating oysters. The report of the New Jersey commission for 1901 is interesting, as it shows they had to combat the same ignorance as to the real welfare of the oyster industry that we have here. They charge an annual rental of but twenty-five cents ($0.25) an acre for bedding grounds.

In Florida there is practically nothing being done in the way of the State's controlling her oyster industry, and it has suffered correspondingly. Some years ago, the United States Fish Commission made some elaborate studies of and researches into the oyster con-

ditions of Florida, and found the prospects very flattering, but the industry there, being without the control of any oyster commission or similar body, no development has occurred.

In New York, on January 1, 1903, that State had under lease, as private bedding grounds, 27,352 acres, which were rented for not less than 25 cents per acre per year rent. Before a lease is
2309 made the price is fixed by public auction, so that the State gets the benefit of any advantage possessed by any particular locality. The oyster industry comes under the head of the Shell Fish Department of the State Forest, Fish and Game Commission.

Great encouragement is lent by the New York oyster law to the development of her oyster industry. Among these encouraging features may be mentioned the right to lease as many acres as one wishes at a rental fair to the State and the applicant, and the right to use whatever means or implements one chooses in cultivating, fishing or harvesting one's oysters from his leased bedding grounds.

In North Carolina the total oyster product for the season ending August 31, 1902, was 643,410 bushels. Heretofore they have operated one steamer in patrolling the State's oyster beds, but the oyster commissioner in his report to the governor recommends the acquisition of three sixty-foot gasoline boats and three schooners for patrolling purposes. The gross receipts from January 1, 1901 to December 31, 1902, amounted to $29,473.63, while the expense during the same period reached the sum of $27,458.11. In North Carolina a tax of two cents ($0.02) per bushel is collected by the State on all oysters fished, which is over three times as much as we collect in Louisiana, and there you may use any implement you choose in fishing oysters on the natural reefs, except in designated places, where the use of anything but hand-tongs is prohibited. In other words, hand-tong fishing is confined to inland shallow waters, while in open and deep waters, where hand-tongs cannot be conveniently used, you may use the more modern implements.

Little or nothing has been done in North Carolina in the matter of leasing barren bottoms to private citizens for the purpose of oyster propagation and culture, and in this respect she is very much behind our own, and her other sister Atlantic States.

The above statement is based on the biennial report of the Oyster Commission of North Carolina, issued in January, 1903.

In Texas the latest report we have is dated August 31, 1900, and shows that the State then had 884 acres of oyster bottom under lease by the State to twenty-three individuals and one corporation.
2310 The State has an oyster law and a fish and oyster commissioner. The law authorizes the leasing of not exceeding 50 acres of bottom to a person, and prohibits corporations from holding more than 640 acres of oyster bottom. The lands are leased for an indefinite period at a rental of 10 cents an acre per year for the first five years, and 25 cents an acre per year thereafter. A charge of $5.

a year is made for a tongman's license. On private bedding grounds you can use any means or implements you choose in handling and marketing your oysters, but on the public reefs nothing but hand-tongs can be used. In speaking of this subject, Mr. I. P. Kibbe, the fish and oyster commissioner of Texas, says:

"The law prohibiting the use of any form of oyster dredge in the waters of this State has been a menace to the trade and detrimental to the growth of the industry. Dredges could be used with good results in many instances not only where the water is too deep for tonging but also where the oysters grow in ridges, for by the dredge the latter would be torn down or spread over a greater surface, thus furnishing a larger area for growth."

Texas claims to have 87,680 square acres of natural oyster reefs, yet her crop for the year ending August 31, 1900, was only 72,208 barrels with but 118 tongmen's licenses, and showing that her great natural resources have not even been worked, regardless of any development in the industry.

Mississippi, our sister State, has practically very little of her bottoms suitable for the cultivation of the oyster, and as a consequence her product largely consists of small reef oysters called "cove oysters," which when they are steamed shrink up to about the size of one's thumb-nail. This is due to the fact that her coast line is so open that there is an excess of salt water.

Her oyster law gives to the riparian proprietor the private use of the bottoms a distance of 500 yards off shore.

This area gets the benefit of the water shed from the land as stated, and except in cases of natural reefs it belongs to private parties and the State gets nothing from its use. There is no such thing
2311 known to the Mississippi law as leasing her barren bottoms to private parties for oyster culture upon the basis of a definite rental, and her annual oyster crop therefore comes from the natural reefs, except when supplemented by these riparian bedding grounds.

Mississippi authorizes the use of scrapers or dredges anywhere in fishing oysters. This is but proper in her case, as her waters are so open that with the least bit of wind it becomes so rough as to prevent a man standing up on the side of a boat and working his hand-tongs overboard. She, however, confines the use of these modern implements to sailing vessels and will not permit of them being used on boats propelled by steam, gasoline or other power. This is done in deference to the poor man, as they think he cannot afford to buy a steamboat, and they want to force him to a position of equality with his richer brothers so far as opportunity for business is concerned. It has a bad side, however, because a sailboat can work only when it has wind, and when there is a calm they must shut down everything, as the canning factories must be assured a regular supply of oysters in order to operate. Then, again, many excellent oysters are found in the deep water channels, and it is almost impossible to follow their curves and meanderings with a sailboat with a scraper dragging behind it.

While dredging in Mississippi has undoubtedly decreased the mber of adult oysters to be presently found there, it has never-less greatly enlarged the natural reef area, and as this is all cov-d with an excellent crop of small oysters, Mississippi will soon re again what she could just as well have lost through the use of nd-tongs. Mississippi's possibilities as an oyster producer do not mpare with Louisiana, as she has not the vast area of otherwise ren bottom covered by a proper mixture of fresh and salt water, ich area in Louisiana can be brought into cultivation by encour-ng private enterprise.

Recommendation.

In looking over the map of the Unit ed States, as well as those of foreign countries, it will be noted that the oyster fields of a 2 State or country are always found in proximity to the mouth of a river discharging its fresh water into the salt water of the . In this respect Louisiana possesses natural advantages enjoyed no other State, for it has the greatest fresh water river in the rid, the Mississippi, discharging its enormous volume of fresh ter into the salt water of the gulf of Mexico; and the area of proper xture of fresh and salt water, heretofore discussed, exceeds that of y other portion of the world. Her oyster fields can, therefore, be de that much more extensive in area, and her possibilities are hout parallel in oyster history, for the warmth of her waters kes her oysters grow many times as fast as they do on the Atlantic st, as will be seen from the relative natural size of the Atlantic st and Gulf Coast oysters at one year of age, as illustrated herein. Louisiana, however, will never be able to compete in oyster pro-ction with the other oyster States of the Union until she enjoys h them equal advantages in the use of the modern labor-saving plements in the gathering of her crops, particularly on private sed bedding grounds, nor until the ridiculous limit as to the area t may be leased is removed. Under the law as it is, even on 's own private bedding ground leased from the State, and for ich an annual rental of $1.00 an acre is paid to the State, one can nothing but hand-tongs to harvest one's crop, no matter how irable any other device may be, and no matter how much money ould save the lessee in gathering his oyster crop from his private ding ground. Though this is absurd, yet it is nevertheless true. ppose the legislature of our State were to say to the Calcasieu rice nter that he must use nothing but a hand sickle in gathering his crop, and must not use a reaper and binder, under penalty of ere punishment, although he might annually save thousands of lars thereby? Suppose it were to say to the sugar planter, You ll not use derricks, nor rope straps, nor the new cane loader; to cotton planter, You must not experiment with the hoped-for on picker, because we will not let you use it? If the legislature

tried to do such a thing with a rice planter, a sugar planter, o
cotton planter, the people would say it was outrageous,
2313 rectly contrary to the spirit of modern times, an idea t
would emanate appropriately from a Chinese legislature, b
certainly not from one of the United States, and yet this law unjus
stands on the statute books, preventing the oyster bedding grou
lessee from conducting his business according to the most improv
and economical methods. The law should be changed in this r
spect, and I have every reason to hope the legislature will
change it.

As to the wisdom of the use of modern implements on priv
bedding grounds, there can be no doubt. As to the wisdom of t
use of anything but hand-tongs on the natural reefs, there is a gr
deal of diversity of opinion. A very careful study of the whole su
ject, and an intimate knowledge of the oyster industry leads to t
following conclusions:

1. Oysters cannot be profitably fished with hand tongs in wa
over ten feet deep. Of course they can be fished; one could g
very long handled rakes and fish a few oysters, but for commerci
purposes oysters cannot be profitably fished in water over ten fe
deep.

2. Natural reefs in ten or less feet of water should not be fished wi
anything but hand or patent tongs. If the bottom is sufficient
hard, the scraper or dredge will not hurt the oyster reef, if the sm
oysters and dead shells are at once culled and thrown back on t
reefs, but in the present state of the public mind, I think the prop
sition to use scrapers or dredges in water under ten feet, on the natu
reefs, if it comes at all, should emanate from the small oyster fish
men. There is a scraper with a windlass that is now built at a co
of $40.00, a price easily within the reach of our small fishermen, a
they could use it to advantage in open water on rough days when
is impossible for them to fish with hand-tongs. Frequently the
cannot fish over the side of the boat with hand tongs, because of t
tossing of the boat by the waves, and if they had a small scraper
dredge they could fish their oysters with it while they sailed alon
and it would harm the reefs less than the use of the hand tong.
regard these shallow water reefs as properly the property
2314 the poor man, who has not the money to lease and prepare h
own bedding ground, and it will be time to permit them to u
these improved implements when they themselves ask for th
privilege, but when these dredges are used by the fishermen the
must cull their oysters and throw back on the reefs the culling
and dead shells, or the natural reefs will continue speeding on t
destruction.

3. If the bottom is soft, a scraper or dredge is injurious, becaus
it will press the oysters into the soft bottom and kill them.

has been claimed, and correctly, that the oyster reefs of Mississippi have been greatly increased in area by the bunches that have been broken up and the oysters scraped off the hard reef onto the soft bottom; but to my mind the use of live oysters to make hard bottom is a heroic means entirely unnecessary when the same thing can be done with dead shells.

(Here follow diagrams marked pp. 2314 *a* and *b*.)

2314a



A drag, or scraper, with hoisting winch, incorrectly called a dredge, used in deep water fishing.

23145

Oyster schooner fishing with drag or scraper. The drag is overboard on the

There is no mechanical appliance that has suffered more unjust criticism, born of ignorance, than has the scraper, commonly misnamed the dredge. Any one unacquainted with the facts would at once suppose that it was similar in construction to the mechanism we use in dredging our canals, and when one speaks of steam dredges we at once picture a machine competent to dig the Panama canal. All these ideas are born of absolute ignorance. The instrument is, in fact, nothing but a garden rake, with very short teeth, inclined at an angle with a chain net behind it. A rope is tied to it and it is thrown overboard, and follows or drags behind the vessel as it moves along. It merely scrapes or rakes the bottom, the short teeth set at an angle pass under the oyster, which falls back into the bag. The thing is pulled up on deck from time to time, and the oysters removed. It take*d* up the oysters just like you would rake the hay in your fields, but, of course, you must throw the small oysters and dead shells back on the reef for the reasons we have heretofore given, and just as tongmen must do, or you will soon destroy the reef. People say oysters are getting scarce in a certain locality because scrapers or dredges are used there. We hear the same complaint from localities where a scraper or dredge was never known. I know of hundreds of natural reefs that have been completely wiped out by hand tongs where a scraper or dredge has never been known, so that we must
2315 render justice where it is due. The fault has not been with the implement so much as it has with the man who operates it, as well as the man who operates the hand tong, in failing to return to the natural reefs the small oysters and dead shells. This is demonstrated by the fact that the use of scrapers or dredges is permitted and encouraged in Mississippi, Virginia, Maryland, New York, Rhode Island, Connecticut and New Jersey. A sailing dredge is one where the boat moves by sail, and a steam dredge is one where the boat moves by steam, and in the latter instance the scrapers are hauled on deck by means of steam.

In the open deep waters of the gulf of Mexico, off the mouth of the Mississippi river, off the mouth of the Atchafalaya river, south of the parish of St. Mary, and off Southwest pass of Marsh island in the parish of Vermilion, and off the mouth of the Calcasieu river, there are millions of barrels of oysters that have never been, and under the present law never will be fished. They are in water too deep to fish them with hand tongs, and being in the waters of the open Gulf, the small boats, now engaged in the oyster industry, are afraid to venture there, though boats patterned after the style of the Connecticut boats could fish these oysters easily, bringing a great profit to the State and a great development in the industry. It would mean the industrial salvation of Morgan City and all places similarly situated, were dredging permitted in deep or open water.

It is only logical and proper that our State Oyster Commission should be vested with discretion to permit the use of implements

and to encourage the adoption of means to bring these unused oysters into commerce, and the present oyster law should be so amended as to permit this discretion to be exercised by the commission.

In conclusion, it is our hope that we have shown that Louisiana owns, in her oyster bottoms, a veritable gold-mine. Indolence and poverty will not develop this vast vault of riches. It requires labor and capital, intelligence and industry. The door needs but to be opened, and the key is in the hands of the members of our State legislature.

The key is intelligent legislation that will provide:

2316 *First. That the oyster commission shall be vested with great discretion in matters concerning the oyster industry.*

Second. That the shallow water natural reefs shall be preserved for the poor man, who must, in turn, not be permitted to destroy these reefs.

Third. That the industrious man or company must be permitted to lease from the State and cultivate as many acres of barren bottom as he desires, not to exceed five thousand (5,000) to any one person or company.

Fourth. That each bedding ground lessee must be given the right to use such implements as he chooses in cultivating and gathering his own crops on his leased bedding grounds.

Fifth. That the oyster cultivator must be permitted to sell his own crop when he chooses.

Sixth. That in open waters and those too deep to be fished with hand-tongs, other means must be permitted to gather these oysters otherwise useless to man.

If such law be adopted, we shall, in less than ten years, see the State receiving a net annual revenue of one million dollars ($1,000,000) from these vast water bottoms belonging to her, and this amount will annually increase by leaps and bounds.

When we stop to think what a world of good could be accomplished with these funds in the matter of the education of our youth and the building of good roads throughout our State, we feel that the intelligence of our legislators will respond to the necessities of the occasion and secure to Louisiana the enjoyment of her lawful and logical rights.

* * * * * * *

Endorsed: Mississippi Document No. 83. Filed Sept. 22, 1904. Wm. D. Bullard, special commissioner for Mississippi. 1st.—pp. 5 to 18 inc. both 2d. Pp. 21 to 29 inc. both. 3rd.—pp. 73 to 81, inc. both. 3rd. Pp. 83 to 107, inc. both. Office, Supreme Court U. S. Filed March 13, 1905. James H. McKenney, clerk.

MISS. DOCUMENT No. 84.

Original.

CHAPTER 20.

Act Giving the Consent of this State to the United States to
urchase a Site on St. Joseph's or Half-moon Island for the Pur-
ose of Erecting a Light-house Thereon.

ECTION 1. Be it enacted by the legislature of the State of Mis-
ppi, That the consent of this State be, and the same is hereby
en to the United States, to purchase a site on St. Joseph's or Half-
on island for the purpose of erecting a light house thereon.
pproved February 17, A. D. 1842.
Laws of Mississippi 1842, page 134.

Endorsed:) Chapter 20 Laws of 1842. Document No. 84. Filed
t. 22, 1904, p. 1391 of record. Office Supreme Court U. S.
ed Mar. 13, 1905, James H. McKenney, clerk.

8 MISS. DOCUMENT No. 85.

Copy.

BILOXI, MISS., November 5, 1902.

his excellency A. H. Longino, governor of Mississippi.

SIR: We have the pleasure to transmit to you, herewith, a certi-
d copy of a resolution passed by the mayor and board of alder-
en of the city of Biloxi at their regular monthly meeting held in
e city hall on yesterday, the 4th inst. In transmitting this reso-
tion, we desire to call your attention to a few important facts in
nnection with the subject matter, to-wit:

1st. The territory in controversy, and concerning which a suit
s been filed in the Supreme Court of the United States by the
ate of Louisiana against the State of Mississippi, has been under
e control of the State of Mississippi, as we are informed and be-
eve, for so long a time that the memory of the oldest inhabitants
this section runneth not to the contrary.

2nd. It is our opinion that the State of Mississippi owns the ter-
tory in controversy, and we believe that, even though there is a
oubt as to whether said territory belongs to Mississippi or Louisi-
na, Mississippi and Mississippians have as much right therein as
ouisiana and Louisianians during the pending of the suit in the
nited States Supreme Court over the boundary line between the
tates of Mississippi and Louisiana.

3rd. The oyster reefs within said territory have been a source of
enefit, revenue, and profit to Mississippi and the citizens thereof.

4th. The State of Louisiana, whether under and by virtue of any law of that State or not, has invaded the said disputed territory and is patrolling the same with an armed force, for the purpose of preventing Mississippi oyster men from catching oysters upon the oyster reefs within said territory.

5th. This action upon the part of the State of Louisiana or its authorities, is working great hardship and becoming very prejudicial to the interests of the State of Mississippi and its citi-
2319 zens; and, as result thereof, a large number of the citizens of Mississippi, to-wit; about one hundred, owning oyster boats to the value of about one hundred thousand dollars, have gone and are going into the State of Louisiana, and have there taken out, and are taking out licenses in order to evade arrest by the authorities of Louisiana for catching oysters upon the oyster reefs within said disputed territory.

6th. The law passed by the last legislature of the State of Louisiana, as Your Excellency will remember, forbids any oysters caught within the boundaries of Louisiana to be brought into the boundaries of Mississippi for any purpose whatever.

7th. It is our opinion that it is the duty of the executive of the State of Mississippi to see that the law is enforced to the extent that the rights of Mississippi and Mississippians in said disputed territory are fully protected.

In view of the foregoing matters, and in behalf of the mayor and board of aldermen of the city of Biloxi and the citizens of the entire coast section, we would respectfully and earnestly request and urge that Your Excellency come to the coast for the purpose of fully investigating and becoming acquainted with the situation as it is, to the end that the rights of Mississippi and Mississippians in the territory in controversy may be accorded the protection that justice demands.

Trusting that Your Excellency may see fit to grant the request herein made, and assuring you of our hearty co-operation in every way possible in this matter,

We beg to remain,

Very respectfully yours,

(Signed) E. M. BARBER,
E. C. JOULLIAN,
Committee on Part Citizens' Meeting.

(Signed) T. J. ROSSELL,
J. B. CHINN,
E. GLENNAN,
Committee on Part of Mayor and Board of Aldermen.

0 Copy from Pages 130, 131, and 132, Minute Book No. 5, of the Mayor and Board of Aldermen of the City of Biloxi.

t a regular meeting of the mayor and board of aldermen of the of Biloxi, held November 4, 1902, the following communication presented:

o the hon. mayor and board of aldermen of the city of Biloxi.

GENTLEMEN: At a meeting held in the Fireman's hall, Nov. 3rd ., composed of citizens directly and indirectly interested in the iness of catching and canning and shipping oysters, 'the unlaw- usurpation of a part of the public oyster reefs belonging to the te of Mississippi' was discussed, and we, the undersigned, ap- nted a committee to present to your honorable body a request for in behalf of the aforesaid citizens that you communicate offi- ly to his excellency, Hon. Gov. A. H. Longino, the above men- ed unlawful usurpation of the rightful property belonging to the zens of the State of Mississippi, requesting his personal investi- ion and the assistance of his executive authority in the protection he lawful rights of the citizens of this State. We ask the con- eration of your honorable body and stand ready to answer to the t of our ability and knowledge all questions concerning the tter.

Very respectfully,
(Signed) E. C. JOULLIAN.
E. M. BARBER."

he following resolution was introduced and adopted:

Resolved, That it is the sense of the mayor and board of alder- n of the city of Biloxi, in view of the unsettled condition of the ndary dispute between the States of Mississippi and Louisiana, olving, as it does, the question of the rights of Mississippians to oysters in the oyster beds which have been under the control Mississippi from time immemorial, that it is the duty of the ernor of the State of Mississippi to make a trip to the coast to familiarize himself with the conditions surrounding the l question: and to this end, T. J. Rossell, E. Gennan, and Buck Chinn, members of this board, are, by order of said mayor board of aldermen, appointed as a committee to act in conjunc- with E. M. Barber, and E. C. Joullian, the committee appointed the citizens' meeting to confer with this board on said question, draft a letter to the governor of the State of Mississippi, express- to him that it is the desire of this board and the entire commu- that he look into this matter and protect the interests of sissippi in said territory.

Further ordered, that the above resolution be spread upon the utes and a copy thereof forwarded to the governor."

STATE OF MISSISSIPPI,
County of Harrison, City of Biloxi,

I, O. G. Swetman, clerk of the mayor and board of alderme
the said city of Biloxi, do hereby certify that the above and
going two (2) typewritten pages constitute a true and correct
of a communication signed by E. C. Joullian and E. M. Barber
sented to the mayor and board of aldermen of the city of Bilox
a regular meeting of said body on Nov. 4, 1902, and of a resolu
adopted by said mayor and board of aldermen at said meeting
the same appear of record on pp. 130 and 131 of Minute Book
5, of said city council, which said minute book is now in my
tody as clerk of said mayor and board of aldermen of the cit
Biloxi.

Witness my signature this the 24th day of August, 1904.

(Signed) O. G. SWETMAN, Clerk

(Endorsed ·) Louisiana *vs.* Mississippi Miss. Doc. 85 Filed S
5 and Sept. 23rd 1904. Wm. D. Bullard commissioner. Office
preme Court U. S. Filed Mar. 13, 1905. James H. McKenn
clerk.

2322 MISS. DOCUMENT NO. 86.

(On Cover.)

Report of special committee appointed to investigate the subj
matter of the bill to provide for defraying the expenses of t
State of Mississippi in the case of The State of Louisiana *vs.* T
State of Mississippi, now pending in the Supreme Court of t
United States, wherein the boundary lines of said States are
dispute.

(The Tucker Printing House, Jackson.)

2323 Report of special committee appointed to investigate the su
ject-matter of the bill to provide for defraying the expenses
the State of Mississippi in the case of The State of Louisiana
The State of Mississippi, now pending in the Supreme Court of t
United States, wherein the boundary lines of said States are
dispute.

Mr. President:

Your committee appointed to investigate the subject-matter of th
bill to provide for defraying the expenses of the State of Missi
sippi, in the case of The State of Louisiana *vs.* The State of Missi
sippi, now pending in the Supreme Court of the United States, wherei
the boundary lines of said States are in dispute, beg leave to re
port:

That on investigation and from the testimony of the most reputable witnesses, composed of the business men of the beautiful, thriving and growing city of Biloxi, and from a personal investigation of the enterprises and industries dependent upon the property now in dispute between the States of Louisiana and Mississippi, and claimed by the State of Louisiana, we state the following to be facts, amply supported by undisputed and undeniable evidence of the highest character, and the existence of enterprises and industries of which Mississippi should be proud and from which she is now deriving a large revenue and will derive a larger as the years go by:

1st. That the territory in dispute in said case and claimed by the State of Louisiana of and from the State of Mississippi, exceeds three hundred square miles.

2d. The said territory in dispute is worth to the State of Mississippi, and her people, ten times all the oyster and water territory in the State of Mississippi not in dispute.

3d. That said territory in dispute, based on the lowest estimate, is of the value of two millions of dollars, and will increase in value.

4th. That the Mississippi Oyster Commission, at its last report, reported for the years 1902 and 1903, that there had been
2324 collected from the oyster business in Mississippi the sum of $14,020.45, and the expense $11,982.67, leaving a balance of $2,057.88, which was turned into the State treasury. That the larger part of said expense was paid out for the purpose of planting oysters, and the building up of reefs in the waters of Mississippi sound. So it will be seen that the expense money is devoted to a purpose which results in the increased value of said territory, and therefore, the revenue therefrom, to the State of Mississippi, is increased yearly, and we are informed that the last year that has not yet been reported will show a large increase in its revenue therefrom to the State.

5th. That there are five large canning factories in operation in the city of Biloxi, and four shippers of raw oysters, and the volume of said shipping and canning business in said city of Biloxi amounts to one million dollars per annum, and one-half million of dollars is invested in said business, and all of this is in the city of Biloxi.

6th. That taking into consideration said business all along the coast in the State of Mississippi, including Biloxi, the volume of said business exceeds a million and a half dollars per annum, and it takes, and there is used in each year, to operate said business more than a million and a quarter dollars in cash, and the daily number of employees in the cannaries alone, is about one thousand, and more — three hundred boats and twelve hundred employees engaged in catching the oysters, and the daily pay-roll for labor in handling the oysters amounts to over one thousand dollars, and for catching the oysters one thousand and five hundred dollars per day. And the average value monthly of the oysters caught is about one hundred and twenty-five thousand dollars for the cannaries alone, and does not include those caught for the raw shipments of shrimp

business, which is large, and the sales of one firm, "Lopez & Dukate," for the month of February, 1904, amounted to ninety thousand dollars.

7th. The oyster catch for this year will amount to eight hundred thousand barrels, and the shrimp business amounts, at Biloxi, to fifteen thousand barrels, which are worth sixty thousand dol-
2325 lars, in their raw state and two hundred thousand dollars in their finished state.

8th. That all of the foregoing figures were doubled year before last, at which time oysters were caught from the territory now in dispute and claimed by Louisiana. And if Louisiana succeeds in winning the territory that she claims, it will have the effect to virtually destroy the oyster and shrimp business in the State of Mississippi, and the property of our citizens invested in said business will be completely lost and they suffer irreparable injury, and the State of Mississippi suffer a loss of about three hundred square miles of her most valuable territory.

We can form no definite opinion as to which State will win out in said case, as the determination of the issue involved depends upon a construction of the acts of Congress, admitting the said States into the Union, with reference to the boundary lines of said States as fixed by said acts of Congress, and also upon what has been the recognized boundary lines of said States and other questions of fact.

Your committee find that in addition to the immense interests this State has in the oyster and fish industry, that the "deep water channel" claimed by Louisiana to be the dividing line between the two States hugs the Mississippi shore across Hancock and part of Harrison counties, and if her claim should be established, it would be a menace to our commercial and maritime interests, especially as to the deep water channel constructed out of Gulfport by the Gulf and Ship Island Railroad Company. The contention of our State, as set up by her answer and cross bill, to the effect that Congress in creating States, out of the Gulf coast territory did not intend that one State should dominate the mouths of the rivers and the water front, and that Louisiana had her three league reach to her south, and that Mississippi has her six league reach to her south, both seaward. It cannot fail casual observation that Louisiana in her three league reach around the mouth of the Mississippi to the Sabine, has more sea frontage than Mississippi with her six league limit from Pearl river to the Alabama line.

2326 Your committee further find, as it believes, that Louisiana has been preparing, as she had the right to do, for several years to make this contest, and that she has not spared means to present her case strongly. In addition to the active services of her historical society, which, as we are informed, has been both diligent and discreet in gathering pertinent data, she has to assist her Attorney-general, Hon. Walter Guion, and his assistant attorney-general, Lieutenant-Governor Albert Estopinal, Judge Zachrie and Mr. John Dymond, Jr., of New Orleans, and Mr. Alexander Porter Morse, a

ry eminent lawyer at Washington, who was lately official attor-
y for the District of Columbia.
Hon. Monroe McClurg had followed the case closely from the be-
nning of the suit, and we approve of his being retained under the
tute to aid General Williams, whose duties would not permit him
spend months in taking testimony and following the case to
ashington. Mr. McClurg immediately employed Judge Hannis
ylor to aid him. We approve this: Judge Taylor was our min-
er plenipotentiary to Spain at the outbreak of the Spanish-Ameri-
n war; he is now professor of international law in the Georgetown
. C.) law school. He was one of counsel in the great Alaskan
undary case, and the author of the Origin of the English Consti-
tion and of International Law, both of said works being pro-
ounced by competent judges as being among the best of their kind
print. Mr. Taylor is a native Mississippian, but was a member
the Mobile bar when appointed minister to Spain. We regard
s selection a wise one. Governor Longino also employed Messrs.
odd & Griffith, of Biloxi, as he did General McClurg, to look to the
gislature for compensation; they are practitioners in the storm
nter of the controversy and are valuable, not only because of their
nown legal ability, but because of their opportunity to gather per-
nent testimony for our State.

It is deemed not out of place to say here that our side is making
od progress, the State of Louisiana has already served notice to
withdraw a great portion of her bill and exhibits, and which
327 our attorneys will resist. March and April have been agreed
upon for Louisiana to take her testimony, while our State
ill take May, June and July, with August and to September 15th
r Louisiana to rebut, and then Mississippi to October 1st, when
ne evidence is to close and be printed, and the case will most likely
e ready for hearing by the first of next January.

Therefore, in view of the foregoing facts hereinbefore stated, we
elieve that it is the duty of the State of Mississippi, to defend said
ase and contest the claim of Louisiana to said territory, and defend
nd protect her title to said territory, and above all protect the pri-
ate property of her citizens that is necessarily effected by the issues
nvolved in said case, and to furnish all money necessary to that
nd.

We, therefore, recommend that senate bill No. 60 do pass.

Respectfully submitted,

PATRICK HENRY, Chm.
W. J. CROOM,
E. H. MOORE,
H. BLOOMFIELD,
H. H. ELMORE,
Committee.

Mississippi Senate Journal 1904, pp. 568–571.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. No. 86. Filed in connection with the testimony of Gov. Longino, Sept. 23rd 1904 Wm. D. Bullard, commissioner, Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2328 (Documents Nos. 87, 88, 89 & 90 are maps, 88, 89 & 90 being in the original and photographic form, and will be found in the Mississippi Atlas of Maps.)

2329 MISS. DOCUMENT NO. 91.

Original.

Report on the agriculture and geology of Mississippi, embraced in a sketch of the social and natural history of the State, by B. L. C. Wailes, geologist of Mississippi, member of the American Association for the Promotion of Science, corresponding member of the Natural Institute, and of the Boston Society of Natural History, etc., etc.

Published by Order of the Legislature.

E. Barksdale, State Printer.
1854.

1. Historical Outline.

The State of Mississippi lies between the thirty-first and thirty-fifth parallels of north latitude, with the addition of that portion lying between the first mentioned parallel and the gulf of Mexico and Lake Borgne and east of Pearl river. On the west it is bounded by the Mississippi and Pearl rivers, and on the east by a line dividing it from the State of Alabama, which is drawn from the mouth of Bear creek on the Tennessee river to the northwestern corner of Washington county, Alabama, and thence south to a point on Grand bay on the gulf of Mexico, about seventeen miles due west from the bay of Mobile. The State also embraces the islands in the Gulf within six leagues of the northern shore, the principal of which are Horn, Ship, and Cat islands.

The width of the State along the northern boundary is one hundred and twenty miles; on the sea shore seventy-eight miles; and along the 31° of north latitude one hundred and eighty-six miles. The greatest length from north to south is three hundred and thirty miles. It embraces an area of 55,500 square miles or 35,520,000 acres.

(Endorsed:) Extract from Wailes' report. Louisiana *vs.* Mississippi Miss. Doc. 91 Filed Oct. 1 '04 Wm. D. Bullard, commissioner Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

0 MISS. DOCUMENT No. 92.

Original.

liminary report on the geology and agriculture of the State f Mississippi, by L. Harper, L. L. D., correspondent of the Im-erial Museum for Nat. Science of France, etc., State geologist of Mississippi.

By Order of the Legislature of Mississippi.

E. Barksdale, State Printer.
Jackson.
1857.

Geographical Description of the State of Mississippi.

The State of Mississippi is bounded, north, by Tennessee; the ndary line, which separates it from the latter State, agrees with 35 degree of N. lat. It commences W. on the Mississippi river, g. 90° 18′, divides Horn lake in two parts, leaving only a part of southern arm in the State of Mississippi, and comes out of the e exactly below a ridge of hills, reaching the lake from the E. From there, that boundary line continues to the Tennessee river, king this river under the 88° 13′, of long. from Greenwich. From re to the mouth of Big Bear creek under the 88° 7′, the Ten-see river forms the boundary line of Mississippi, leaving a small ner within the square of the State between it and Tennessee, to State of Alabama.

From the mouth of Big Bear creek, from the 88° 7′, of long. from eenwich, the State *if* is bounded E. by Alabama, the boundary e going from that point in a direction of about S. S. W., or more ictly S. 15° W., to a point under lat. 32° 8′, long. 88° 38′, from which point it turns again a little E., and goes S. 15° E. to the 31 gulf of Mexico, which it reaches in lat. 30° 25′, long. 88° 18′.

From the latter point to the mouth of Pearl river, lat. 30° ′, long. 90° 25′, the gulf of Mexico forms the boundary of the con-ental part of the State, not excluding, nevertheless, a number of nds, of which Round, Horn, Ship, Deer, Cat, and Aupied islands the principal.

From the latter point, lat. 30° 13′, long. 88° 18′, in the mouth of arl river, this river makes the W. boundary of the southern part Mississippi, to lat. 31°, long. 88° 45′, separating the State from t of Louisiana.

From the latter point on Pearl river, lat. 31°, long. 89° 45′, the uthern boundary line, which separates Mississippi from Louisiana, rresponds with the 31° of N. lat. to the Mississippi river, in long. ° 41′.

From this point, in lat. 31°, long. 91° 41′, to the line of Tennessee, in lat. 35°, long. 90° 18′, the principal channel of the Mississippi river forms the western boundary line of the State, and separates its southern part from the State of Louisiana, and its northern part from Arkansas.

The territory, on whose geology I have the honor of reporting to the legislative body of the State, extends, therefore, according to the above geographical description, from the 35° of N. lat. to lat. 30° 13′, and measures, in its greatest latitudinal extent, 287 geographical, or 331.65 statute miles.

In longitude it extends under the 31° of N. lat. from the Alabama line, in long. 88° 23′, to long. 91° 41′, on the Mississippi river, and measures, in its greatest longitudinal extent, 198 geographical, or 227.7 statute miles.

The State has the smallest latitudinal extent west of Pearl river, where the southern boundary line follows the 31° of N. lat. It measures there in length 4° *degrees*, from the 31st to the 35th, or 330 geographical, or 276 statute miles; and width, from long. 88° 23′, on the Alabama line to long. 89° 45′, on Pearl river; extending over 1° 11′, or 71 geographical, or 81.65 statute miles.

The area comprehended in the territory of the State of Mississippi comprises, according to a careful calculation, about 45,468 square miles or 29,099,520 acres of ground, which is divided as follows among the different geological formations in the State:

(Endorsed:) Extract from Harper's Report 1857. Louisiana vs. Mississippi. Miss. Doc. No. 92. Filed Oct. 1/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2332 MISS. DOCUMENT NO. 93.

Original.

CHAPTER XL.

An Act to Provide for the Printing of the Second Annual Report of the Agricultural and Geological Survey of the State, and for Other Purposes.

SEC. 1. Be it enacted by the legislature of the State of Mississippi, That so much of "An act to further endow the University of Mississippi," approved March 15th, 1850, as appropriates out of the treasury three thousand dollars per annum to aid in making an agricultural and geological survey of the State, and also so much of said act as connects the said survey in any manner whatever with the university, be, and the same is hereby, repealed.

SEC. 2. Be it further enacted, That the agricultural and geological survey of the State shall be prosecuted and completed, according

the provisions of the above recited act, and of any act entitled An act to authorize the printing of the first annual report of the gricultural and geological survey of the State," approved March t, 1854, by a State geologist, to be appointed by the governor.

SEC. 3. Be it further enacted That the State geologist shall keep is office in the city of Jackson, and shall receive a salary of two ousand dollars per annum, to be paid quarterly, upon the requisition the governor, and shall also be furnished with such an outfit as may e necessary to be provided under the direction of the governor; he all also keep an exact account of his expenses in making his sur- ey, and submit the same to the examination of the governor, who all issue his requisition upon the treasury for the amount, pro- ided the sum shall not exceed one thousand dollars per annum.

SEC. 4. Be it further enacted, That twelve hundred dollars be, and he same is hereby appropriated, out of any money in the treasury ot otherwise appropriated, for the purchase of suitable apparatus r making the analysis provided for in the above recited acts. The pparatus shall be purchased under the direction of the governor, nd shall not cost, including all expenses in procuring the same, ore than the same herein appropriated.

SEC. 5. Be it further enacted, That the State geologist may occupy a laboratory the two front rooms in the second story of the Peni- ntiary building, and shall be allowed the assistance of one con- ict, to be named by the inspectors, to aid him in keeping his ap- aratus in good order.

SEC. 6. Be it further enacted, That five thousand copies of Pro- ssor Harper's report be printed, under the direction of the gov- nor, to be bound in boards, with such plates, charts, and wood- uts therein, as His Excellency may deem appropriate and neces- ry for its illustration.

SEC. 7. Be it further enacted, That when said report shall be rinted and bound, it shall be distributed according to the provis- ions of the last recited act.

333 SEC. 8. Be it further enacted, That a sum not exceeding three thousand five hundred dollars be appropriated, to be rawn from the treasury upon the requisition of the governor, for e purpose of carrying into effect the sixth and seventh provisions this act.

SEC. 9. Be it further enacted, That Professor Harper shall be en- tled to receive a salary at the rate of two thousand dollars per annum, om the first day of November, 1856, to the first day of March, 1857, being necessary to allow him time to finish writing out his re- ort.

SEC. 10. Be it further enacted, That the State geologist to be ap- ointed under the provisions of this act, shall enter upon the dis- harge of the duties of his office on the first Monday of March, 57, and this act shall go into effect from and after its passage.

Approved January, 31, 1857.

Laws of Mississippi 1857, page 113.

(Endorsed:) Act of 1857 directing distribution of Harper's report &c. Louisiana vs. Mississippi Miss. Doc. 93 Filed 10/1/04, Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2334 MISS. DOCUMENT NO. 94.

Original.

CHAPTER XXXVIII.

An Act Entitled An Act to Provide for the Appointment of an Harbor Master for Ship Island Harbor, and for Other Purposes.

Be it enacted by the legislature of the State of Mississippi, That the governor of the State shall biennially appoint an harbor master for the harbor of Ship island and for other harbors and anchorages upon the sea coast of Mississippi, to superintend the delivery and unloading of ballast within such place.

SEC. 2. Any harbor master may continue to act until his successor is appointed and qualified, or if any person appointed shall fail to act, or a vacancy in said office should otherwise happen, the board of police of Harrison county shall fill such vacancy, and such person so appointed by said board shall continue to perform the duties of said office until his successor is duly appointed and qualified.

SEC. 3. The harbor master may appoint one or more assistants, and all the provisions of this act in respect to the harbor master shall apply to such assistants. If any person after accepting the said office shall fail in any duty prescribed in this act, he shall forfeit and pay the sum of one hundred dollars to any person who will sue for the same, one half for the use of the State.

SEC. 4. The said harbor master shall be entitled to receive for his services the sum of two hundred dollars per annum, to be paid him out of the State treasury and the auditor of public accounts is hereby authorized to draw his warrant in favor of the said harbor master, upon exhibition of his certificate of appointment.

SEC. 5. Every harbor master on receiving information that ballast is to be discharged from any vessel in such harbor, roads or anchorage, shall go on board such vessel and attend until the whole is unloaded. He shall see that it is brought on shore, or in water not more than four feet deep, and laid in some convenient place where it will not obstruct navigation, nor be washed or rolled in the channel, and thereupon he shall give to the commander of such vessel a certificate that his ballast has been duly unladen from on board his vessel, on being paid by such commander the sum of three dollars per day for each day's attendance.

SEC. 6. Every commander of a ship or vessel having ballast to

unload shall give notice in writing to some harbor master of the time when he intends to unload the same. If any such commander shall land, or cast overboard any ballast, without having given such notice, or otherwise than according to the directions of an harbor master, he shall forfeit and pay the sum of five hundred dollars, to be sued for by said harbor master, who is hereby authorized to proceed for the recovery of the same by attachment or otherwise.

SEC. 7. If a commander of any vessel, from which ballast has been unloaded, shall, when required by any ballast master, justice of the peace, sheriff, coroner, constable, or freeholder of the county or town adjacent to, which said vessel may ride, fail to produce the certificate of the harbor master, he shall forfeit and pay the sum of fifty dollars.

SEC. 8. If the commander of any vessel, or any person on board thereof, shall cast into the channel of the harbor of Ship island, or any other harbor, road, or anchorage, within the jurisdiction of this State, any ballast, stone, or other heavy articles, he shall forfeit and pay the sum of five hundred dollars to any one who shall sue for the same, one half to the use of the State.

2335 SEC. 9. All justices of the peace, sheriffs, coroners, constables, harbor masters, members of the board of police and corporate authorities of the towns and counties of Jackson, Harrison, and Hancock, are hereby required to bring suit immediately against any commander of any vessel, or other person offending against the provisions of this act, and if any such officer on receiving information of such violation shall fail to institute suit against such persons, — shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than ten nor more than fifty dollars.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved, November 19, 1857.

Laws of Mississippi 1857, page 109.

(Endorsed:) Act of 1857 (Miss.) defining duties of harbor master and giving jurisdiction — justices of the peace &c. Louisiana *vs.* Mississippi Miss. Doc. 94 Filed 10 1 '04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 James H. McKenney, clerk.

2336 MISS. DOCUMENT No. 95.

Original.

Acts of 1812 Relating to the Division of the Original County of Mobile into the Counties of Mobile, Jackson, and Hancock.

Act of December 18, 1812 (Stat., p. 37).

63. SECT. 1. The country of Mobile be, and the same is hereby divided in the following manner, to-wit: All that part of the county situated south of the thirty-first degree of north latitude, and bounded east by the Perdido river, west by the dividing ridge between the Mobile river and the Pascagoula, shall compose a county which shall be called "Mobile."

SECT. 11. All that tract of country within the following boundaries, to-wit: South of the thirty-first degree of north latitude and west of the dividing ridge between the Mobile and Pascagoula, and east of a line running due north from the middle of the bay of Baloxi to the thirty-first degree of north latitude, shall compose a county which shall be called "Jackson."

SECT. 111. All that tract of country lying south of the thirty-first degree of north latitude and west of the line running due north from the middle of the bay of Baloxi to the thirty first degree of north latitude and east of the Pearl river, shall compose a county and shall be known by the name of "Hancock."

Digest of the Statutes of the M. T., page 108.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 95 Filed 10 1 '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2337 MISS. DOCUMENT No. 96.

Original.

Section 4 of Chapter 84, Laws of Mississippi, Approved December 16, 1830.

And be it further enacted, That the south boundaries of the counties of Hancock and Jackson be, and they are hereby extended to the south boundary of this State.

Laws of Mississippi 1830, page 114.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 96 Filed 10 1 '04, Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2338 MISS. DOCUMENT No. 97.

Original.

CHAPTER 52.

An Act to Extend the Jurisdiction of the County of Harrison, and for Other Purposes.

(Only Section 1 of This Act is Copied Herein.)

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the county of Harrison shall be bounded on the south by the southern boundary of the State of Mississippi.

Approved February 22, A. D. 1842.

Laws of Mississippi 1842, page 174.

(Endorsed:) Sundry acts of Miss. T. and State relating to coast counties. Louisiana *vs.* Mississippi Miss. Doc. 97 Filed 10 1 '04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2339 MISS. DOCUMENT No. 98.

Original.

CHAP. CXXV.

Memorial of the Legislature of the State of Mississippi.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the legislature of the State of Mississippi respectfully represents: That it is important that light houses should be erected at the Rigolets, Joseph's island, at the mouth of Pascagoula and Pass Christian, on the waters of Lake Borgne; that the citizens of this State are extensively engaged in commerce on the whole coast, from Mobile to New Orleans, in the transportation of lumber, wood, sand, lime, and cattle; that the Rigolets is the only entrance into Pontchartrain to New Orleans; that the entrance into the lake cannot, by the most experienced navigator, be discovered at night, because no object presents itself at the entrance but a dreary marsh, which at night is difficult to avoid; that for the want of a light at Joseph's island, vessels frequently mistake the channel and either get aground or are wrecked; that the contractors for the transportation of the United States mail by steam boats, from Mobile to New Orleans, could not comply with their contract except by hiring in-

dividuals to suspend lamps at their private expense, and for the want of lights at other points the contract has been totally abandoned. The importance of the light houses as a means of facilitating the commerce of other States who navigate the waters of Lake Borgne and Pontchartrain, must be well known to your honorable body. We, therefore, pray that an appropriation may be made to carry into effect the object of this memorial.

Resolved by the senate and house of representatives of the State of Mississippi, in General Assembly convened, That a copy of this memorial be transmitted by the governor of this State to our Senators and Representatives in Congress.

Approved: January 26th, 1830. Laws of Mississippi, 1830, page 205.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. 98. Filed 10 1 '04. Wm. D. Bullard, commissioner. Office Supreme Court U.S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2340 MISS. DOCUMENT NO. 99.

Original.

CHAPTER 36.

An Act to Provide for a Survey of the Mississippi Coast.

SECTION 1. Be it enacted, by the legislature of the State of Mississippi, That an engineer shall be appointed by the governor of the State, whose duty it shall be to make, as early as practicable, a survey of the whole of the sea-coast upon the southern boundary of this State, and report to the governor of this State, who shall lay the same before the legislature at its next session.

SEC. 2. And be it further enacted, That said engineer shall receive, as his compensation for such service, a sum not exceeding two thousand dollars, to be allowed by the legislature after such surveys shall have been made.

SEC. 3. And be it further enacted, That this act shall be in force from and after its passage.

Approved February 14, 1839.

Laws of Mississippi 1839, page 56.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 99 Filed 10 1 '04. Wm. D. Bullard, commissioner. Office Supreme Court U.S. Filed Mar. 13 1905, James H. McKenney, clerk.

2341 MISS. DOCUMENT No. 100.

Original.

CHAPTER 150.

Joint Resolution to Congress for a Light-house on the Shoal or Middle Ground between Pass Christian and Pass Mary-Ann.

Resolved, by the legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives be requested, to use their exertions to procure the passing of a law by Congress, with an appropriation, to build a light-house on the south point of the shoal or middle ground between Pass Christian and Pass Mary-Ann, nearly west of the Cat Island light-house, in order to enable vessels to find and use said Pass Mary-Ann in the night, which is now impracticable, and very hazardous for the want of such light-house, and in consequence of Pass Christian being so crooked, narrow, and shallow, our commerce in those waters is thereby frequently retarded and much time often lost by the steamboats carrying the mail between New Orleans and Mobile, as said boats often get aground in said Pass Christian.

Be it further resolved, That the governor forward each of our Senators and Representatives in Congress with a copy of the above resolution.

Approved February 7, 1840.

Laws of Mississippi, 1840, page 262.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 100 Filed 10, 1,'04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13 1905. James H. McKenney, clerk.

2342 MISS. DOCUMENT No. 101.

Original.

CHAPTER 148.

To the Senate and House of Representatives of the Congress of the United States:

Your memorialists, the legislature of the State of Mississippi, would respectfully but earnestly call the attention of the Congress to the importance of erecting and establishing, on the southern coast of this State, suitable naval fortifications, and a minute survey of the bays, sounds and harbors within, and adjacent to the State.

It will be remembered by your body, while our Atlantic States are amply provided with highly useful and necessary fortifications,

that there is but one naval depot in the whole southwest; and, consequently, the long extent of our coast is not only defenceless, in this particular, but completely exposed to the inroads of those who may become our enemies.

No section of the whole country can claim, over the cotton growing States, any substantial reason why less adequate means of protection should be extended to the Atlantic States than to the States of the South. The commerce of the South is annually increasing, and promises, within the circle of a few years, to be equal to any portion of the Union; that great staple has a market chiefly abroad, and for the products of their soil and agricultural labour, receive a return in the shape of commercial commodities, to supply the demands of the whole valley of the Mississippi; and to swell the commercial business of these States to an extend to need the strong arm of protection from the country, that the commerce of all nations requires at the hands of their Government, when exposed to the aggression of those that for any reason may become antagonistical in their intercourse. We do not hesitate to say, that the commerce of the United States will be more assailable in this quarter for foreign assaul- than any other section of the continent, and with the most limited means of defence. It is a matter of regret that our country and its vast peculiarities and recourses are so little known, and so lightly regarded; and that inaccurate surveys and partial reports, made by incompetent persons, constitute almost every thing that can be referred to for information in the archives of the country. As little as it is generally understood, it is nevertheless true, that, in an extent of facilities and importance, the coast of Mississippi presents harbours, soundings, &c., as well as adapted for the anchorage of ships of war of the largest class, and the easy, uninterrupted purposes of commerce, as the most approved favorite points elsewhere.

None of the States are more accessible to invasion, by sea, than our coast, and during the last war, the want of a proper defense was most seriously felt in the easy invasions of Louisiana through this channel of internal communication; and but for the decisive triumph of our soldiery, at the memorable conflict of 1814 and '15, the most calamitous results might have happened to our southern cities and towns, which time to this day might have not subdued or mitigated. It is also painfully true, that in the invasion of the Southern States, by the British, it was found that the English surveys of the southern coast, made years before, when the country was an unbroken wilderness, were far more extensive and complete than any information furnished by the departments at Washington, or in the possession of the officers
2343 of either the army or the navy, assigned on duty in this section of the country, during the time of the invasion; a whole fleet of the British navy found an easy ingress to our shores, and one of the largest men of war, anchored off Cat island during the time, and by its position was enabled to command the whole pass, yielding the greatest succour to their own forces, and entirely cutting

our means of attack or defence; since the war very few examina-
ns or surveys have been made, and the departments may, even
, be said to be destitute of this most desirable information.
In the support of the necessity of erecting suitable naval fortifica-
ns on this coast, to the reason stated before, may be added the
t, that the whole country around is most abundantly clothed with
growth of live oaks, eminently fitted for the construction of
ry description of vessels; and the quality, not inferior to the
wth of that valuable wood in any region, on this account, not
y would the United States, in point of economy, study the inter-
s of the country, (but at the same time build up a most important
ence for the whole country). The coast of Mississippi immedi-
ly on the gulf of Mexico has been invariably considered the
lthiest point in the Southern States, and is the usual resort of our
zens during the season of sickness and the visitation of epidemics,
ere they are enabled to remain with perfect security. There has
er been a solitary instance of the fatal fevers (epidemical) of the
th that originated on the coast, while in other particulars no
t can be selected freer from disease either on account of location
climate.
So far as any risk from exposure to sickness to those who may be
ployed in the erection, or detained in or about the proposed
ifications, is concerned, the Government may not have the
htest fears or objections. And that the proposed works will meet
united consent and approbation of the whole South, we do not
itate to assert; and we would, therefore, with all due deference,
reat your honorable body to a full investigation of the subject
l a speedy action thereon.
n conclusion, we would again revert to the importance of taking
mediate steps to have an accurate survey and examination made
his coast, so essential to southern interest, as being not only of
t utility to the department at Washington, but useful to our
ble citizens; and when it is remembered, that other nations, in
ir scientific explorations, are possessed with a knowledge of some
our harbours and coast, superior to what we ourself possess, it
be readily conceded that our safety, to a small extent, is greatly
ardized and compromitted.
f national pride would not stimulate us to the performance of
duty, at least a regard for the defence and protection of the
ntry loudly demands that this branch of the public duty be no
ger neglected or delayed.
Therefore, resolved, that our Representatives in Congress, be re-
sted, and our Senators instructed, to use their utmost means to
cure the passage of a law, by Congress, to cause the erection of
al fortifications at some suitable point on the southern coast of
State, and cause an accurate survey and examination to be
le of the different harbors and sounds of said coast.
pproved February 22, 1840.
Laws of Mississippi, 1840, page 148.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 101 Filed 10/1/04 Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13 1905, James H. McKenney, clerk.

2344 MISS. DOCUMENT NO. 102.

Original.

CHAPTER 118.

A Resolution to Congress Concerning the Erection of a Light-house on St. Joseph's Island.

Resolved by the legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives requested to unite their best exertions to obtain a sufficient appropriation for the erection of a light-house on St. Joseph's, sometimes called Half-moon island, situated in Lake Borgne, and lying between the mouth of Pearl river and the bay of St. Louis.

Approved February 22, A. D. 1842.

Laws of Mississippi 1842, page 252.

(Endorsed:) Louisiana *vs.* Mississippi. Miss. Doc. 102. Filed 10/1/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2345 MISS. DOCUMENT NO. 103.

Original.

CHAPTER 196.

Resolutions Requesting the Congress of the United States to Remove the Custom House from Pearlington, on Pearl River, to Shieldsborough, on the Bay of St. Louis.

Whereas, the present location of the custom house at Pearlington is extremely inconvenient to a large portion of the owners of vessels interested in the custom house, for the reason that Pearlington is situated on the extreme western border of this State, and the said location at Pearlington is not of easy access, owing to the fact that it is some ten miles above the mouth of Pearl river, which is, at certain stages of water, of difficult access to vessels propelled by wind, in consequence of the current of the river; and, whereas, nine-tenths of the vessels interested in the location of the custom house, are owned and navigated by persons living to the eastward of said location at Pearlington; and, whereas, Shieldsborough, situated on

of St. Louis is about twenty-five miles from the western , and about fifty miles from the eastern boundary of this l is not more than two miles from the usual route from ans to Mobile, thus presenting a location as nearly central e conveniently had; thus it is seen that Shieldsborough is in every respect more suitable than Pearlington: Therefore ed, That our Senators in Congress be instructed, and Repre- s requested to use all proper exertions to have the custom ow located at Pearlington, removed to Shieldsborough, on of St. Louis.
ved February 24, 1844.
aws of Mississippi 1844, page 371.

rsed:) Louisiana *vs.* Mississippi Miss. Doc. 103 Filed 4 Wm. D. Bullard, commissioner. Office Supreme Court iled Mar. 13, 1905. James H. McKenney, clerk.

MISS. DOCUMENT No. 104.

Original.

CHAPTER 307.

le and Resolutions Asking Congress to Erect Light Houses, tablish a Mail Route on the Sea Coast of Mississippi, &c.

reas, that portion of the State of Mississippi bordering on lf of Mexico, is rapidly improving in population, commerce vigation, and its people and interest are suffering greatly for f that attention from the General Government which has generally extended to our northern and eastern sea coasts, way of light houses, to guide our hardy and tempest tossed ers—protect their lives and the property of our citizens; and as the last acquisition of the extensive territory of Texas, ex- g our possessions to the south and west on the gulf of Mexico, great additional importance to every part of those waters, and ade and commerce passing through them, and the apprehen- t present of a rupture with our old British foe, and our liabil- any time to the difficulties with foreign powers, render the t of our wholly unprotected sea board, in every way, of the st importance to the General Government, and particularly to States, more immediately the subjects of such neglect; and as, our entire sea coast is deprived of such mail facilities from o the cities of New Orleans and Mobile as are extended to t every other portion of our country similarly situated, which tter of the most serious importance in the present advanced and rapid progress of physical knowledge, and as our whole oard is entirely unprotected in case of invasion: Therefore—

Be it resolved by the legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives requested, to use their best and untiring exertions to get laws passed to the following effect, viz: First, a law making an appropriation for building light houses at Biloxi, Mississippi City, and Pass Marianne, at such places as may be deemed suitable, to be selected by direction of the Secretary of the Treasury. Second, a law establishing a mail line by steam from New Orleans to Biloxi and back, touching regularly each way at Fort Pike, Shieldsboro, Pass Christian, and Mississippi City, once a week each way in the winter, and twice a week each way in the summer: Provided, said contract shall not let for a sum exceeding $8,000.00 per annum. Third, a law appropriating the sum of $5,000.00 to clean out and deepen the channel to Biloxi, at the west end of Deer island, and a like sum to deepen the channel on the bars at Pass Christian. Fourth, a law reserving Ship island from sale, and making an appropriation for building a fort and navy yard or naval depot, on the west end of said island, and barracks in or near the center of said island, as a place of summer resort for U. S. troops to avoid sickness, and where their services may be of utility in building such fort.

Approved February 5th, 1846.

Laws of Mississippi 1846, page 553.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 104 Filed 10/1/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2347

Miss. Document No. 105.

Original.

Chapter 46, Laws of Mississippi, 1854.

An Act to Authorize the Printing of the First Annual Report of the Agricultural and Geological Survey of the State.

Section 1. Be it enacted by the legislature of the State of Mississippi, That two thousand copies of the report of Prof. B. L. C. Wailes, State geologist, be printed under his supervision in quarto form, and in such manner and with such illustrations and plates therein given as his excellency the governor shall deem appropriate and necessary, for its illustration.

Sec. 2. Be it further enacted, That when printed and bound, the said report shall be deposited in the office of the secretary of state, to be by him distributed as follows: Fifty copies to be deposited in the State library, twenty-five copies to be deposited in the State university, one copy in each State in the Union, one copy to be given to each incorporated college and academy in the State, one copy

h to the governor, secretary of state, auditor of public accounts, te treasurer, adjutant general, the chancellor and vice chancel-s, the judges of the high court of errors and appeals, the attorney eral, the judge and district attorney of each district, each mem- of the present senate and house of representatives, and one hun- d copies to the State geologist, to be by him exchanged for simi- reports from other States, and to furnish the scientific societies l public libraries.

EC. 3. Be it further enacted, That one thousand copies of said ort shall be deposited in the office of the secretary of state, to be l by any agent or agents to be appointed by the governor, under h regulations and for such sum each, as he may deem prudent l advisable for the purpose of reimbursing the State for publish- the same, and the balance to be distributed among the several nties of the State in proportion to their representation in the slature to be furnished to the people thereof in such a manner as board of police of the several counties may direct.

EC. 4. Be it further enacted, That previous to the printing of l report, it shall be revised and completed by said State geologist; the portion of it that treats of zoology, as far as prepared, shall mitted, and in lieu thereof a catalogue of the fauna of the State ar as ascertained, be substituted.

EC. 5. Be it further enacted, That a further and more efficient secution of the survey, analysis of the marls, soils, mineral ers and the chief agricultural productions of the State, shall be le at the University of Mississippi, as the trustees may designate, the State geologist may from time to time furnish such marls, , and waters as may be required for analysis, and shall receive, eturn from the chemist, full and precise reports of all analysis ch may be made, and specimens of the marls, and soils shall be erved in convenient glass bottles in the State cabinet and in the net of the university, properly labelled, with the chemical char- r of the substance, and the locality from which the same was ined.

EC. 6. Be it further enacted, That the State geologist shall make collections of specimens to illustrate the mineral character and paleontology of the State, in addition to the geological productions which by law he is now required to collect, and ause them to be suitably arranged and preserved in the State net, and in that of the university, and any duplicates that re- n may be distributed by him among such of the incorporated ges as may apply for them.

EC. 7. Be it further enacted, That the sum not to exceed two sand five hundred dollars *to* be appropriated out of any money e treasury, to be drawn upon the requisition of the governor, he purpose of carrying into effect the provisions of this act.

EC. 8. Be it further enacted, That — act shall take effect and be ree from and after its passage.

pproved March 1, 1854.

Laws of Mississippi 1854, page 148.

(Endorsed:) Louisiana vs. Mississippi Miss. Doc. 105 Filed 10/1/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

Miss. Document No. 106.

Original.

CHAPTER CV.

An act to enable the United States of America to obtain a title to St. Joseph island, near the east end of the Rigolets, in the county of Hancock, for the purpose of constructing a lighthouse thereon.

Whereas it is represented that the United States are desirous to acquire a title to a small island on the Gulf coast, near the east end of the Rigolets, called St. Joseph island, situated within the limits of the county of Hancock in this State, for the purpose of erecting a lighthouse thereon, and that they have not been able to obtain from the owner thereof a title to the same, and whereas it is important to the safety of navigation of said coast that the said improvement should be made, therefore:

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That it shall be lawful for the United States of America, by that name, or in the name of any officer thereof authorized for that purpose, on giving five days' personal notice to the owner of said St. Joseph island, or if such owner be not found or known, then on posting such notice for five days at the door of the courthouse in the said county of Hancock, to apply to the circuit court of said county for the appointment of five disinterested persons as commissioners to appraise and value the said island, or such part thereof as may be required for the purpose aforesaid, and the said commissioners, or a majority of them, shall value and appraise the same, and make their report thereof to the said court without delay, under oath, and the said court shall confirm the same, and thereupon the United States and their officers and agents, upon payment or tender of the amount of said valuation to the owner of said island, if he be found or discovered, to enter upon and use the land so valued for the purpose aforesaid, and the said United States shall be invested with the full title to use, occupy and possess the same so long as it may be desired for the purpose aforesaid; and this act shall take effect from its passage.

Approved, November 19th, 1857.

Laws of Mississippi 1857, page 162.

(Endorsed:) Louisiana vs. Mississippi Miss. Doc. 106 Filed 10/1/04 Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2130 MISS. DOCUMENT No. 107.

Section 1 of an Act to Establish a Separate Territorial Government for the Eastern Part of the Mississippi Territory, Approved March 3, 1817.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all that part of the Mississippi Territory which lies within the following boundaries to-wit: Beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of Georgia, thence along said line to the southern boundary line to the State of Tennessee, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of Washington, thence due south to the gulf of Mexico, thence eastwardly including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, shall for the purpose of temporary government, constitute a separate territory, and be called "Alabama."

U. S. Statutes at Large, vol. 3, page 371.

(Endorsed:) Act of Congress erecting eastern part of Miss. T. into State of Alabama. Louisiana vs. Mississippi Miss. Doc. 107 Filed 1/1/04, Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2131 MISS. DOCUMENT No. 108.

Original.

Chap. LII.—An Act Authorizing the Erection of Certain Lighthouses, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as soon as a session shall be made by the States, respectively, within the limits which any of the light-houses, and other public works hereinafter provided for may be situated, to the United States, of the jurisdiction over a tract of land, respectively, proper for the said light-houses and other public works, the Secretary of the Treasury shall cause the said lighthouses and other public works to be erected; and that he shall cause the lighthouses and other public works herein provided for, which may be situated on such locations as are within and under the jurisdiction of the United States, to be erected as soon as practicable; and that the following sums be, and they are, appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose herein specified, to-wit:

(Only that part of the act relating to lighthouses in Mississippi is copied herein.)

"In Mississippi.—For a lighthouse on Merrill's shell bank, twelve thousand dollars; and the appropriation of a like sum for a light on St. Joseph's island, on the third day of March, eighteen hundred and thirty-seven, is hereby repealed."

"For a lighthouse at Biloxi, twelve thousand dollars."

Approved, March 3, 1847.

Page 175, vol. IX, U. S. Statutes at Large.

(Endorsed:) Act of Congress, 1847. St. Josephis Island lighthouse. Louisiana vs. Mississippi. Miss. Doc. 108. Filed 10/1/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

Original.

Chap. CLX.—An Act Making Appropriations for Light-houses, Light-boats, Buoys, etc., and Providing for the Erection and Establishment of the Same, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following appropriations be, and the same are hereby made, and directed to be paid out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Treasury to carry the provisions of this act into effect; provided, however, if a good title to any land, which it may be necessary to use, cannot be obtained on reasonable terms, or the exclusive right to such land cannot be acquired by cession when the interest of the United States demands it, before the appropriation would by law fall into the surplus fund, in any and all such cases the appropriations shall be applicable to the objects for which they are made at any time within two years after the first meeting of the legislature of any State wherein such land may be situated, subsequent to the passage of this act, to wit:

(Only that part of the act which relates to light-houses in Mississippi is copied here.)

"Mississippi.—For rebuilding the light-house and keeper's dwelling at Round island, eight thousand dollars."

"For rebuilding the light-house tower at the west end of Cat island, and fitting it with proper illuminating apparatus, twelve thousand dollars."

Approved August 18, 1856.

Page 95, vol. XI, U. S. Statutes at Large.

(Endorsed:) Act of Congress, 1856. Round Island light house. Louisiana vs. Mississippi. Miss. Doc. 109. Filed 10/1/04. Wm. D. Bullard, commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

Miss. Document No. 110.

Original.

Chap. XX.

An Act for the Relief of John Quavre.

Whereas, it has been represented to the General Assembly, by the tition of sundry citizens of Hancock county, that John Quavre, of d county, has rendered to the State of Mississippi, and to society general, great service in detecting and bringing to justice, John ker, and Martin Hogan, the first of whom was tried at the last perior court, held in and for said county, for robbery committed the gulf of Mexico, within the boundary of this State, was con- nned and sentenced to death by said court and was executed on 27th day of September last; the latter having made his escape m jail, was not tried.

And, whereas, it is considered important to the interest of this te, that persons should be encouraged in deeds of valor, humanity l patriotism; such as this, is represented to have been, especially relation to the atrocious crimes committed on high-seas and sea- rd—Therefore,

c. 1. Be it enacted by the senate and house of representatives he State of Mississippi, in General Assembly convened, That the of two hundred dollars be paid to John Quavre, for having de- d and delivered to justice, John Baker and Martin Hogan, for ery committed in the gulf of Mexico, within this State, out of money in the State treasury, not otherwise appropriated.

COWLES MEAD,
Speaker of the House of Representatives.
JAMES PATTON,
Lieut. Gov. and President of the Senate.

pproved November 24, 1821.

GEO. POINDEXTER.

Laws of Mississippi 1821, page 21.

ndorsed:) Act for the relief of John Quavre 1821. Louisiana lississippi Miss. Doc. 110 Filed 10/1/04 Wm. D. Bullard, nissioner. Office Supreme Court U. S. Filed Mar. 13, 1905 s H. McKenney, clerk.

2354 MISS. DOCUMENT NO. 111.

STATE OF MISSISSIPPI, }
Hancock County. }

I, Emile H. Hoffman, clerk of the circuit court of Hancock county, hereby certify that I have made diligent search and inquiry for the records and files relating to the case of The State of Mississippi *vs.* John Baker and Martin Hogan, in which case the said persons were charged with robbery in said county, in 1821; that I have searched in the places where such papers ought to be and would likely be found if they were in existence; that such records and files, if in existence would be in my custody as clerk of the circuit court of Hancock county aforesaid; that I have been unable to find them, or any part of them, all of our county and court records having been destroyed by fire on the 1st day of April, 1853.

Witness my hand and official seal this the 29 day of September, 1904.

[Seal of Circuit Court, Hancock County, Miss.]

E. H. HOFFMAN, Clerk.

(Endorsed:) Certificate of Hancock Co. clerk. Louisiana *vs.* Mississippi Miss. Doc. No. 111 Filed 10/1/04. Wm. D. Bullard, commissioner Office Supreme Court U. S. Filed Mar. 13, 1905. James H. McKenney, clerk.

2355 MISS. DOCUMENT NO. 112.

Original.

Doc. *a*.

Extract from Letter of W. C. C. Claiborne to George Poindexter, a Member of Congress, of Date Jan. 7, 1812.

"NEW ORLEANS, Jan. 7, 1812.

The Honorable George Poindexter, a member of Congress.

DEAR SIR: I have for some time past anticipated the pleasure of a letter from you. But I see (through the medium of the papers) that you are busily engaged, and can readily find for you an apology. I sincerely wish you success in your application for a State authority:—Territorial governments are at best necessary evils:—they are ill suited to the genius of the American people and should never exist but over small communities, who are neither able nor desirous to manage their own affairs. I cannot however wish success to your efforts to take from Orleans the whole of West Florida:—

Had you designed to give us a moiety for example, had you proposed that the Orleans Territory should extend eastwardly to Pearl river, and the tract of country extending from Pearl river to the Perdido to be attached to the Mississippi territory, I do not know that the plan would be very exceptionable:—But your demand for the whole seems to me somewhat extravagant and if granted by Congress, will in my opinion be highly injurious to the new State of Louisiana (the name the convention has preferred) whose best interests suggest an extension of its eastern boundary. I myself would prefer the Perdido, but we would compromise and take as far as Pearl river, and leave to your State the country on the Tombigbee and Pascagoula and the care of one of the great avenues for the western commerce the mouth of the Mobile."

Doc. *b*.

Original.

Extract from Letter of W. C. C. Claiborne to James Monroe, Secretary of State, of Date Jan. 31, 1812.

"Mess. Fromentin & Magruder are charged by the convention with a memorial to Congress which prays for the annexation of a part of West Florida to the new State. How far the posture of our relations in respect to that district, with foreign nations, will permit the Government to annex permanently, to a State, such part of Florida as lies west of the Perdido, is not for me to determine. But you will permit me to observe that the interests of the new State strongly advise an enlargement of its limits, and I do add that the annexation solicited would, (in my opinion), not only conduce to the convenience and prosperity of the people, more immediately interested but to the national good."

56

Doc. *c*.

Original.

Extract from Letter of W. C. C. Claiborne to John H. Johnson, Esq., Sheriff of the 7th Court, etc., St. Francisville, Dated at New Orleans, April 20, 1812.

"A bill approving the constitution formed by the Orleans convention has passed the House of Representatives; but I am not advised the details. It is understood, that the country from Pearl river to Perdido, is to be added to the Mississippi territory. But of the disposition to be made of the residue of Florida, I am not informed. I indulge however the pleasing hope that the parishes of St. Tammary, Hellena, Baton Rouge and Feliciana will ultimately form a part the State of Louisiana."

Doc. *d.*

Original.

Extract from Letter of W. C. C. Claiborne to John H. Johnson, Esq., St. Francisville, Dated New Orleans, May 4th, 1812.

"We have information that the passage of the bill, by the two houses of Congress, for the admission of Louisiana into the Union, and by the ensuing mail, shall no doubt, receive a copy of the act as approved by the President.

Florida as far as Pearl river is annexed to Louisiana; but as to the conditions I remain uninformed."

Extract from Letter of W. C. C. Claiborne to William L. Brent, Esq., Attackapas, Dated New Orleans, May 14, 1812.

"We are momently in expectation of receiving official information of our admission into the Union. On the 6th of April a bill approving the constitution passed both houses of Congress, and by the ensuing mail, we shall doubtless receive a copy with the President's approbation. It is understood, that Florida, as far as Pearl river, with the assent of the State legislature is to be added to Louisiana. There are individuals in this city, and some too, who will probably be in the legislature, who would withhold this assent. But I trust a great majority will accede to the proposition with promptitude and pleasure. For myself I shall view such an acquisition of population and territory, as an event greatly interesting to the present and future prosperity of this section of the Union."

2357 Doc. *e.*

Original.

Extract from Letter of W. C. C. Claiborne to the Honorable James Monroe, Secretary of State, Dated Near New Orleans, June 27th, 1812.

"As the tract of country which lies between the Mississippi and Pearl rivers is not yet included within the State of Louisiana, nor annexed to the Mississippi territory, it has been considered as forming at this moment the Territory of Orleans.

If this opinion should be deemed correct, I beg the favor of you to announce to the President my resignation as governor of Orleans, from and after the date of this letter."

Letter from W. C. C. Claiborne to the Honorable Albert Gallatin, Sec'y of the Treasurer, Dated Near New Orleans, 27th June, 1812.

"I have had the honor to receive your letter of the 25th ultimo, and shall in obedience to your directions, close my accounts against

the U. States, for contingent expenses, with the 30th of April, 1812. As that tract of country, which lies between the Mississippi and the Pearl river, is not yet included in the State of Louisiana nor annexed to the Mississippi territory, it has been considered as forming at this moment the Orleans Territory. I do not know that this opinion is correct, but as doubts may arise upon the subject, I have this day, forwarded my resignation as governor of Orleans to the Hon. the Secretary of State for the U. States."

Doc. *f*.

Original.

Letter from W. C. C. Claiborne to Thos. B. Robertson, Esq., New Orleans, Dated New Orleans, July 4th, 1812.

"On the 27th ultimo, in a letter to the Secretary of State, I announced to him my resignation of the office of governor of the Orleans Territory. It would seem by Mr. Gallatin's letter of the 25th of May (a copy of which I requested Mr. Vassant to hand you) that in his opinion no such Territory existed. But as the tract of country, which lies between the Mississippi and Pearl rivers is not yet included within the State of Louisiana, nor annexed to the Mississippi territory an opinion has prevailed that this tract formed for the present the Orleans Territory. I will not undertake to say, that this opinion is correct. But as the ordinance has provided in the event of the resignation of the governor, that his powers shall devolve upon the Secretary. I have deemed it my duty to address you this letter."

2358

Doc. *g*.

Original.

Letter from David Holmes to Governor Claiborne, Dated Town of Washington, 22nd of June, 1812.

"I have seen on a public print an act of Congress to enlarge the boundaries of the Mississippi territory, by which it appears that all the tract of country lying east of Pearl river, west of Perdido, and south of the thirty-first degree of north latitude, is annexed to our territory. In all probability it will be my duty to organize this newly acquired country, and as you have heretofore exercised authority as governor over the same, it is in your power to afford me some useful information in this discharge of this duty. I will, therefore, thank you for the names of the persons that have been commissioned to fill the offices within this district under your government, and any other information which, in your opinion, will aid me in performing this duty."

Extract from a Letter of David Holmes, Governor of the Mississippi Territory, to General Wilkinson, Dated at the Town of Washington, 7th of September, 1812.

"I have erected the whole of that tract of country lying south of the 31st degree of north latitude, east of Pearl river, and west of the Pe-dido, into a county by the name of Mobile. Civil and military commissions were forwarded to Judge Toulmin with a request that he would have them distributed. Since then I have not heard from that part of the territory."

Doc. *h*.

Original.

By David Holmes, Governor of the Mississippi Territory.

A Proclamation.

Whereas by an act of the Congress of the United States passed the 14th day of May in the year one thousand eight hundred and twelve, "entitled'An act to enlarge the boundaries of the Mississippi territory," there has been annexed to said territory all that tract of country lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of north latitude, and whereas the same is declared by the act aforesaid to be a part of the said territory, and to be governed by the laws thereof now in force, or such as hereafter may be enacted, and the laws and ordinances of the United States relative thereto, in like manner as if the said tract of country had originally formed a part of the said territory. Now, know ye, that by virtue of the powers in me vested, as governor of the Mississippi territory, and in order that the benefit of the laws and ordinances aforesaid may be extended to the people inhabiting the said tract of country, I do hereby erect the same into a
2359 county, and by these letters made patent do order and declare that the said county shall be called and known by the name of Mobile, and do further declare that the laws of the Mississippi territory, and the ordinances and acts of Congress relative thereto are in force within the said county of Mobile, and that the inhabitants thereof are entitled to all and singular the jurisdiction, rights, privileges and immunities that respectively appertain to the counties of the Mississippi territory, and moreover—I do invite and enjoin the inhabitants of the said county, to be obedient to the laws, to maintain order, and to demean themselves as peaceable citizens.

In testimony whereof, I have caused the seal of the Mississippi Territory, to be hereunto annexed, and signed the same with my hand.

Done at the town of Washington, the first day of August A. D. 1812, and in the 37th year of the Independence of the United States of America.

DAVID HOLMES.

Doc. *i*.

Original.

David Holmes, Governor of the Mississippi Territory—A Proclamation.

Whereas by a proclamation issued by me on the 1st day of August
I did, by virtue of the powers in me vested, erect into a county
e known by the name of Mobile all that tract of country lying
t of Pearl river, west of the Perdido, and south of the thirty-first
ree of north latitude, which said tract of country was annexed to
Mississippi Territory by an act of the Congress of the United
tes, passed on the 11th day of May, in the year of our Lord 1812,
itled An act to enlarge the boundaries of the Mississippi Territory.
d whereas by the aforesaid act of Congress the inhabitants of
l county of Mobile are entitled to one representative in the General
embly of said Territory, now know ye, that I do hereby authorize
l empower the sheriff of the said county of Mobile, to convene
freeholders of the same, on the third Monday in October next,
uch place or places as he may deem most convenient for the said
holders, of which he is to give public notice, for the purpose of
ting one fit person, qualified as the ordinance directs, to repre-
t them in the General Assembly of the Territory. And I do fur-
r empower and direct the said sheriff to cause to be appointed
able persons to superintend the said election as managers. And
reover I do order that said election be conducted in all things
ording to the laws of the Mississippi Territory, in like manner as
he said county had originally formed a part of the said Terri-
.

n testimony whereof, I have caused the seal of the Mississippi
ritory to be hereunto annexed, and signed the same with my
d at the town of Washington, the 17th day of September, A. D.
2, and in the 37th year of the Independence of the United States
America.

DAVID HOLMES.

0 JACKSON, MISSISSIPPI.

hereby certify that I have carefully compared the foregoing
es with the originals in my office and find that they contain
e and correct copies of certain letters and documants and parts
certain letters and documents found in the journals of David
mes and W. C. C. Claiborne respectively; that the said copies of
ers and documents and extracts from letters and documents,
ch I have examined, compared and found correct are marked
his batch as Documents *a*, *b*, *c*, *d*, *e*, *f*, *g*, *h* and *i* respectively.
further certify that the originals, from which the said copies

were made, are part of the archives of my department, and that I am the official custodian of them.

Witness my hand this the first day of October, 1904.

DUNBAR ROWLAND,
Director Department of Archives and
History of the State of Mississippi.

(Endorsed:) Louisiana *vs.* Mississippi Miss. Doc. 112 Filed 10/1/04. Wm. D. Bullard commissioner. Office Supreme Court U. S. Filed Mar. 13, 1905, James H. McKenney, clerk.

2361 (Mississippi Exhibits A & B are maps which will be found in its atlas of maps.)

2362 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
v.
THE STATE OF MISSISSIPPI. } Original Cause No. 11.

I, Frank M. Peyton, certify that in the above styled cause I was appointed and sworn as official stenographer on the part of the State of Mississippi; that the oral testimony on the part of said State was taken down by me in short hand before Hon. William D. Bullard, commissioner for said State, and Hon. Frank H. Mortimer, commissioner for the State of Louisiana, and by me extended in typewriting as shown by the accompanying volumes to-wit:

Vol. 1, from page 1 to page 303 inclusive.
Vol. 2, from page 303 to page 610 inclusive.
Vol. 3, from page 610 to page 923 inclusive.
Vol. 4, from page 923 to page 1144 inclusive.
Vol. 5, from page 1144 to page 1387 inclusive.
Vol. 6, from page 1387 to page 1496 inclusive.

I certify that said six volumes, in triplicate, the original and one for each State, contain a true and correct report of all the testimony and of the proceedings had in said cause before said commissioners taken down by me and by me extended in typewriting as aforesaid, on the part of the State of Mississippi in said cause.

Witness my signature this November 1, 1904.

FRANK M. PEYTON,
Official Stenographer.

3 In the Supreme Court of the United States.

STATE OF LOUISIANA
vs.
STATE OF MISSISSIPPI. } October Term, 1904, Original Bill No. 11.

, W. D. Bullard, commissioner, appointed by the honorable Su-
me Court of the United States in the above entitled and num-
ed proceeding, do hereby certify, that under the agreement be-
en counsel for the respective parties therein of record, testimony
behalf of the State of Louisiana was taken before me at the city
New Orleans, State of Louisiana, on September 5th, 6th, 15th and
h, 1904, and that a transcript thereof is contained in the record
testimony for the State of Louisiana, in vol. IV, beginning at
e 1294, and ending on page 1477, both inclusive:
further certify the several exhibits offered in connection with
said testimony so taken before me and enumerated and set out
rein, and identified by my signature, are transmitted therewith.
n testimony whereof, I have signed these presents at the city of
anton, State of Mississippi, this 27 day of February, A. D. 1905.

WM. D. BULLARD,
Commissioner.

4 In the Supreme Court of the United States.

THE STATE OF LOUISIANA
vs.
THE STATE OF MISSISSIPPI. } Original No. 11.

, William D. Bullard, appointed by the Supreme Court of the
ited States to act as commissioner, on the part of the State of
sissippi, to take and report the testimony on the part of the said
te in the above styled cause, and to report the same together with
the proceedings had before me as such commissioner, hereby cer-
that I was duly sworn as comm..sioner aforesaid and pursuant
said appointment, and according to the terms of the several
eements entered into by the counsel in this cause and made
ts of the record herewith presented, I proceeded to take the said
imony and to conduct the said proceedings on the part of the
te of Mississippi at the times and places and in the manner
wn by the said record to which this certificate is attached, and
e the honor herewith respectfully to report the same to this hon-
ble court, in the following form to-wit:
Vol. 1, from page 1 to page 303 inclusive.
Vol. 2, from page 303 to page 610 inclusive.
Vol. 3, from page 610 to page 923 inclusive.
Vol. 4, from page 923 to page 1144 inclusive.
Vol. 5, from page 1144 to page 1387 inclusive.
Vol. 6, from page 1387 to page 1496 inclusive.

I certify that the said six volumes contain a true and correct report of the oral testimony taken and of all the proceedings had before me; that the same was taken down by Hon. Frank M. Peyton who had been duly appointed by me as official stenographer for Mississippi in the said cause and who was by me duly sworn as such and whose certificate is attached thereto, and extended by him into typewriting; that the maps, charts, plats, diagrams and documentary evidence noted and referred to in the said stenographer's report and shown therein to have been filed by me as commissioner aforesaid are also hereby certified to be true and correct and are delivered herewith as a part of this my report.

Witness my signature this the 15th day of November. A. D. 1904.

WM. D. BULLARD,
Commissioner for the State of Miss.

2365 And afterwards, to wit, on the first day of May, A. D. 1905, a motion to assign case for argument was filed in the words and figures following, viz:

2366

Supreme Court United States.

STATE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI, Respondent. } No. 11, Original, October Term, 1904.

Motion to Set Cause for Argument.

Now, comes The State of Louisiana, complainant, through Walter Guion, attorney general, and John Dymond, Jr., and Frank C. Zacharie, of counsel, and The State of Mississippi, respondent, through William Williams, attorney general, and Hannis Taylor, of counsel, and move the court for an order to have this cause on its merits set for argument for October 10, 1905, and further move the court for an order to grant such additional time for argument, considering the character and importance of the issues involved in this cause as the court may find itself able to grant.

STATE OF LOUISIANA.
WALTER GUION,
Attorney General.
JOHN DYMOND, JR.,
Of Counsel.
STATE OF MISSISSIPPI.
WILLIAM WILLIAMS,
Attorney General.
HANNIS TAYLOR,
Of Counsel.

(Endorsed:) Original, No. 11 Supreme Court of the United ates. State of Louisiana *vs.* State of Mississippi Agreement and otion. Filed —— —, —. —— ——, clerk John Dymond, Jr., torney for ——.

(Endorsed:) Supreme Court U. S. October term, 1904, No. 11, iginal State of Louisiana, complainant, *vs.* State of Mississippi otion to assign cause for argument. Filed May 1st 1905.

7 And on the same day, towit, on the first day of May, A. D. 1905, the following entry appears of record, viz:

8 Supreme Court of the United States.

TE OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1904.

Ir. Hannis Taylor, of counsel for the defendant, submitted to the sideration of the court a motion to fix a day for the argument of cause.
lay 1, 1905.

9 And afterwards, towit, on the 8th day of May, A. D. 1905, the following entry appears of record, viz:

9 Supreme Court of the United States.

E OF LOUISIANA, Complainant,
vs.
STATE OF MISSISSIPPI. } No. 11, Original, October Term, 1904.

consideration of the motion to fix a day for the argument of cause, it is now here ordered by the court that this cause be, the same is hereby, assigned for argument on Tuesday, October next, at the head of the call for that day.
y 8, 1905.

[Endorsed:] Supreme Court of the United States, October term, 1904. Term No. 11, original. Order. Filed May 8,

11
No. 12 Orig.

Off. of Guion & Dymond, Counsel.

Filed Oct. 27, 1902.

Office Supreme Court U.S.
FILED
OCT 27 1902 (on mo.)
Clerk.

Supreme Court of the United States.

——— TERM, 1902.

11

No. 12 Orig.

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

MOTION AND BRIEF IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

Supreme Court of the United States.

No. ———

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

And now comes the State of Louisiana, through Walter Guion, its Attorney General, and Messrs. John Dymond, Jr., and Albert Estopinal, Jr., of Counsel, and moves this Honorable Court for permission to file in this Court its bill of complaint against the State of Mississippi, and for process to answer.

Attorney General of Louisiana.

Of Counsel.

Supreme Court of the United States.

No. ———

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

BRIEF ON THE PART OF THE STATE OF LOUISIANA IN SUPPORT OF ITS MOTION TO FILE ITS BILL OF COMPLAINT.

May it please Your Honors:

This proceeding is an action of boundary on the part of the State of Louisiana brought against its adjoining sister State, Mississippi, and relief is sought through the original jurisdiction of this Honorable Court, as provided in Section 2 of Article Three of the Constitution of the United States of America.

We have set forth in our Bill of Complaint the detail of the dispute between the two States. It is as to their respective boundaries as created, described and established by the Acts of Congress of the United States forming the two

States, and your Honors are asked to interpret the meaning of these Acts of Congress and to apply your resulting conclusions in establishing a boundary line in the waters between certain parts of the two States where the disagreement as to their respective rights exists.

The proceeding is not a novel one, as in the course of the history of our Union many similar cases have been heard and decided by your Honors.

In the case of the *State of New Jersey vs. The State of New York*, 5 Peters, 284, the question was first fully considered and it was there held, that the Supreme Court of the United States had original jurisdiction to settle boundaries between States. This decision on this point was affirmed in the cases of the *State of Rhode Island vs. The State of Massachusetts*, 12 Peters, 657; and has been uniformly followed in the cases of the *State of Missouri vs. The State of Iowa*, 7 Howard, 660; *The State of Florida vs. The State of Georgia*, 17 Howard, 478; *The Commonwealth of Virginia vs. The State of West Virginia*, 11 Wallace, p. 39; *The State of Missouri vs. The State of Kentucky*, 11 Wallace, p. 395; *The State of Indiana vs. The State of Kentucky*, 136 U. S. p. 479; *The State of Virginia vs. The State of Tennessee*, 148 U. S. p. 503.

Your Orator therefore respectfully prays that its motion for leave to file its Bill of Complaint be granted, and that process to answer be issued and all other necessary orders be granted.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.

No. 12 Orig.

Bill of Complaint.

Filed Oct. 27, 1902.

Office Supreme Court U.S.
FILED
OCT 27 1902
JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

——————— TERM, 1902.

NO. ~~12~~ 11 Orig.

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

BILL OF COMPLAINT.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.
ALBERT ESTOPINAL, JR.,
Of Counsel.

Supreme Court of the United States.

——— ——— TERM, 1902.

NO. ———

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

BILL OF COMPLAINT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The STATE OF LOUISIANA, one of the United States of America, by WILLIAM W. HEARD, Governor, and upon the information of WALTER GUION, Attorney General, brings this, her Bill of Complaint, against the STATE OF MISSISSIPPI, one of the United States of America, and against ANDREW H. LONGINO, a citizen of the State of Mississippi, in his capacity as Governor of the State of Mississippi, and Monroe McClurg, Attorney General of the State of Mississippi, and thereupon your orator complains and says:—

1st. That the State of Louisiana was admitted into the Union of the United States of America by the Act of Congress, found in Chapter 50 of the United States Statutes at

Large, Volume 2, page 701, approved April 6th, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said act, were described as follows:—

"WHEREAS, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the Treaty made at Paris on the 30th day of April, 1803, between the United States and France contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said River, including all islands to the 32d degree of latitude; thence due north to the northernmost part of the 33d degree of north latitude; thence along the said parallel of latitude to the Mississippi River; thence down the said River to the River Iberville, and from *thence along the middle of said River and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the Coast*" etc. (Italics ours.)

2nd. That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi River, beginning at the northeast corner of said State and extending south to the junction of the said River, with the River Iberville (now known as Bayou Manchac) and thence exteading eastwardly through the lower end of the Amite River, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the Gulf of Mexico its only course was through the Rigolets, into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, following said channel, north of Half Moon Island, through Mississippi Sound to the north of Isle à Pitre, through the Cat Island Channel, southwest of Cat Island, into the Gulf of Mexico, which said eastern boundary of the State of Louisiana is more fully shown on diagram No. 1, made part of this bill;

3rd. That by the Act of Congress, found in the United States Statutes at Large, Vol. 2, p. 708, chapter 57, approved April 14th, 1812, additional territory was added to the then

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existing State of Louisiana, which additional territory was described in the following language:—

"Beginning at the junction of the River Iberville with the Mississippi River; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl River; thence up the eastern branch of the Pearl River to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said River to the place of beginning, shall become and form a part of the State of Louisiana";

4th. That the effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the Mississippi River as the original eastern boundary, as far [illegible] as the 31st degree of north latitude. The change then moved the eastern boundary eastward along the 31st degree of north latitude to the Pearl River, whence it then ran south down the said River, through its eastern branch, till it entered the northern corner of Lake Borgne, where the State's eastern boundary then joined and followed the boundary line originally fixed in the Act of April 6th, 1812, and followed, as heretofore stated, the deep water channel through the upper corner of Lake Borgne, north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound till it reached the Cat Island channel north of Isle à Pitre, and southwest of Cat Island, whence passing through Chandeleur Sound, northeast of Chandeleur Islands, it entered the Gulf of Mexico, and ran south around the Delta of the Mississippi River and then north and westward to the point where the Sabine River enters the Gulf of Mexico, as will be more fully seen from the diagram No. 2, made part of this bill;

5th. That the territory lying adjacent to, and to the eastward of the State of Louisiana is the State of Mississippi, which latter State was admitted into the Union of the United States of America by the

Act of Congress, found in the United States Statutes at Large, Volume 3, Chapter 23, page 348, approved March 1st, 1817, whereby the inhabitants of the western part of the then Mississippi Territory were authorized to form for themselves a State Constitution and to be admitted into the Union, the boundaries of the then to be created State being described as follows:—

"Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the Gulf of Mexico; *thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne;* thence up said River to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi River; thence up the same to the beginning";

6th. That by the said Act, Congress intended that the southern boundary line of the State of Mississippi, beginning at the point dividing it from the State of Alabama, should run westwardly till it joined the Louisiana eastern boundary line, and that in doing so, the said southern boundary would in effect start westward from a point eighteen miles south of the Coast line, and include in its westwardly direction the western end of Petit Bois Island, all of Horn Island, Ship Island and Cat Island, and the smaller islands north of these, those islands being the ones contemplated in the Act of Congress, as being within eighteen miles of the Southern Coast line of Mississippi, and that the said southern boundary of Mississippi, extending in its *westwardly* direction through the Gulf of Mexico, would gradually approach the coast line, and meet the eastern boundary line of Louisiana, just as the said eastern boundary line of Louisiana immerges from the Cat Island Channel into the Gulf of Mexico, and thence follow and



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become the same as the Louisiana boundary line extending westwardly to the south of Cat Island, through Mississippi Sound to the north of Half Moon or Grand Island to the *most southern junction of the east branch of Pearl River with Lake Borgne*, being identical with the Louisiana eastern boundary, and thence extending up the channel of Pearl River;

7th. That the islands included between the shore line and the southern boundary of the State of Mississippi are the islands heretofore described, viz: the western end of Petit Bois Island, with all of Horn Island, Ship Island and Cat Island, and the small islands north of them, those islands being large, and well known to Congress at the time of the passage of the act, all of which islands and the southern boundary of the State of Mississippi will more fully appear from the diagram No. 3, made a part of this bill;

8th. That the islands contemplated in the Act of Congress of 1812, creating the State of Louisiana, and intended to be embraced within the State of Louisiana, as provided by the clause, "*Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the Coast,*" were all of the other islands, except those heretofore named as going to the State of Mississippi, as all other islands, and all other mainland, are south and west of the boundary line thus passing from Pearl River through the Deep Water Channels in Lake Borgne, and Mississippi Sound, through the Deep Water Channel, southwest of Cat Island to the eastward of the Chandeleur Islands, and thence south, taking in the Delta of the Mississippi River, and extending westward along the Gulf coast, including all islands along the coast, to the Sabine River, where the State of Louisiana is thence bounded on the westward by the State of Texas, all of which will more fully appear from diagram No. 2, heretofore referred to;

9th. Now your orator avers that there has developed in recent years in the waters south of the State of Mississippi and

east of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom;

10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and *permits* the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made;

11th. That the State of Louisiana has by legislative enactments regulated the oyster industry in the said State of Louisiana, and *prohibits* the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made;

12th. That the provisions of the laws of the said two States differ considerably in many other respects.

13th. That the existence and location of the natural oyster reefs in the waters of the Parish of St. Bernard in the State of Louisiana which adjoins the State of Mississippi is shown by the map made from a reconnaissance by the United States Fish Commission steamer, "Fish Hawk", in February, 1898, as will more fully appear from diagram No. 4, now made part of this bill;

14th. Now your orator avers that the boundary line dividing the two States in the waters thereof has been clearly defined by the Acts of Congress creating the States of Louisiana and Mississippi, as will be seen from the diagram No. 5, made up from the boundary descriptions taken from the Acts of Congress creating the said States of Louisiana and Mississippi, which diagram is also made part of this bill;

15th. That the said boundary line in the waters between said States has never been designated by buoys or marks of any kind by either State, nor designated in any manner, except by the United States Government in so far as it has buoyed the *Deep Water Channel*, extending from the mouth of the Pearl

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River through the upper corner of Lake Borgne north of Half Moon Island, eastward to the Cat Island Pass, north of Isle à Pitre, and southwest of Cat Island, which buoys were placed by the Coast Survey of the United States Government;

16th. That owing to the differences in the laws of the States of Louisiana and Mississippi, regulating the oyster industry of the respective States, the said statutes providing penalties for the violation thereof, much confusion has resulted and a great public demand has arisen in Louisiana to definitely mark the boundary line dividing the two States in the waters thereof; that citizens of the State of Mississippi, in violation of the laws of the State of Louisiana, have been fishing oysters with dredges on the natural reefs in the waters of the State of Louisiana, said fishermen claiming that they were in the waters of the State of Mississippi and consequently not violating the laws of the State of Louisiana;

17th. That affairs had reached such a crisis that, to avoid an armed conflict between the sheriff and officers of the Parish of St. Bernard in the State of Louisiana and the sheriff and officers of the County of Harrison in the State of Mississippi, a meeting of citizens of the State of Louisiana was called by the Governor of the State of Louisiana and held in the City of New Orleans, State of Louisiana, as will be seen from a certified copy of the minutes of said meeting, to-wit:—

"Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen:—

Present:—His Excellency, Gov. W. W. Heard; Lieutenant Governor Albert Estopinal; Major H. B. Richardson, Chief of the Board of State Engineers; Messrs. Simon Leopold and A. T. Bonvillain, representing the Commission appointed by the House of Representatives of the State of Louisiana; Mr. H. C. Cage, representing the Commission appointed by the Senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the Committee from the Police Jury of the Parish of Plaquemines; Albert Estopinal, Jr., District Attorney for the

Twenty-ninth Judicial District; Clem Story and Gus Schoenberger, Oyster Inspectors, respectively of the Parishes of St. Bernard and Plaquemines; Frank C. Mevers, Sheriff of the Parish of Plaquemines; E. E. Nunez, Sheriff of the Parish of St. Bernard; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the subject of the call, stating that the oyster industry was of much greater magnitude than our people believed; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a Penitentiary offense. Mr. Story called to the attention of the meeting the Congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the Committee that the Mississippi Oyster Factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the Committee the fact that these tongmen and the dredges from the Oyster Factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana Oyster Industry was susceptible of much greater development than enjoyed in any of those States; that an acre of oysters would yield 300 barrels, which at $1.00 a barrel would give gross proceeds of $300.00 from one acre of oysters; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the *Louisiana Marshes*. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an Oyster Receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the Parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction.

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Mevers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following Resolution, which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the Governor of the State of Louisiana request the Governor of the State of Mississippi to appoint a Commission of five gentlemen to confer with a Commission to be appointed by the Governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the Committee, to constitute the Commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

(Signed) W. W. HEARD, Chairman.
(Signed) JOHN DYMOND, JR., Secretary."

The original minutes of said meeting being made part of this bill as Exhibit "A".

18th. That to determine amicably the eastern boundary line between the said States, in the waters to the south of the State of Mississippi, and to the east of the southern portion of Louisiana, W. W. Heard, Governor of the State of Louisiana, addressed the following communication to his Excellency, A. H. Longino, Governor of the State of Mississippi, to-wit:—

"STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,

BATON ROUGE, January 26, 1901.

His Excellency, Governor A. H. Longino,

Jackson, Miss.:

Dear Sir:—

On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the Oyster Industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the Laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the Governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

I would therefore request that you appoint the Commissioners for your State at your earliest convenience.

(Signed) W. W. HEARD,
Governor."

As will be seen from a copy of said letter taken from the letter book in the hands of the Governor's private secretary, sworn to by said secretary and made part of this bill, marked Exhibit "B".

19th. That his Excellency, A. H. Longino, Governor of the State of Mississippi, in response to the foregoing, then addressed to his Excellency, W. W. Heard, Governor of the State of Louisiana, the following communication, to-wit:—

"EXECUTIVE DEPARTMENT,
JACKSON, MISSISSIPPI.
February 9, 1901.

His Excellency, Gov. W. W. Heard,
Baton Rouge, La.

Dear Governor:—

I have the honor to inform you that I have this day appointed the following named gentlemen as Commissioners from this State to confer with the Commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.
Mr. A. Keller, Bay St. Louis, Miss.
Hon. W. A. White, Biloxi, Miss.
Mr. Harry T. Howard, Biloxi, Miss.
Hon. J. I. Ford, Scranton, Miss.

I have the honor to be, sir,

Very truly yours,
(Signed) A. H. LONGINO,
Governor."

The original of which said letter is made a part of this bill marked Exhibit "C".

20th. Your orator avers that this joint commission on boundary met in the City of New Orleans, State of Louisiana, on the 26th of March, 1901, as will appear from a certified copy of the minutes of said meeting as follows, to-wit:—

"Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 A. M.

Present:—Mississippi Commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent:—Hon. A. Kellar.

Louisiana Commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal, Jr., chairman of the Louisiana Commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi Commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story, Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi Commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 A .M. This motion was put and adopted, and the meeting then took a recess until 11:30 A. M.

At 11:30 A. M., after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present:—Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana Commission, then presented to the Mississippi Commission the views of the Louisiana Commissioners on the subject of the boundary line in the waters between the two States. Mr.

Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the Act of 1812 annexing the territory west of the Pearl River the eastern boundary of Louisiana was extended to the mouth of the Pearl River, from which point the line joined the original water boundary and extended to the Gulf by the deep water channel, passing to the eastward of Chandeleur Islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula River, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana Boundary Commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi Commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana Commission thereupon invited the Mississippi Commission to luncheon at the Cosmopolitan Hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

(Signed) JOHN DYMOND, JR., Secretary.
(Signed) H. T. HOWARD, Chairman."

Which said original minutes are now made a part of this bill marked Exhibit "D", and the said original map, the sub-

ject of discussion, is now made a part of this bill marked Exhibit "E".

21st. That the said Commission appointed on the part of the State of Mississippi met, after some five months' delay, and on July 20th, 1901, submitted its reply to the Louisiana Commission, as follows, to-wit:—

"Hon. Albert Estopinal, Jr.,

Chairman Louisiana Boundary Commission.

The Commission appointed by the State of Mississippi to confer with a like Commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana Commission, and having examined the line as delineated by that body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi Commission considers as islands considerable territory which the Louisiana Commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed) H. T. HOWARD, Chairman;
J. I. FORD, Secretary;
E. J. BOWERS,
W. A. WHITE,
AUG. KELLER."

Which said original document is now made a part of this bill marked Exhibit "F".

22nd. Your orator now avers that, as will appear from the foregoing, the State of Louisiana has exhausted all means whereby the said boundary line might be established amicably, except for the suggestion made by the State of Mississippi through its Commission in its foregoing reply and contained in the following language:—

> *"It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States, and we respectfully suggest that course."*

23rd. Now your orator avers that it is entitled to appeal for relief to your honors, as one of the causes influencing the establishment by the Constitution of the United States of America, of your august tribunal, was the determining of disputed boundaries between Sovereign States of the Union and that the right and power is therefore within your jurisdiction to fix and determine the boundary line dividing the States of of Louisiana, south of the State of Mississippi, in the waters lying between the said States;

24th. That the eastern water boundary line as claimed by your orator, viz: a line beginning at the most southern junction of the Channel of the east branch of the Pearl River with Lake Borgne and thence eastward following the Deep Water Channel to the north of Half Moon Island, through the Mississippi Sound Channel, to Cat Island Pass, northeast of Isle à Pitre into the Gulf of Mexico, thereby dividing the waters between the two States, agrees, and is in accord, with the acts of Congress creating respectively the State of Louisiana and the State of Mississippi as already shown by diagram No. 5; that any other boundary than the *Deep Water Channel* as aforesaid would cause the limits of the two States to conflict and overlap, and that it is not to be presumed that the Congress of the United States intended to, or would establish, in its description, a boundary for the State of Mississippi, conflicting with the already existing Louisiana eastern boundary, when there is a construction of the wording of the two Acts,

in fact the only construction that suggests itself, that shows a boundary readily ascertained, harmonizing with the words of the Acts as they now read, and clearly defining the limits of the two States in the waters between them.

25th. Your orator further avers that the use of the word "*Westwardly*" in the description of the southern boundary of the State of Mississippi, as that southern boundary line extends westwardly from the Alabama State line to the Louisiana eastern boundary line, shows that it was not the intention of Congress to have it run direct or due west throughout the whole course, and that it was evidently the intention of Congress, in giving to the State of Mississippi the Islands north of that westwardly drawn line, that the eighteen-mile limit shall gradually decrease as it approached the Louisiana line on the east till it met and followed it to its source. If the Mississippi line ran parallel to the southern coast of Mississippi, at a distance of eighteen miles from such coast line following the meander of the coast, and thence joined at right angles a line emerging from the mouth of Pearl River, such line would not only include Grassy, Half Moon, Round, LePetit Pass Islands and Isle à Petre, already belonging to Louisiana as being within nine miles or three leagues of the Louisiana shore line, but such line would also include part of the mainland of the State of Louisiana as will be seen from the following diagram (No. 6) made a part of this bill, and it certainly could not have been the intention of Congress to take away from the State of Louisiana any islands or mainland already belonging to it and to give them to the State of Mississippi, as such a proceeding, without the consent of the Legislature of the State of Louisiana, would be in violation of Sec. 3 of Art. IV of the Constitution of the United States.

26th. Your orator avers that the marsh lands claimed by the State of Mississippi to be islands are in truth, with the exception of the Isle à Pitre, Grassy, Half Moon, Round and Le Petit Pass Islands, low lying marsh lands forming part of the mainland of the State of Louisiana; that said swamp

or marsh lands and islands have been known as and called since time immemorial "The Louisiana Marshes"; that they were approved to the State of Louisiana by the Commissioner of the General Land Office on May 6, 1852, as will appear from a certified copy of said record of approval from the United States Land Office made a part of this bill, marked Exhibit "G", and where not since sold by the State of Louisiana to private purchasers have always stood on the books of the Register of the Louisiana State Land Office as State lands, to be offered for sale, until recently transferred by the State of Louisiana to the Board of Commissioners for the Lake Borgne Basin Levee District by the provisions of Act No. 14 of the Legislature of the State of Louisiana for the year 1892, for the purpose of enabling the said Levee Board, by the proceeds of sale of said lands to secure the funds to aid in the building of levees in that Levee District, to protect the lands from overflow.

27th. That parts of said disputed territory claimed by the State of Mississippi to be islands within eighteen miles of its shore line are in fact part of the mainland of the State of Louisiana, and therefore belong to and form part of said State of Louisiana, but if your Honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, then as islands they are within the nine mile limit of distance from the shore line of the State of Louisiana and therefore belong to and form part of the State of Louisiana by that second provision of the Act of Congress giving Louisiana all islands within three leagues of its shore line.

28th. Your orator further avers that where contiguous States or countries are separated by water it is, and always has been, the custom to regard the *Channel* as establishing the boundary line of such States, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own Constitution adopted November, 1890, in the following words:—

"The limits and boundaries of the State of Mississippi are as follows, to-wit:— Beginning on the Mississippi River (*meaning thereby the center of said River or thread of the stream*) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and V. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi A. D. 1837 and J. D. Grahan and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee River, six four-pole chains south of and above the mouth of Yellow Creek; thence up the said River to the mouth of Bear Creek; thence by a direct line to what was formerly the northwest corner of the County of Washington, Ala:; thence on a direct line to a point ten miles east of the Pascagoula River on the Gulf of Mexico; thence westwardly including all the Islands within six leagues of the shore *to the most eastern junction of Pearl River with Lake Borgne;* thence up said Pearl River to the 31st degree of north latitude; thence west along said degree of latitude *to the middle or thread of the stream of the Mississippi River; thence up the middle of the Mississippi River or thread of the stream* to th the place of beginning, *including all islands lying east of the thread of the stream of said River*, and also including all lands which were at any time heretofore a part of this State."

29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government having authority in the premises, have themselves recognized the boundary line contended for by the State of Louisiana, by reason of the fact that the United States Government has confirmed to the State of Louisiana the lands composing Half Moon Island which is just south of the deep water channel, and which island is composed of Section 36 of Township 10 S. R. 17 East, Sections 29, 31, 32 and 33 of Township 10 S. R. 18 East; Section 1 of Township 11, S. R. 17 East; Sections 5 and 6 of Township 11, S. R. 18 East, in the South-Eastern

Land District of Louisiana, East of the Mississippi River; and that the lands forming what is commonly known as Isle à Pitre and being in sections 23, 24, 25, 26, 27, 28, 32, 33 and 34 of Township 10, S. R. 20 East, and in fact all of the remaining lands in Township 11, S. R. 17 East; Township 11, S. R. 18 East; Township 11, S. R. 19 East; Township 11, S. R. 20 East; Township 12, S. R. 16 East; Township 12, S. R. 17 East; Township 12, S. R. 18 East; Township 12, S. R. 19 East; Township 12, S. R. 20 East; Township 13, S. R. 16 East; Township 13, S. R. 17 East; Township 13, S. R. 18 East; Township 13, S. R. 19 East; Township 13, S. R. 20 East; in the aforesaid Land District, and parts of which are claimed by the State of Mississippi under its right angle line to belong to the State of Mississippi, have in fact been also confirmed to the State of Louisiana by the United States Government, and are recognized as belonging to and forming part of the State of Louisiana by the said United States Government and have always heretofore been so recognized by the people of the said two States; that the lands forming the Isle à Pitre were sold by the State of Louisiana to Richard Pindell on March 20, 1867, as per land patents of the State of Louisiana Nos. 194, 195 and 196, that Pindell sold to H. J. Leovy on April 18, 1867, by acts of sale before Geo. W. Christy, a notary public of the State of Louisiana, certified copies of said State land patents and said notarial acts being made part of this bill, marked Exhibits "H", "I", "J", "K" and "Z", and are now owned by the Messrs. Gilmore of the State of Louisiana, who acquired the said, and other, lands from Leovy on March 2, 1892, by two acts of purchase before Theo. Cotonio, a notary public of the State of Louisiana, certified copies of said notarial acts being made a part of this bill, marked Exhibits "L" and "M", and said lands have been assessed on the assessment rolls of the Parish of St. Bernard, State of Louisiana, and taxes thereon have been paid to the State of Louisiana for the past 35 years, and said lands have never been

assessed on the rolls of, nor have any taxes ever been paid to, the State of Mississippi and that this is the case with all the other lands and islands now claimed by the State of Mississippi, but which in truth and fact belong to the State of Louisiana.

30th. Your orator therefore further avers that all constituted authorities competent to create, adopt or consider the said boundary line have declared the water boundary line claimed by the State of Louisiana, viz: The deep water channel running from the most southern junction of the Eastern mouth of Pearl River, through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle à Pitre and southwest of Cat Island, through Cat Island Pass, through Chandeleur Sound northeast of Chandeleur Islands, to the Gulf of Mexico, to be the true water boundary between the said States.

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief prayed for and may, according to the best and utmost of their several respective knowledge, remembrance, information and belief, full true, direct and perfect answer make to the matters and things averred in this Bill, an answer under oath being herewith specially waived, may it please your Honors to grant to your orator the most gracious writ of subpœna directed to the said State of Mississippi, and to said Andrew H. Longino, Governor of the State of Mississippi, and Monroe McClurg, Attorney General of the State of Mississippi, commanding them and each of them to be and appear in this Honorable Court on a day to be therein named, and to abide the judgment of this Court.

And after due proceedings may it please your Honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth

of Pearl River with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon Island through Mississippi Sound, north of Isle à Pitre, through Cat Island Pass Channel, southwest of Cat Island, through Chandeleur Island Sound, northeast of the Chandeleur Islands, to the Gulf of Mexico, as is delineated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Commission and now made part of this bill marked Exhibit "E", that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.
ALBERT ESTOPINAL, JR.,
Of Counsel.

STATE OF LOUISIANA, PARISH OF ORLEANS.

Personally came and appeared before me the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the Governor of the State of Louisiana; that he has read the foregoing bill, and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

W. W. HEARD, *Governor.*

Sworn to and subscribed before me this 14th day of October, 1902.

ALVIN EDWARD HEBERT,
Notary Public.

[Seal]

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12. Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

BRIEF FOR COMPLAINANT ON DEMURRER.

SYLLABUS.

1st. In a boundary suit between States, a State properly makes its appearance in the Supreme Court of the United States through its Governor or Chief Executive. Commonwealth of Kentucky vs. Dennison, Governor, 24 How. 66.

2d. The Governor, as the special guardian of the State's interest, is a proper party to initiate necessary litigation. His right to do so is indeed a part of his general powers of supervision over the property and welfare of the State. State vs. Dubuclet, 22 La. An. 602; 25 La. An. 161, and it therefore is not necessary that he should first be authorized by legislative act.

3d. The Supreme Court of the United States, exercising original jurisdiction, will take judicial cognizance, with-

out proof or plea, of the laws of a State whether depending upon statute or judicial opinion. Lamar vs. Micou, 114 U. S., p. 223, and authorities cited in brief.

4th. The Court will, therefore, take judicial notice of Act 65 of the Louisiana Legislature for the year 1884, vesting authority in the Attorney General to initiate litigation necessary to protect the State's interests.

5th. In addition to this specific authority, the Attorney General of Louisiana has, by virtue of the jurisprudence of our country, general authority justifying him in joining in the institution of this suit. Am. and Eng. Ency. of Law, 2d Edition, Vol. 3, p. 479, Verbo Attorney General.

6th. This Court will take judicial cognizance of Act 153 of the Louisiana Legislature for the year 1902, and Chapter No. 58 of the laws of Mississippi for the year 1902, which two statutes control the oyster industries of the respective States.

7th. This Court will take judicial notice of the laws of the State of Mississippi for the year 1902, page 240, where the Governor of Mississippi stamped with the badge of authority the conclusions or findings of his Advisory Boundary Commission when he submitted its report to his Legislature for action.

8th. The submission to the Legislature of the State of Mississippi of the Report of the Advisory Boundary Commission made that report official and binding upon the State of Mississippi to the extent that, as the conclusions there formulated were not repudiated by the Legislature of Mississippi when it could have easily done so, Louisiana was justified in presuming that the action of the Advisory Boundary Commission was the official action of the State of Mississippi.

9th. The allegations of the demurrer to the effect that this is not a controversy between two States is negatived by the averments of the Bill of complaint; but if there be any doubt in the mind of this Honorable Court as to the suf-

ficiency of the allegations of the bill, the case of Kansas vs. Colorado, 185 U. S. p. 125, would be sufficient warrant for this Court to refuse to dismiss the bill on demurrer.

The State of Louisiana having, as its Bill of Complaint will show, exhausted all means at its command to amicably and extra-judicially ascertain one of its boundary lines, contiguous to the State of Mississippi, accepted the invitation of that State to have the rights of the respective States, in the pending controversy, settled judicially. Our State had hoped that the conference of the respective advisory boundary commissions, previously appointed by the Governors of the two States, would have resulted in the outlining of a plan of settlement that could have been referred to and approved by the Legislatures of the two States, and subsequently ratified by an act of Congress.

Being informed, however, by the Advisory Commission appointed by the Governor of the State of Mississippi that the contentions as to boundary made by that State were so much at variance with ours that they could not be extra-judicially settled, and this Advisory Commission having suggested that the issues should be submitted to and determined by the Supreme Court of the United States, it comes to us in the nature of a surprise, that we should be called upon, at the threshold of the action, to meet a Demurrer that among other things alleges that there is no boundary dispute between the two States; and that this controversy is not one within the jurisdiction of this Honorable Court.

Making nevertheless a virtue of necessity, we beg to say that the Demurrer as filed, we presume is to be considered by the name given it by the defendant. It really also contains pleas as to the jurisdiction of the Court. Upon a proper proceeding and upon proper plea being filed, it might become necessary, in the event that the Bill of Complaint was not found to be self-sufficient, to take evidence on these pleas. We think,

however, this will not be found to be necessary and we will consider, therefore, the allegations of the Demurrer, as a Demurrer, and as they are severally presented, under their twelve headings, to-wit:

1st. The sufficiency of the Bill of Complaint is first attacked upon the ground that it does not show that the same was filed, or is being prosecuted by the authority of the State of Louisiana, or by the authority of any law whatsoever. The substantive allegation or plea is then made that the Governor and the Attorney General of the State of Louisiana, as a matter of fact, have no authority in law to proceed in this matter of their own motion.

The first paragraph of the Bill of Complaint, it will be seen, is to the effect that the State of Louisiana, one of the United States of America, through William W. Heard, Governor, and upon the information of Walter Guion, Attorney General, brings her Bill of Complaint. This allegation, we respectfully submit, when taken in connection with the jurisprudence of our country, is amply sufficient to sustain the bill on this point. The proper person through whom a State shall make its appearance in any boundary litigation before the Supreme Court of the United States is its Chief Executive. Not only has the appearance been so made in the present bill, but the substantive allegation is also made that the State of Louisiana also appears upon the information of its Attorney General.

Your Honors held, in the case of Commonwealth of Kentucky vs. Dennison, Governor of the State of Ohio, 24 Howard, page 66, as follows:

"The cases referred to leave no question open to controversy as to the jurisdiction of the Court. They show that it *has been the established doctrine* upon this subject ever since the Act of 1789, that in all cases where original jurisdiction is given by the Constitution, this Court has authority to exercise it without any further Act of Congress, to regulate its process or confer jurisdiction; and that this Court may regulate and mould the processes it uses in such manner as in its judgment will best promote the purposes of justice; *and that it has also been set-*

tled that where the State is a party, plaintiff or defendant, the Governor represents the State, and the suit may be, in form, a suit by him as Governor, in behalf of the State where the State is plaintiff, and he must be summoned or notified as the officer representing the State where the State is defendant." (Our italics).

It would seem to us that the only legitimate reason for denying the authority of the Governor of the State of Louisiana to appear in these proceedings, as representing the State of Louisiana, would be an anxiety on the part of the State of Mississippi to have the State of Louisiana bound by any decision that might eventually be rendered herein. Any other reason for such a demurrer could have for its purpose only the mere matter of delay.

We feel gratified to state that it has been recognized as one of the principles of law that the Governor of a State is the proper party to initiate necessary litigation, and he may do so without legislative authority.

Strange as it may seem, this recognized legal proposition emanates from a decision of the Supreme Court of the State of Louisiana. If the Supreme Court of this State has therefore judicially determined that the Governor of this State is a proper party to initiate litigation, without the necessity of specific legislative authority, then there can be no just cause for anxiety on the part of the State of Mississippi that the State of Louisiana, as a State, would ever endeavor to repudiate this present litigation, or its consequences.

In the American and English Encyclopedia of Law, Second Edition, Volume 14, page 1100, Verbo, Governor, we find the following:

"The Governor, as the special guardian of the State's interest, is a proper party to initiate necessary litigation. His right to do so is indeed a part of his general powers of supervision over the property and welfare of the State." State vs. Dubuclet, 22 La. An. 602; 25 La. An. 161.

This authority has likewise been recognized in the suit of Alexander vs. the State, 56 Ga. 478.

It would be a peculiar condition of affairs if the Governor of a State, in the event of necessity, were compelled to delay the initiation of necessary litigation until the regular session of the Legislature of the State, or be compelled to put the State to the enormous expense of having a special session of the Legislature called for the purpose of considering a subject which, though very important, might not justify the expense. In support of this proposition, we find that your Honors have likewise held in the case of Texas vs. White, 7 Wallace, 700:

"That the Governor of a State may authorize an attorney to institute in the Supreme Court of the United States, suit in the name of the State."

We submit, therefore, that the general proposition can be taken as well settled that it is one of the rights, inherent in the office of the Governor, or of the Chief Executive of a State, and it is one of his duties, to initiate, without the necessity of previous legislative authority, such proceedings on the part of the State as may be necessary to protect that sovereignty in the enjoyment of its rights.

While this single proposition would justify the status of this Bill of Complaint, the State of Louisiana has gone further and has had its Attorney General, by information, join in initiating these proceedings. An examination of the powers and duties connected with the office of Attorney General shows that it is also an inherent right in his office to likewise initiate such proceedings as may be necessary to protect the State in the enjoyment of its rights.

Referring again to the American and English Encyclopedia of Law, Second Edition, Volume 3, page 479, Verbo, Attorney General, we find the following:

"The powers and duties connected with the office of Attorney General are so numerous and varied that it has not been the policy of the various Legislatures to attempt the difficult task of enumerating them exhaustively, and they have ordinarily been content, after expressly defining such as are deemed most important, to leave the residue as they exist at common

law, so far as applicable to our jurisprudence and system of government."

In the case of Hunt vs. Chicago R. R. Co., 20 Ill. App. 282, we find:

"In those jurisdictions where the common law has been adopted, wherever applicable, and so far as it has not been changed by statute, a duty required of an Attorney General by the rules of common law is as much a duty required of him by law as though it were imposed by the express mandate of the statute."

Speaking of what the common law duties of an Attorney General are, it was held, in the case of the People vs. Miner, 2 Lans. (N. Y.) 397:

"Most, if not all, of the Colonies appointed Attorney Generals, and they were understood to be clothed with nearly all the powers of the Attorney Generals of England, and as these powers have never been defined, we must go back to the common law in order to ascertain them. The Attorney General had the power, and it was his duty:

"1st. To prosecute all actions necessary for the protection and defense of the property and revenues of the Crown."

A grant by statute of certain powers would not operate to deprive the Attorney General of those belonging to the office at common law, unless the statute either expressly or by reasonable intendment forbade the exercise of powers not thus expressly conferred." (Idem.)

In the case of the Attorney General vs. Detroit, 71 Mich., page 92, we find the following:

"It is the right and duty of an Attorney General to intervene and prevent franchises of a public nature from usurpation and destruction. Thus, the Attorney General can intervene to prevent the destruction of a public market."

Referring again to the American and English Encyclopedia of Law, Second Edition, Volume 3, page 481, Verbo, Attorney General, we find the following:

"The Attorney General, as the Chief Law Officer of the State, has the power to institute proceedings in equity in behalf of the people to compel the discontinuance of acts which constitute a public nuisance."

In the brief of counsel for plaintiff, in the case of Knowlton,

Attorney General, vs. Williams, 47 L. R. A., p. 314, the authorities or adjudicated cases on the right of an Attorney General to initiate proceedings are further collated in detail.

Thus far, we have considered the right of the Attorney General to bring this suit from the point of view of the general jurisprudence of our country. Considering, however, the legislation of the State of Louisiana, we find that this State has granted specific authority by Act No. 65 of the Acts of the Legislature of the State of Louisiana, approved July 9th, 1884, which provides:

"That the Attorney General be, and he is hereby, authorized and empowered, to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the state," etc.

This being not only a proceeding, but also an original proceeding, before a United States Court, this Court will take notice, without proof, of the laws of the several States of the United States.

Your Honors held, in the case of the Chicago and Alton R. R. Co. vs. Wiggins Ferry Co., 119 U. S., p. 622:

"This Court, and the other Courts of the United States, when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States, etc."

In the case of Lamar vs. Micou, 114 U. S., p. 223, your Honors held: "The law of any State of the Union, whether depending upon statutes or upon judicial opinions, is a matter of which the Courts of the United States are bound to take judicial notice without proof or plea." Owings vs. Hull, 9 Pet. 607; Pennington vs. Gibson, 16 How. 65; Drawbridge Co. vs. Shepherd, 20 How. 227.

In the case of Gormley vs. Bunyan, 138 U. S., p. 635, your Honors held:

"With respect to the refusal of the Court to allow certain other public statutes to be introduced in evidence, it need only be said that the Courts of the United States take judicial notice of all the public statutes of the several States."

Your Honors will, therefore, take judicial notice of the existence of Act No. 65 of the Legislature of the State of Louisiana for the year 1884, authorizing the Attorney General of Louisiana to institute this suit. You will also take judicial cognizance of the opinions of the Supreme Court of this State in this connection, and likewise you will take notice of the other statutes of Louisiana and Mississippi referred to in the Bill of Complaint. There is a long line of authorities in support of this proposition, among which may be mentioned:

Fourth National Bank vs. Francklyn, 120 U. S., p. 747; Huntington vs. Attrill, 146 U. S. 678; Lloyd vs. Matthews, 155 U. S., p. 227; Mills vs. Green, 159 U. S., p. 657; Eastern Building & Loan Association vs. Ebaugh, 185 U. S., p. 114.

The following authorities are also in point, to-wit:

Knower vs. Haines, 31 Fed. 514; Newberry vs. Robinson, 36 Fed. 843; Borland vs. Haven, 37 Fed. 406; State vs. Coosaw Min. Co., 45 Fed. 808; Western, etc. R. Co. vs. Roberson, 61 Fed. 594; Davenport vs. Moore, 74 Fed. 946; Davidow vs. Pennsylvania R. Co., 85 Fed. 944; Andruss vs. People's Building Association, 94 Fed. 580.

The bill filed by the State of Louisiana is, therefore, sustained both by the jurisprudence of our country and by the statute law of the State of Louisiana, and to this extent must be maintained.

2d. The complaint is next made that the bill does not show on its face a question of boundary between the States and within the cognizance and jurisdiction of the Supreme Court of the United States, under the provisions of Section 2 of Article 3 of the Constitution of the United States of America. As to the weakness of this contention, we beg to refer you to the contents of the bill, and more particularly to paragraphs 16, 17 and 21.

3rd. The third objection is somewhat similar to the second. As to it, we would say that the main question at issue, as is shown by the face of the bill, is the interpretation or construction of Acts of Congress fixing the boundaries of two adjacent

States. It was in the interpretation of these Acts of Congress that the two States could not extra-judicially agree by reason of diverging views. As appears from the bill, it is alleged that the State of Louisiana was granted by the Congress of the United States all islands within three leagues of its coast, and the State of Mississippi was subsequently granted all islands within six leagues of its coast, and further that there are islands which are not only within three leagues of the Louisiana coast, but which are also within six leagues of the Mississippi coast, and further that there are lands which Louisiana claims are part of its mainland, but which are claimed by Mississippi to be islands, and that these lands are not only within three leagues of, but form part of the Louisiana mainland, and are also within six leagues of the Mississippi coast line, so that depending upon the interpretation of the Acts of Congress creating the States of Louisiana and Mississippi, it is possible for said lines to conflict both upon land and water, but a further allegation of the bill is that there is an interpretation of the Acts of Congress which does away with this conflict, and that this is the interpretation which the State of Louisiana seeks at the hands of your Honors to have declared to be the proper meaning and true interpretation of said Acts, and the determination of this issue is certainly a subject within the jurisdiction of the Court.

4th. It is here charged that the bill shows that the State of Louisiana has not attempted to mark or define by buoys or otherwise her boundary line in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana. What the consequences of this are is not stated. We assert that it was not necessary, prior to instituting this suit, for Louisiana to buoy her boundary line, nor was it necessary for her to so allege in the bill. But let us see what in fact the bill does allege. It shows (paragraph 15) that the boundary line, the deep water channel, was and is buoyed by the United States Government. It further shows that the boundary line as claimed by Louisiana was set forth definitely and shown to

the State of Mississippi (paragraph 20, Exhibit E) by the map presented to it; and in the several maps made part of the bill (Diagrams Nos. 1, 2, 3 and 5), the line claimed is clearly set forth.

It is further alleged by complainant (paragraph 29) that all competent authority, including the United States Government, and more particularly the United States Land Office, had reorgarized this line which is set forth on the maps in the bill and had transferred to Louisiana, United States lands in accordance therewith.

This is all that could be required, and this phase of the Demurrer is without merit.

5th. As to this paragraph of the Demurrer, we beg to submit that the Bill of Complaint does not allege that the commissions appointed by the Governors of the two States were clothed with the legal authority to finally fix the boundary between the two States. It simply sets forth, in this respect, a history of the facts as they occurred, and it is for the Court to draw its deductions therefrom. These commissions were appointed for the purpose of examining the question in an advisory manner, and to report the results of their investigations to the Governor appointing them. A favorable, unanimous report of the joint commissions would have paved the way to mutual legislative action by the two States, which, when approved by an Act of the Congress of the United States, would have been binding on both of them. It was only by an elaborate proceeding of this kind that the matter could have been extra-judicially settled. This is recognized by the fourth section of the Constitution of the State of Mississippi, where reference is made to the fact that the Legislature of that State might settle boundary disputes between it and its coterminous States when such disputes should arise.

It is an incident of executive power, however, when information is wanted to appoint persons and commissions to examine and report. What the Bill of Complaint does charge is that the report of the Mississisippi Advisory Boundary Commis-

sion was a sufficient intimation of the official attitude of that State as to justify Louisiana in presuming that an extra-judicial settlement of the boundary dispute was impossible.

As has been heretofore stated, this Court will take judicial cognizance of the public acts of the various States of the Union, and authorities in support of this are herewith submitted. An examination of the official edition of the laws of Mississippi for the year 1902, page 240, will show that the Governor of the State of Mississippi submitted to the Legislature of the State of Mississippi the report of the Advisory Boundary Commission, appointed by him, which report is referred to in the Bill of Complaint (paragraph 21). That the Legislature of the State of Mississippi took no action on the subject is no fault of the State of Louisiana, but a ready explanation of its failure to take action is found in the suggestion that the said Governor there made to his Legislature that a friendly suit in the Supreme Court of the United States was contemplated. There was no need, then, for further action, and none was taken, for this suit was naturally expected and naturally followed. This, however, can only be taken as an official ratification by the State of Mississippi of the action of its Advisory Boundary Commission, and as warranting the State of Louisiana in presuming that the State of Mississippi as a State disputed officially the contention of the State of Louisiana as to boundary, and would be pleased to have the dispute settled by the Supreme Court of the United States.

This element of the Demurrer is, therefore, likewise without merit.

6th, 7th, and 8th. We may consider under one heading these three paragraphs of defendant's Demurrer, because they all in different form assert the same proposition, viz: That the Bill of Complaint discloses that it is private interests of individuals, and not the State's public interest, for which protection is sought by the State at the hands of the Court. Even a cursory perusal of the Bill of Complaint will show that it is asserted that there is a serious difference of opinion between the

official representatives of the two States as to the interpretation of the Acts of Congress establishing their respective boundaries (paragraphs 18 to 21, inclusive); that islands and land as well as water area are in dispute (paragraphs 24 to 37, inclusive); that Louisiana is interested in maintaining her sovereignty over the land and water within her boundaries (paragraphs 11, 12, 16 and 17), and collecting her taxes therefrom (paragraphs 11 and 29); and that her State laws should be effectively enforced within her territorial limits (paragraphs 11, 12, 16 and 17).

While it may be true that there might be some slight advantage to those citizens of Louisiana engaged in the oyster business, to exclude the citizens of Mississippi from the Louisiana Natural Oyster Reefs, this is but an incident, and cannot be considered the ground of complaint of the bill; for the State of Louisiana has a much greater public interest. First of all, it is her duty, and she must maintain order and observance of her laws. Then the natural oyster reefs are the property of the State in her sovereign capacity, as are also the lands under the navigable waters of the State. The Bill of Complaint charges that the State of Louisiana regulates her oyster industry by legislation and specifically refers thereto (paragraphs 11, 12 and 13).

A reference to this Act, No. 153 of the Legislature of the State of Louisiana of the year 1902, shows that the State is entitled to specific license fees from the oyster vessels, tongmen, dealers and canners operating in her waters, and on her oyster beds; that she is entitled to 2 cents per barrel privilege license on each barrel of oysters fished from her waters, and a rental of one dollar ($1.00) per acre of water bottom leased from the State, all of which revenues go into her State Treasury, so that she has a manifold public and direct pecuniary interest in ascertaining whether this disputed area is hers or her neighbor's.

The Court will take judicial cognizance of the existence of Act 153 of the Legislature of the State of Louisiana for the year 1902, which is the Act referred to in the Bill of Complaint

(paragraph No. 11) as regulating the oyster industry of the State of Louisiana, and it will also notice Chapter No. 58 of the laws of the State of Mississippi for the year 1902, p. 54, which is the statute referred to in the Bill of Complaint (paragraph No. 10) as being the one by which the State of Mississippi regulates its oyster industry.

In the case of Kansas vs. Colorado, 185 U. S., p. 142, your Honors referred to the case of Missouri vs. Illinois, 180 U. S., p. 208, and mentioned approvingly the remarks of Mr. Justice Shiras, to the effect that it was not essentially necessary for a State in her Bill of Complaint to allege a pecuniary interest.

By reference to the statutes of the two States of Louisiana and Mississippi, heretofore referred to, it will, however, appear that both States have in fact in this case a pecuniary interest in the matter in controversy, as both States, by their statutes, propose to derive revenue from their respective oyster industries. An oyster industry is situated in the territory in dispute, as charged by the Bill of Complaint (paragraph No. 9), and it is for this Court to determine to which State said territory belongs, so that the fortunate State may reap the profits arising from the oyster industry there existing, and it is therefore readily apparent that this contention of the defendant is without merit.

9th and 10th. These two allegations of defendant's Demurrer are also so closely related as to be better considered together. In answer thereto, it will appear from the bill that the Advisory Boundary Commission appointed by the Governor of Mississippi (paragraph 21) claims an adverse title to these certain lands and water area, and would not concede to Louisiana the area delineated on the map made part of the bill, as exhibit "E" (paragraph 20). This commission represented the Governor, and the Governor represented the State of Mississippi, and the State of Louisiana was justified in presuming that no extra-judicial agreement could be made. If this were not so, and if Louisiana's right of action were dependent on the action of the Mississippi Legislature, and the Mississippi

Legislature should omit or fail to take action thereon when the matter was laid before it, as is the case at bar, Louisiana could never assert her title in the Courts, and there would ensue an oyster war such as has occurred in some of the Atlantic States because of the value the locality has for the development of the oyster industry.

This is just what is charged in the bill, for it says (paragraph 17) that there was about to be an armed conflict between the Sheriff and the officers of the Parish of St. Bernard, of Louisiana, and the Sheriff and officers of the County of Harrison, of the State of Mississippi. These are the counties that most nearly touch each other in the disputed area, as is shown by the maps attached to the Bill of Complaint.

The Sheriff of Harrison County, Mississippi, is an officer of the State of Mississippi, required, as a representative of the State of Mississippi, to preserve peace and order in the County of Harrison, and when he and his officers were claiming Louisiana territory as Mississippi territory, and were about to back up their claim by force of arms, it was high time for Louisiana to seek some tribunal to arbitrate and settle her claims.

If we again refer to the Legislative Acts of the two States, Act 153 of 1902 of Louisiana and Chapter 58 of the laws of 1902 of Mississippi, it will appear that both States have created State Commissions to regulate and control the oyster industry of the respective States. It is, therefore, highly important that these commissions should have their territorial limits defined, so that they would not each be insisting, as the official representatives of their respective States, that the disputed area was under their individual control.

11th. Our answer to this is fully set forth in our reply to the third paragraph of defendant's Demurrer to the effect that our bill is to fix boundaries and have conflicting Acts of Congress properly construed and interpreted and its purpose is not to change any boundary, because we charge that Mississippi never had any legal claim to Louisiana territory (para-

graphs 2 to 8, inclusive), and that there is no boundary to change, but one to determine and fix.

12th. This is a suit for boundary, and not one to determine the number of the armed force that was resisting Louisiana's claim, nor its personnel. Nor is it a suit or proceeding to punish the offenders personally for violating any law or disturbing the peace. We made the substantive allegation and charge (paragraph 17) that something had to be done to avoid an armed conflict which was threatening between the States' officers in those portions of the two States where they most nearly approached each other, in the disputed area, and that the alternative was to appeal to the Governor of Mississippi, which was done. That this did not produce satisfactory results, is no fault of ours, as Louisiana did all it could to settle the matter amicably and extra-judicially, only to be invited to come here. Here we are, and here with the permission of your Honors, we now propose to stay until this matter is finally settled.

For the foregoing reasons, therefore, complainant respectfully represents that the Demurrer of defendant is not well founded in law, in any particular; that it should be overruled and set aside, and defendant required to answer complainant's bill as filed and of record herein, but should your Honors conclude that our Bill of Complaint is not in any respect self-sufficient, then your orators respectfully pray for leave to amend as justice and equity may require.

Respectfully submitted,

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
Of Counsel.

FILE COPY.

Office Supreme Court U. S.
FILED
MAR 20 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 11 ORIGINAL.

STATE OF LOUISIANA, *Complainant,*

versus

STATE OF MISSISSIPPI, *Defendant.*

SUPPLEMENTAL BRIEF FOR COMPLAINANT ON DEMURRER.

It will be remembered that on March 2, 1903, at the time of the submission of the Demurrer to the Court, Louisiana had not yet received the brief of the State of Mississippi, and the brief which we then submitted had therefore been prepared without the advantage of a knowledge of the arguments that Mississippi's able counsel would use in support of its Demurrer. Now that by the delay of twenty days granted by this Court, we have had an opportunity to carefully consider Mississippi's brief, and prepare our supplemental reply thereto, we find that to a very great extent we had anticipated the line of defendant's argument, and it therefore but remains for us to recapitulate our original reasons for urging that the Demurrer of defendant is not well founded, either in law or in fact.

The only proper questions that can be said to be at issue on Demurrer, are:

1st. Does the Bill of Complaint set forth that the State of Louisiana makes its appearance through its proper officer?

2d. Is there a cause of action within the jurisdiction of this Honorable Court set forth in the Bill of Complaint?

The Bill of Complaint is self-sufficient in its answer to both of these tests.

The State appears in the persons of its Governor and Attorney General, and there is no denial that these gentlemen really fill the offices they claim to occupy. The Bill of Complaint sets forth a claim to a certain boundary line, which it alleges the State of Mississippi denies (paragraphs 10, 18, 19, 21, 22, 26, 27, 28). The denial by Mississippi of Louisiana's pretensions is shown not only in the Bill by the action of the Mississippi Advisory Boundary Commission, but also in the Laws of Mississippi for the year 1902, by the action of the Governor and the Legislature of the State of Mississippi on the said Report.. If Mississippi as a State did not propose to approve, confirm and coincide in this denial of Louisiana's claim, it could easily have repudiated the findings of its Advisory Boundary Commission, or kept the matter open for further consideration.

It is a specious argument to say that Mississippi is being drawn unwillingly into this litigation. How easy could she cleanse her own hands and purge her own conscence by admitting Louisiana's boundary claim, if she does not dispute it. Why demurr when she could meet this issue on the merits without cost or trouble to herself by admitting Louisiana's claims, if she does not deny them? But no; the fact is that Mississippi as a State did then, and does now, dispute the correctness of Louisiana's construction of the Acts of Congress, and this appears even from the brief now filed by her able counsel wherein they say:

"We do not understand that any claim has been, or will be made by Mississippi to any of the mainland of Louisiana, but, whatever *islands* that are within six leagues of her shore, at

any point, belong to her and she should have them. It is immaterial to the present contention that land owners on Half Moon Island or Isle a'Pitre, deraign their titles through the State of Louisiana."

The Bill of Complaint and its annexed Exhibits show that these two islands, Half Moon Island and Isle a'Pitre, are not only within nine miles of the Louisiana, but are also within eighteen miles of the Mississippi shōre line, and although Lousiana in her Bill of Complaint alleges specific title to them, Mississippi claims that all of that does not count as they belong to her because within eighteen miles of her shore line, regardless of their position relative to Louisiana.

This therefore is certainly a boundary dispute between the two States.

We have carefully noted the other provisions of defendant's brief, and we find they bear almost entirely on the merits of the case, a subject certainly not to be considered on Demurrer.

Counsel's reference, however, to Act No. 65 of the Legislature of Louisiana for the year 1884 and his admission that it authorizes the Attorney General of Louisiana to defend the State's interests is a concession of our own contention, for, to properly defend a State's interests, it is as often necessary to appear as plaintiff or complainant as it is to appear as defendant.

By their reference to the action of the Governor and Legislature of the State of Mississippi on the Report of its Advisory Boundary Commission, counsel for Mississippi also concede the admissibility, and the right of this Honorable Court to consider this subject in passing upon its Demurrer. It is then in evidence that the State of Mississippi did not repudiate this denial of Louisiana's boundary claim, but by its silence and inaction permitted the dispute to reach this Honorable Court for settlement.

We respectfully submit that the construction of the Acts of Congress creating the two States, is part of the merits of the case, and we therefore forbear from showing the fallacy of counsel's argument in relation thereto, while we are still on the Demurrer.

The same reasoning applies to counsel's extended argument on the subject that the State of Louisiana cannot maintain a suit for the benefit of individuals. We have shown that it is not the interests of individuals that are involved; that there is a boundary controversy here; that both States have a direct pecuniary interest in the controversy, and that the sovereignty of Louisiana is involved as to the territory in question. If these allegations are not true as facts, that is a matter to be proved by the State of Mississippi when the merits of the case are reached and are not to be considered on Demurrer.

We therefore, for the foregoing reasons, and for those set forth in our previous brief, respectively urge, that the State of Louisiana appears before this Honorable Court properly represented and presents for judicial determination a boundary controversy fully within its jurisdiction, and that the Demurrer should therefore be overruled, and the State of Mississippi compelled to answer Louisiana's Bill of Complaint as justice and equity may require.

Respectfully submitted,

WALTER GUION,
Attorney General of Louisiana.
JOHN DYMOND, JR.,
ALBERT ESTOPINAL,
ALEXANDER PORTER MORSE,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1903.

Original No. II.

THE STATE OF LOUISIANA,
COMPLAINANT,

versus

THE STATE OF MISSISSIPPI,
RESPONDENT.

IN EQUITY.

GENERAL REPLICATION AND ANSWER TO CROSS BILL.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Louisiana, repliant, saving and reserving unto herself all advantage of exception to the insufficiencies of the answer of the State of Mississippi herein, for replication thereunto says: that she will aver and prove her bill of complaint in this cause to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to; all of which this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and prays as in and by her said bill she has already prayed.

And further, the said State of Louisiana, now and at all

times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to any errors, uncertainties, or other imperfections contained in so much of the answer of the State of Mississippi, herein, as may be deemed a cross bill herein, and also the right to make further answer thereto, if the same should become necessary, for answer to said cross bill of the State of Mississippi, says she denies:

I.

That the fixing of the southern boundary of the State of Mississippi by Section 2, Chapter 23, of the Acts of the Congress of the United States, creating said State and approved March 1, 1817, found in Vol. 3, page 348, of the Statutes at large, quoted in full in paragraph one (1) of Respondent's cross bill, certainly and indisputably fixed and designated said southern boundary, as alleged and averred by Respondent, but Repliant avers that if the construction of said act sought to be placed theron by Respondent be true, and that Act did purport so to do, which is denied, Repliant avers that said Act in said respect would be in violation of, and contrary to, the Constitution of the United States, in as much as said Act would include in the boundaries of the State of Mississippi the islands, adjacent waters, and territory in dispute and controversy in this cause, which islands, adjacent waters, and territory had theretofore been by the Act of Congress, Chapter Fifty of the United States Statutes at large, Volume 2, page 701, approved April 8th, 1812, admitting the State of Louisiana into the Union, included within the boundaries of the State of Louisiana, by the provisions of said Act, and Repliant avers and alleges that if the Act of Dec. 10, 1817, admitting the State of Mississippi into the Union, is to be construed and interpreted as covering and including the said islands, adjacent

waters, and the territory in dispute and in controversy herein, that said Act is void, unconstitutional and of no effect in so far as the islands, territory and waters in dispute and controversy herein, are concerned, for the reason that said Act is and would be in violation of, and contrary to, Section 3, Article IV, of the Constitution of the United States, which Section and Article prohibit the transfer of any part of the territory of one State to another adjacent State without the consent of the legislature of the two States, which consent the legislature of the State of Louisiana has never granted or given, for the reason that the Act of Congress of 1812, admitting the State of Louisiana into the Union, placed said territory herein in controversy within the boundary lines, and under the sovereignty and jurisdiction of the State of Louisiana.

II.

Repliant further answering, especially denies that the claim set forth in the second paragraph of Respondent's cross bill, that the islands, and territory herein in dispute and controversy belong to, or are included within the lawful boundaries of the State of Mississippi for the reasons set forth in paragraph one (1) of this answer, and Repliant further especially and particularly denies that the limits of the State of Louisiana are to be defined and delimited from the "mainland" of said State, as claimed by Respondent, but are to be defined, determined and delimited from the islands, as the "coast" of the State of Louisiana.

III.

Repliant further answering to the cross bill of Respondent, denies the allegations and averments contained in Respondent's third (III) paragraph of the cross bill, but Repliant avers and alleges on the contrary that the

southeastern boundary of the State of Louisiana, in so far as the territory in dispute and controversy herein is concerned, is governed and fixed by the Act of Admission of the State of Louisiana into the Union, in 1812, by which all islands within three leagues of the coast were included within said State, and that the boundaries therein set forth must be taken and held as the true boundaries of the State of Louisiana, being prior in time to the boundaries of the State of Mississippi, fixed on the admission of that State into the Union on December 10, 1817, and for the additional reasons hereinbefore set forth in Repliant's answer to the cross bill of Respondent, in paragraphs one (1) and two (2) of this answer; and Repliant further avers that there is now and always has been a well-defined and continuous coast line of the southeastern coast of the part of Louisiana herein in dispute and controversy, extending eastward as far as the eastern extremity of Isle a Pitre, intersected only by the several bayous found therein.

IV, V, AND VI.

Repliant, further answering to paragraphs (IV) four, (V) five and (VI) six, of Respondent's cross bill, denies the truth and correctness of the allegations thereof, except in so far as is hereinafter especially admitted, but Repliant only admits that the Act of Congress of May 14th, 1812, set forth in the (V) fifth paragraph of Respondent's cross bill, was passed and enacted at that date, but Repliant alleges and avers that said Act only became a law on the 14th day of May, 1812, (14) fourteen days after the 30th of April, 1812, at which prior date the State of Louisiana had been admitted to the Union and its boundaries defined and delimited, and said Act of May 14th, 1812, could not, and did not, change the boundaries or territory of the State of

Louisiana, for the reasons already hereinbefore set forth in this Repliant's answer to the cross bill in paragraphs one (I), two (II) and three (III), of this answer. And that in truth and fact the southern portion of the said Mississippi territory as claimed by respondent was not even then in possession of the United States, and did not extend south of the thirty-first degree of north latitude, and did not reach or touch the Gulf of Mexico or Mississippi Sound, for it was only on February 12th, 1813, that the Congress of the United States, U. S. Statutes at large, Vol. 3, p. 472, passed "An Act authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi territory and west of the River Perdido." This Act was not published until 1818. It declared that the country called West Florida, which lay west of the Perdido River, was not then in possession of the United States, and the Act was not published till 1818, evidently for fear of the effect its passage might have had on the Government of Spain, with which the United States was then negotiating a treaty relative to that territory, as is similarly shown by the general resolutions on the relation of the United States to Spain, U. S. Statutes at large, Vol. 3, p. 471-472, approved January 15th, 1811, and March 3, 1811, but not published until after April 20, 1818, in which the President of the United States was specially instructed not to publish same unless he deemed it wise to do so.

VII.

Repliant further answering unto paragraph seven (VII) of Respondent's cross bill, denies the averments and allegations therein set forth, and Repliant avers and alleges in contradiction thereof that the acknowledgment of the true boundaries of the State of Louisiana by the officers of the

United States Government are binding as showing that the territory here in dispute and in controversy has always been considered by the Federal Government, and its officers, as being a part of the territory of the State of Louisiana, and Repliant further alleges and avers that all the cartographers who have made maps of Louisiana and Mississippi from a date shortly after the acquisition of Louisiana by the United States, have placed and delineated on all of said maps from the year A. D. 1806, up to the present year, the territory in dispute herein as belonging to Louisiana, and forming a part of its territory, and Repliant further alleges and avers that the government and officers of the State of Mississippi, and of the County of Hancock in said State, have repeatedly officially recognized the territory in dispute and controversy herein as the territory of, and belonging to, the State of Louisiana:

1st—On Hardee's Geographical and Statistical Map of Mississippi, embracing portions of Tennessee, Alabama, Louisiana and Arkansas, from recent surveys and investigations and officially compiled for the State of Mississippi, and paid for by appropriation from the Treasury of the State of Mississippi, all under Statutes of the State of Mississippi, which map was officially approved by the then Governor of the State of Mississippi, in writing, on the face of said map, which official map was published and promulgated in the year 1868, and a second edition in 1872.

2nd—On the official map of the State of Mississippi, published in accordance with an Act of the Mississippi State Legislature, approved March 8th, 1882, by the Mississippi State Board of Immigration and Agriculture, prepared under the direction of E. G. Wall, in 1883.

3rd—On a sectional map of Mississippi compiled from the records of the offices of the Surveyor General and of the Board of Immigration and Agriculture of the State of Mississippi, published by Rand, McNally & Co., in 1896, to be found in the office of the Clerk of the Chancery and Circuit Courts of the County of Hancock in the State of Mississippi; and,

4th—A map of Hancock County, Mississippi, compiled by Leland Henderson of Mississippi from the records of the United States and Mississippi Land Offices, which map Repliant is informed and believes was prepared for and approved by the Board of Supervisors of the County of Hancock, State of Mississippi, by virtue of the powers invested in said Board by the laws of said State, and by divers other official maps prepared, approved, published and issued by competent authority of State and county officers of the State of Mississippi, and Repliant avers that on all of said official maps of Mississippi, the islands, waters adjacent and territory here in dispute and controversy, are delineated and set forth as belonging to, and forming a part of, the territory of the State of Louisiana. Repliant further alleges and avers that if it be conceded, and this Honorable Court should so decide, that the islands and landed territory here in dispute are a part of the territory of the State of Louisiana, it follows that the land and soil underneath said waters, adjacent to said islands are the property of the State of Louisiana, and that said State has full jurisdiction and sovereignty over them. Repliant especially denies that the State of Mississippi has ever "exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union," as alleged and averred by Respondent in paragraph (VII) seven of Re-

spondent's cross bill, but Repliant especially alleges and avers the contrary; that the State of Mississippi has never exercised in any manner whatsoever, any sovereignty over said islands and waters, and Repliant further avers and alleges on information and belief that the citizens of Mississippi have never enjoyed the same for lawful purposes, that is, the taking and obtaining of oysters from said disputed territory, but that it is only in the last few years, when the citizens of Mississippi had, by improvident, careless, and wasteful use of Mississippi's own oyster beds, destroyed or greatly depleted the same, that the said citizens of Mississippi began to trespass on the islands and waters, here in controversy, by taking oysters therefrom, and began to claim any rights in and to the islands and waters here in controversy, that said claims and said trespasses have been resisted by the officers of the State of Louisiana, who at all times have resisted said claims of the State of Mississippi, and the said citizens of Mississippi have been warned off from, and forbidden to use the oyster beds in said territory by said officers of the State of Louisiana. Repliant further avers and alleges that all of said citizens of Mississippi using and trespassing on the territory in controversy herein, always have called and designated, and do now call the territory here in controversy as "the Louisiana marshes" and have no other name for the same.

VIII.

Repliant further answering to the (VIII) eighth paragraph of Respondent's cross bill, alleges: that if, as stated, in that paragraph of Respondent's cross bill "The Congress of the United States, in the early history of the Republic, in dealing with the Gulf Coast or shore and carving States out of the Louisiana purchase, was not perfectly familiar

with said coast or shore line, and as is shown by the several Acts of Congress," then Repliant further avers and alleges that a similar unfamiliarity existed in the minds of Congress when it erected the territory of Mississippi into a State in 1817, and that if Respondent's theory of construction of the Acts of Congress be true, that Congress intended to comprise within the boundary of the State of Mississippi the territory in dispute herein as alleged by Respondent, which, however, is denied, then it was on account of said unfamiliarity that Congress failed to recognize the fact that in placing within the jurisdiction and boundaries of that new State "*all the islands within six leagues of the shore to the most eastern junction of Pearl River with Lake Borgne,*" that Congress, in the Act of Admission of Louisiana in 1812, five years before had fixed a part of the southeastern boundary of the State of Louisiana as "bounded by said Gulf to the place of beginning, *including all islands within three leagues of the coast,*" and Congress thus failed to realize that in fixing the Southern boundary of the State of Mississippi it was including on the western end of the Gulf boundary, as it approached Pearl River, islands and waters previously put and placed within the southeastern boundaries of the State of Louisiana in 1812, thus producing a conflict by the boundaries of both of the two States covering and including a part of the same territory. Repliant avers and alleges that if, owing to said unfamiliarity of Congress with the geography of the new acquisitions of territory, it, by mistake, attempted to take away from Louisiana a portion of its territory previously allotted to it by the Act of Congress of 1812, such would be in violation of Section three (3), Article IV, of the Constitution of the United States.

IX.

Repliant further answering to paragraph (IX) nine of Respondent's cross bill, alleges and avers that if the allegations of fact in said paragraph contained, in so far as they relate to the organizations of the Gulf Coast counties of the State of Mississippi by the Legislature of that State, and also the Sections of the Revised Code of Mississippi and other codifications of the laws of Mississippi, as therein recited, and that the Supreme Court of Mississippi did decide as therein recited in the case of *Leinhard et al. vs. Harrison County*, as alleged by Respondent, be true, Repliant especially denies that the State of Mississippi, or the local authorities of the Gulf Coast counties of the State of Mississippi, have ever exercised control, jurisdiction or sovereignty over the territory herein in controversy, and Repliant especially denies that the Codes, laws, codifications of the State of Mississippi, and the decision of the Supreme Court of Mississippi cited by Respondent, have any application to, or binding effect on, this Repliant, as the State of Louisiana was not in any way, nor were its citizens, parties to said proceedings, and they were all *res inter alios acta*, and neither the legislative nor judicial branch of the government of the State of Mississippi did have, or could have any jurisdiction over the sovereign State of Louisiana in any way, much less to deprive said State of any of its rights, claims or territory; and in all other respects, as to the allegations of fact contained in said paragraph IX, Repliant specially denies the truth thereof.

And the State of Louisiana, as a part of her answer to said cross bill, refers to the original bill herein, and makes every averment thereof a part of this answer, the same as if said averments had been set out at length herein.

And the State of Louisiana for further answer to said cross bill says to any matter or thing in said cross bill con-

tained not herein answered unto, the same is hereby specifically denied.

Wherefore the State of Louisiana prays for relief as in her original bill prayed for; that the Respondent's cross bill be dismissed and for all proper relief in the premises, and for costs of suit.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
F. C. ZACHARIE,
ALBERT ESTOPINAL, JR.,
ALEXANDER PORTER MORSE,
of Counsel.

STATE OF LOUISIANA,
Parish of Orleans.

Personally came and appeared before me, the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the Governor of the State of Louisiana; that he has read the foregoing replication and answer to the cross bill of the State of Mississippi, and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

W. W. HEARD, *Governor.*

Sworn to and subscribed before me, this 30th day of November, 1903.

ALVIN EDWARD HEBERT,
[SEAL] *Notary Public.*

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 24 1904
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Original No. 11.

STATE OF LOUISIANA
COMPLAINANT.

versus

STATE OF MISSISSIPPI,
RESPONDENT.

OCTOBER TERM 1904.

WALTER GUION,
Attorney General.

Palfrey-Dameron Co., Ltd., New Orleans, La.

EXHIBIT P—11

In the Honorable the Supreme Court of the United States,

OBTOBER TERM, 1904.

ORIGINAL No. 11.

THE STATE OF LOUISIANA, Complainant,

versus

THE STATE OF MISSISSIPPI, Respondent,

IN EQUITY.

To the Honorable William Williams, Attorney General of the State of Mississippi, and to the State of Mississippi, represented by Honorable William Williams, Attorney General of said State, herein:

Take notice that this Honorable Court will be moved, for and on behalf of the Complainant, the State of Louisiana, on the 24th day of October, 1904, that Complainant, the State of Louisiana, and Respondent, the State of Mississippi, in the preparation of their evidence for filing and hearing in this cause, will be allowed to respectively offer in separate atlas form, each, the maps offered by them in the preparation of this cause before the Commissioners authorized to take testimony herein, to be prepared under the supervision and direction of the respective

Commissioners of each State, said atlases to be received in lieu of the twenty-five (25) copies of the maps usually required by the rules of this Honorable Court in cases on appeal, or by writ of error, for consideration in the trial of this cause, and for an order in conformity with said motion, as the whole will more particularly and fully appear by a copy of the motion to be filed, which accompanies this notice and is annexed to the same.

New Orleans, October 8th, 1904.

Attorney General of Louisiana.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF ORLEANS.

On the 11th day of October, 1904, I served the within notice, together with the annexed motion and exhibits, on William Williams, Attorney General of the State of Mississippi, of counsel for the State of Mississippi in this cause, by handing copies of the same to him personally, in his, the Attorney General's office, in the City of Jackson, and the State of Mississippi.

Sworn to and subscribed before me,
this 12th day of October, 1904.

Notary Public.

Supreme Court of the United States.

Original No. 11.

STATE OF LOUISIANA
COMPLAINANT.

versus

STATE OF MISSISSIPPI,
RESPONDENT.

OCTOBER TERM 1904.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

On motion of the State of Louisiana, Complainant, represented herein by Walter Guion, Attorney General of the State of Louisiana, and,

Upon suggesting and showing to this Honorable Court that the State of Louisiana has already disbursed in costs, in this proceeding, the sum of Twenty-Seven Hundred and Fifty-Two and 16-100 ($2752.16) Dollars, as will more fully appear from Exhibit P-1, hereto annexed and made part of this motion, and has incurred a further expense for costs in this suit, not yet paid, amounting to Twenty-Two Hundred and Forty-Three and 58-100 ($2243.58)

Dollars, as will more fully appear from Exhibits P-2, P-3, P-4, and P-5, hereto annexed and made part of this motion, and that the record, as made up, will embody the following evidence on the part of the State of Louisiana, to-wit:

Fourteen hundred and fifty (1450) legal cap typewritten pages of testimony;

Seventy-seven (77) maps of various sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth,

all of which will more fully appear from Exhibits P-6 and P-7 hereto annexed and made part of this motion.

And upon suggesting and showing to this Honorable Court that copies of all such maps, documents, testimony, and other evidence, have been regularly furnished to the State of Mississippi as the same were, from time to time, offered, for filing by said Commissioner, as will more fully appear from Exhibit P-8, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this Honorable Court that it is estimated by the clerk of this Honorable Court that the printing of the testimony and other evidence, except maps, of the State of Louisiana in the number of copies usually required in cases of appeal and writs of error, would involve an expense of about Two Thousand ($ 2000) Dollars, as will more fully appear from Exhibit P-9 hereto annexed and made part of this motion, and making a total amount of expense already incurred, and to be necessarily incurred, of

six thousand, nine hundred ninety five ($6,995)
Dollars; and 24/100

Upon further suggesting and showing to this Honorable Court that it is estimated that to reproduce twenty-five (25) copies of the seventy-seven (77) maps offered in evidence by the State of Louisiana in this cause, would involve an additional expense of about Seven Thousand ($7000.00) Dollars, an amount almost prohibitive in its nature and for which latter item no adequate and sufficient appropriation has been made by the Legislature of the State of Louisiana, it in fact being impossible to reproduce faithful and correct copies of some of said maps owing to their age and condition, all of which will more fully appear from Exhibit P-10, hereto annexed and made part of this motion; and,

Upon further suggesting and showing to this Honorable Court that the ends of justice would be as well subserved by permitting each State, complainant and respondent herein, to offer one copy of each of its maps, all of the maps of the State of Louisiana to be bound in one atlas, and all of the maps of the State of Mississippi to be likewise bound in one atlas, for use in the trial of this cause.

And upon further suggesting and showing to this Honorable Court that the State of Mississippi, through its Attorney General, has been duly notified of the intention of the State of Louisiana, through counsel, to make this motion and application as will more fully appear from Exhibit P-11, hereto annexed and made part of this motion.

And thereupon the State of Louisiana moves that it be ordered that the States of Louisiana and Mississippi be respectively permitted to, each, offer its

maps in atlas form, an atlas for each State, the respective atlases to contain one copy of each of the maps offered in evidence herein by that State, said atlases of maps to be prepared by the respective commissioners appointed by this Honorable Court, and to be returned to this Honorable Court by the said respective commissioners when making returns under their commissions, and the clerk of this Honorable Court be directed to receive said atlases as being a full compliance with the requirements of this Honorable Court on the subject of this map evidence in preparing the record in this cause for trial and submission.

Attorney General of Louisiana.

EXHIBIT P—1.

Statement of amount disbursed for costs of Court in the suit of the State of Louisiana vs. the State of Mississippi.

1903 July 21,	A. P. Morse, services as asst. counsel	$100 00
" Dec. 16,	American Printing Co. for printing briefs	15 00
1904 March 18,	Walter Guion, for copies of maps, etc,	287 34
" April 1,	Walter Guion, for costs	28 00
" " 2,	V. Loisel, U. S. Marshal serving subpoenas	50 00
" April 4,	Bank of Baton Rouge, costs	240 10
" " 15,	F. H. Mortimer, Com witnesses's fees	50 00
" April 16,	Walter Guion, for four bills	46 70
" " 18,	W. C. Hodgkins, fees as expert	200 00
" April 22,	F. H. Mortimer costs and expenses	100 00
" April 23,	O. M. Tennison, services	40 00
" " 25,	John Dymond, Jr., balance on bill	34 69
" April 29,	E. J. Bellocq, photographic work	70 80
" May 5,	A. C. Gonzales, extracts from assessment roll	25 00
" May 7,	George de Armas, services	25 00
" " 23,	Miss Bessie Mead, for maps	24 50
" July 19,	L. Graham & Co., for mounting maps	9 50
" July 19,	Romanski Photo Engraving Co., for maps	25 00

1904	July 19, Romanski Photo Engraving Co., for halftone Majestic	3 05
"	July 19, F. H. Mortimer, commission mileage and expenses	60 89
"	July 25, Hibernia Bank & Trust Co., money advanced	333 89
"	Aug. 1, L. N. C. Spotorno for articles furnished	36 50
"	Aug. 16, Eugene Dietzan Co.	1 80
"	" 19, L. Nat. Bank, bill of F. C. Zacharie	30 00
"	Aug. 19, J. D. St. Alexandre, notarial work	189 50
"	Aug. 30, F. H. Mortimer, fees and mileage for witnesses	75 00
"	Aug. 30, E. J. Bellocq, for maps	11 80
"	Sept. 6, V. Loisel, U. S. Marshal, serving subpoenas	6 00
"	Sept. 9, E. J. Bellocq, maps	6 60
"	" 9, E. Hooker, fees and mileage as witness	19 50
"	Sept. 9, Stephen Maloche, fee and mileage as witness	9 60
"	Sept. 13, R. H. Carter, serving subpoenas	50 00
"	Sept. 13, R. H. Carter services stenographer	500 00
"	Sept. 14, E. Wentzel, witness	9 60
"	Oct. 1, O. H. Tennison, services	5 00
	E. H. Bellocq, maps	31 80
		$2752 16

I hereby certify the above to be a correct statement of amounts paid out for costs of Court in the suit of the State of Louisiana versus the State of

Mississippi, as shown by the records of my office to October 1, 1904, inclusive.

Martin Behrman

Auditor.

Baton Rouge, Oct. 7, 1904.

EXHIBIT P—2.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared:* MR. REGINALD H. CARTER, official Stenographer for the State of Louisiana, in the suit of the State of Louisiana vs. State of Mississippi, No 11 Original, of the docket of the Supreme Court of the United States, who, being by me first duly sworn, deposes and says, that his bill for stenographic services, rendered the State of Louisiana in said cause, amounts to the sum of Nineteen Hundred and Fifty-Six ($1956.00) Dollars, on which there is a balance due him of Twelve Hundred and Fifty ($1250.00) Dollars.

R. H. Carter

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P.—3.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public, for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared*: FRANK H. MORTIMER, appointed by the Supreme Court of the United States as Commissioner to take the testimony and evidence on the part of the State of Louisiana in the suit of the State of Louisiana vs. State of Mississippi, No. II. Original of the Docket of the Supreme Court of the United States, who being duly sworn, deposes and says, that there is due him by the State of Louisiana for services rendered in said cause, about Two Hundred and Sixty ($260.00) Dollars.

Frank H. Mortimer

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.



EXHIBIT P—4.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA,
PARISH OF ORLEANS.

Before me, the undersigned authority, personally came and appeared Walter Guion, Attorney General of the State of Louisiana, who, on being duly sworn, declares that, in addition to the amount already paid by the State of Louisiana, as costs in the suit now pending in the Honorable the Supreme Court of the United States, wherein the State of Louisiana is plaintiff, and the State of Mississippi defendant, as shown by the statement of the Honorable Martin Behrman, Auditor of the State of Louisiana, dated October 7th, 1904, and the amount due Commissioners Mortimer and Bullard, and R. H. Carter, Stenographer, there is a further and additional amount of $309.15 due by the State of Louisiana for copies of maps and coloring of same, and for expenses of special counsel employed by the State of Louisiana in visiting Washington, D. C., for the purpose of making a special motion in behalf of the State of Louisiana, to be permitted to offer in evidence the maps produced by the State of Louisiana in atlas form, which amount of Three Hundred and Nine Dollars and Fifteen Cents ($309.15) is yet to be paid by the State of Louisiana on the approval of declarant.

Walter Guion

Sworn to and subscribed before me
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—5.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared*: MR. WM. M. JUNGBLUT, Auditor of the *Oyster Commission of Louisiana*, who being, by me, first duly sworn, deposes and says:

That the *Oyster Commission of Louisiana* advanced the sum of Four Hundred and Twenty-four and 43-100 ($424.43) Dollars, in Court costs in the boundary suit of the State of Louisiana, Complainant, vs. the State of Mississippi, Respondent, No. 11, Original of the Docket of the Supreme Court of the United States, and that the said sum has not yet been reimbursed to the said *Oyster Commission of Louisiana* by the State of Louisiana.

Wm. M. Jungblut

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert
Notary Public.



EXHIBIT P—6

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

I, FRANK H. MORTIMER, Commissioner by appointment of the Supreme Court of the United States, in the suit of the

STATE OF LOUISIANA, Complainant,

versus

STATE OF MISSISSIPPI, Respondent,

No. 11, Original, of the docket of the Supreme Court of the United States—

Do Hereby Certify, that the record in this cause, as made up of evidence offered by the State of Louisiana, consists, and will consist, of the following, to-wit:

About fourteen hundred and fifty (1450) typewritten pages, legal cap size, of testimony;

Seventy-seven (77) maps of various sorts and sizes;

One hundred and four (104) documents;

Seventeen (17) exhibits;

Five (5) diagrams;

Two (2) samples of earth;

I do further certify that no copy was placed in the record of maps Nos. 21 and 23, the originals obtained from the Congressional Library at Washington, D. C., being exhibited before me and returned to said library to be subsequently produced in original on the trial of this cause, it being testified before me that it was impossible to copy said maps by photographic process, by reason of their age and condition,

and that Map No. 56, although the original was filed with me, could not be copied for the same reason.

Frank H. Mortimer

Commissioner.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared:* MR. FRANK H. MORTIMER, who, being by me first duly sworn, deposes and says, that the facts stated in the foregoing certificate are true and correct to the best of his knowledge, information and belief.

Frank H. Mortimer

Sworn to and subscribed before me,
this 8th day of October, 1904.

Alvin Edward Hebert

Notary.



EXHIBIT P—7.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public, for the Parish of Orleans, this State, duly commissioned and qualified, *Personally Came and Appeared:* MR. REGINALD H. CARTER, official Stenographer for the State of Louisiana, in the suit of the State of Louisiana vs. State of Mississippi, No. 11, Original of the docket of the Supreme Court of the United States, who being by me first duly sworn, deposes and says, that the testimony on the part of the State of Louisiana in said cause will make, when completely written out, about fourteen hundred and fifty (1450) type written legal cap pages of about three hundred words (300) each.

R. H. Carter

Sworn to and subscribed before me,
this 8th, day of October 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—8.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

Before me, Alvin Edward Hebert, a Notary Public for the Parish of Orleans, this State, duly commissioned and qualified, personally came and appeared, Walter Guiou, Attorney General of the State of Louisiana, who being by me first duly sworn, deposes and says, that, on Friday, October 7th, 1904, he personally, by direct telephonic communication, notified Hon. William Williams, Attorney General of the State of Mississippi, at Jackson, Mississippi, that the State of Louisiana, would, through counsel, appear in the Supreme Court of the United States, at Washington, D. C., on Monday, October 10th, 1904, and then move the said Court for an order, permitting the State of Louisiana in preparing for submission to said Court, the record in the suit of the State of Louisiana vs. the State of Mississippi, No. II, Original, of the Docket of said Court, to tender her map evidence in a single atlas form, containing all maps offered by the State of Louisiana, except those on file in the library of Congress, Washington, D. C., and which could not be copied by photographic process by reason of their age, said Court being moved to accept and receive said single atlas of maps as a full compliance with the requirements of its rules in such cases and the enormous expense of reproducing further copies of said maps being thereby avoided; and,

Affiant further deposes and says that the State of Mississippi had, from time to time, been furnished

with copies of the maps, documents, and other evidence, offered as evidence, in said cause, as said maps were, from time to time, offered in evidence in said cause, save and except those maps, copies of which were formally waived by the State of Mississippi, as shown by the record, and those certain maps Nos. 21, 23, and 56, which, by reason of their age and discoloration could not be copied by photographic process.

Walter Sauer

Sworn to and subscribed before me
this 8th day of October, 1904.

Abner Edmunds Hatch
Notary Public.



EXHIBIT P—10.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
CITY OF NEW ORLEANS.

BEFORE ME, ALVIN EDWARD HEBERT, a Notary Public for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, *Personally Came and Appeared*: MR. JOHN DYMOND, JR., who, being by me first duly sworn, deposes and says: that he is one of the associate counsel representing the State of Louisiana in the suit of the State of Louisiana vs. State of Mississippi, No. II, Original, of the Docket of the Supreme Court of the United States; That in his said capacity, as associate Counsel, he has had charge of the procuring and preparing of the evidence offered by the State of Louisiana in said cause, and is familiar with the cost of reproducing copies of the maps offered in evidence in said cause, by the State of Louisiana, and that he estimates that it would cost, at the very least, the sum of Seven Thousand ($7000.00) Dollars to reproduce by photographic process twenty-five (25) copies of each of the seventy-seven (77) maps, offered by the State of Louisiana in said cause.

John Dymond Jr.

Sworn to and subscribed before me,
this 8th, day of October 1904.

Alvin Edward Hebert
Notary Public.

EXHIBIT P—9.

OFFICE OF THE CLERK,
SUPREME COURT OF THE UNITED STATES,
Washington, D. C., October 22, 1904.

F. C. ZACHARIE, Esq.,
Washington, D. C.

DEAR SIR: In compliance with your verbal request of today, I beg to say I estimate that the total cost of preparing and printing the record in the case of Louisiana v. Mississippi, No. 11, Original, of October Term, 1904, at about $2,000. This estimate is based on your statement that the record will contain about 1600 typewritten pages of 3 hundred words to a page.

Yours truly,

JAMES H. MCKENNEY,
Clerk Supreme Court U. S.,
Per W. R. S.

FILE COPY.

FILED
OCT 5 1905
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF HER BILL OF COMPLAINT.

WALTER GUION,
Attorney General of the State of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 18372

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI.

IN EQUITY.

BRIEF ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF HER BILL OF COMPLAINT.

STATEMENT OF PLEADINGS.

Without quoting here at length the pleadings in full, it will be sufficient for the purposes of this argument to state briefly the claims of Louisiana and the counter-claims of Mississippi set forth in the pleadings of the two States.

Louisiana claims the disputed territory by virtue of the act of Congress admitting her into the Union approved April 6, 1812, fixing her boundaries and the amendatory act of Congress approved April 14, 1812, adding territory to her domains, as including within these boundaries the territory here in dispute; Louisiana further claims herein, in

the bill of complaint, that the boundaries of the State of Mississippi under the act of Congress approved December 10, 1817, did not include the territory in dispute; and if they did, that said act would be inoperative and void and would not affect the boundaries laid down in the Louisiana act five years previous to the passage of the Mississippi act; the bill then sets forth that the States of Mississippi and Louisiana have by legislative enactments regulated the oyster industries of the two States, some of the provisions of which laws are in conflict with each other; Louisiana further claims that the true boundary line of southern Mississippi and the northern line of the southeast portion of Louisiana is at the deep-water sailing channel, extending from the mouth of the Pearl river through the upper corner of Lake Borgne, north of Half Moon, or Grand Island, eastward through Mississippi sound to the Cat Island pass, north of Isle à Pitre and southwest of Cat island, in which channel buoys, marking it, have been placed by the United States Coast Survey; that owing to the great differences between the oyster laws of the States of Louisiana and Mississippi, and there being no definitely marked boundary line in this region of the States and the waters thereof, there came about a violent clash and dispute in regard to their rights in the disputed territory between the two States, their officers and citizens, which threatened to result in violence; and, thereupon, that the governor of the State of Louisiana initiated and brought about an agreement and understanding with the governor of Mississippi by which the governor of each State appointed a commission of citizens of each State to endeavor to amicably settle the dispute and agree upon the boundary line; that after a joint meeting of the two commissions and full discussion of the subject-matter, it appeared that there could be no amicable agreement on the subject-matter and the Mississippi commissioners said that—

"*It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course*" (Record, p. 25).

and in accordance with that suggestion and agreement the present suit was brought.

Whereupon The State of Mississippi, respondent, through its counsel, filed a demurrer to the bill of complaint, and asked the dismissal of the suit because the Governor and Attorney General of Louisiana had no authority in law to bring the suit; and further because this honorable court had no jurisdiction in the matter, as it did not constitute a controversy between the States of Louisiana and Mississippi as to their boundary line within the meaning of the Constitution of the United States; and further that, under the boundaries as laid down in the two acts admitting the respective States, the territory in dispute belonged to Mississippi and that there was no conflict between the provisions of said two acts of Congress; and further that the bill showed upon its face that the suit was attempted to be brought by the State of Louisiana in its sovereign corporate capacity, when the said State had no property rights involved, but was simply championing the rights of its private citizens and lending its name for their individual benefit; and further that the State of Mississippi had never, in any manner, denied or controverted the boundary line of the State of Louisiana or through any of its duly authorized officers; and that the action of the so-called commissioners of the State of Mississippi, in regard to the adjusting of the boundary line, was unauthorized by the State of Mississippi or any of its laws; and further that the alleged threats of an armed conflict between the officers of the State of Louisiana and those of the State of Mississippi were merely alleged generally in the bill without setting forth any facts or details.

This demurrer having been overruled, the State of Mississippi filed its answer and cross-bill and denied singularly and articulately almost every material allegation contained in the bill of complaint, and set up in the cross-bill an entirely new and different boundary line from that claimed by the State of Louisiana, basing its claim on its interpretation

of the acts of Congress, creating the two States, to the effect that the islands which Congress gave to Louisiana were other islands outside of and beyond the disputed territory, in the gulf of Mexico, and that Mississippi owned the disputed area, because it was composed of islands which were within six leagues of her shore; and setting forth other new matters which we will not recapitulate here, but will discuss hereafter in the course of the argument in this brief. To this cross-bill of Mississippi, the State of Louisiana filed her replication, and answer to the cross-bill, in which it is set forth and alleged that if the contentions of the State of Mississippi, as set forth in her cross-bill, be true that the act of Congress admitting the State of Mississippi as a State, gave to the State of Mississippi the territory in dispute, then said portion of said act would be unconstitutional and void as taking away from the State of Louisiana without her consent, a portion of her territory previously granted to her by Congress in 1812, and if there be a conflict between the two acts of Congress, the prior grant to Louisiana must prevail over the later grant to Mississippi; that the islands embraced in the grant to the State of Louisiana are not to be defined and delimited from the main land of Louisiana, but are to be defined, determined and delimited from the *Louisiana marshes*, as her *coast* of the State of Louisiana as set forth in the act of Congress creating the State of Louisiana; further that the acts of Congress cited by respondent in the cross-bill cannot in any way affect the prior grant to Louisiana; further that the officers and citizens of the State of Mississippi, as well as the official cartographers, have from almost time immemorial acknowledged and recognized the territory in dispute as belonging to Louisiana and that Louisiana has always uniformly asserted title thereto, and that Mississippi, until quite recently has tacitly assented thereto; and further, if there be any inconsistency or clash between the boundary lines of the States of Louisiana and Mississippi as laid down in their respective acts of admisaion into the Union,

that said conflict was purely unintentional on the part of Congress and arose from a want of geographical and topographical knowledge of the territories, of a remotely distant country from the National Capital, and at the time only recently acquired by the United States; and further that the recent acts of the legislature and courts of the State of Mississippi, in reference to islands within eighteen miles of her shore, referred to those islands belonging to the State of Mississippi outside of the disputed area and about the ownership of which there was no dispute and that such legislative enactments and judicial decisions had no reference or relation to the disputed area of today; and finally that the adoption of the deep-water sailing channel line as the boundary of the States in this region reconciled the acts of Congress, was in accord with the line which the two States have for the past one hundred years recognized by their own acts as the true boundary line, and should be decreed to be such today.

With this statement of the pleadings we will, therefore, in our argument and discussion first consider—

THE DEMURRER OF THE STATE OF MISSISSIPPI TO THE SUFFICIENCY OF THE BILL OF COMPLAINT AS FILED BY THE STATE OF LOUISIANA.

An analysis of the demurrer of the State of Mississippi shows that it subdivides its attack on the sufficiency of Louisiana's bill of complaint into the three following parts:

I. That the governor and attorney general of Louisiana were not authorized to file the bill on behalf of the State of Louisiana.

II. That there was no danger of an armed conflict between the States; that there was no dispute; that Louisiana was acting for her citizens and their private interests and not for herself as a sovereign State; and that there was not a con-

troversy between the two States within the intendment of the provisions of the Constitution of the United States on the subject.

III. That the State of Louisiana had no direct financial proprietary interest that would be affected by a decision of the issues.

We take it that your honors in overruling the demurrer of the State of Mississippi did so on the theory that the bill of complaint, on its face, stated a cause of action giving this honorable court jurisdiction and that your honors would expect the State of Louisiana, on the trial of the case, to show the existence of the state of facts which she claims establish her cause of action (Kansas *vs.* Colorado, 185 U. S., 125).

This leads us to a consideration of the facts established by the record for the purpose of ascertaining if there be really a controversy between the States of Louisiana and Mississippi in their sovereign capacities, such as would justify your honors in asserting your right to jurisdiction as prayed for by the State of Louisiana and such as would come within the provisions of the Constitution of the United States, where there is alleged to exist a *controversy between two States*. It will be necessary to further ascertain if the record shows, as a result of the acts of Congress respectively creating the States of Louisiana and Mississippi, such confusion and conflict as to boundaries as would give rise to a legitimate subject of dispute as to their respective boundaries today, and lastly whether the record shows a direct financial and proprietary interest in either the State of Louisiana or the State of Mississippi which would be affected by the existing contentions and by a decision of the issues involved herein.

We respectfully submit that the record affirmatively shows the existence of all of these facts and conditions essential to constituting a cause of action within the intendment of the

article of the United States Constitution just referred to, as we will now proceed to show by recounting historically the facts that led up to the institution of this suit by the State of Louisiana and as these propositions are all closely interrelated, cognate and bearing one upon the other, we shall consider and discuss them collectively under one heading in our consideration of the demurrer, setting them forth in chronological order.

In the year 1886, the State of Louisiana, by act No. 106 of the legislature of that year, page 195, first undertook to adopt a comprehensive system of control of her State oyster-producing waters and of her oyster industry. This law placed the power to control the industry in the hands of the officials of the political subdivisions of the State of Louisiana, corresponding to the counties of other States, but which are in Louisiana called *parishes*. By its provisions, these parochial authorities were vested with the power to control the oyster waters and regulate the industry in their several localities; but along general lines laid down in the State law. As the oyster industry grew in importance, through its own natural development, this original oyster law was followed by additional oyster legislation to be found in the acts of the Louisiana legislature Nos. 110 of 1892, page 142, and 121 of 1896, page 170, until the year 1900 when the legislature of Louisiana, appreciating the growth of the State's oyster industry and the value of the State's ownership of her oyster water bottoms and beds, adopted act No. 159 of the session of that year providing for the creation of a legislative commission to investigate and study the oyster industry of the State. It will be observed by referring to the Louisiana oyster law, act 121 of 1896, page 175, section 9, 3rd paragraph, that the *dredging* of oysters was prohibited in Louisiana waters. The dredging of oysters is a process by which the water bottoms are scraped for the purpose of gathering the oysters therefrom. Mechanical appliances, called *dredges* are employed and are operated on

vessels, some of which vessels are propelled by steam and others by sail power. Adopting a policy absolutely different from that of Louisiana, the State of Mississippi (chapter 129 of the Laws of Mississippi of 1896 and chapter 90 of the Laws of 1898,) permitted the use of these dredging appliances in the oyster fishing of her waters, thus leading to a radical difference in the treatment by the two States of their oyster industries in their respective waters; and furnishing an opportunity for a consequent conflict in the system of operation in the event of any uncertainty or dispute as to the boundaries of the two States.

It will also be noted that under the provisions of this Louisiana law, page 171, section 4, non-resident oyster fishermen were prohibited from fishing oysters in Louisiana waters In this action of her legislature, in reserving for the exclusive benefit of her own citizens the privilege of fishing oysters in her waters, Louisiana was but following the example previously set by some of her sister oyster States on the Atlantic coast, and was exercising a right which has been universally recognized as being properly hers: (McCready *vs.* Virginia, 94 U. S., 391, affirming 27 Grat. (Va.), 985 (and in effect overruling *Ex parte* McCready, 1 Hughes (U. S.), 503); Alvey, C. J., in Hess *vs.* Moir, 65 Md., 586; Haney *vs.* Compton, 36 N. J. L., 507; People *vs.* Lowndes, 130 N. Y., 455; State *vs.* Medbury, 3 R. I., 138; Chambers *vs.* Church, 14 R. I., 398; 51 Am. Rep., 410. See also New England Oyster Co. *vs.* McGarvey, 12 R. I., 385; Eng. & Am. Encyc. of Law, vol. 13, 2d ed., p. 575, and note 3.)

Returning, however, to the more concrete facts in the record in the matter of the controversy we find that in the locality where the disputed boundary exists, is situated the parish of St. Bernard, a political, governmental subdivision of the State of Louisiana. The parochial authorities of the parish of St. Bernard, as shown by the official records hereinafter referred to, in January, 1898, in enforcing the provisions of the then Louisiana oyster law, act 121 of 1896, equipped

and sent out an official expedition to exclude from the oyster waters of the parish of St. Bernard, and which were necessarily, therefore, oyster waters of the State of Louisiana, any non-resident oyster fishermen who might be found fishing oysters in those waters (documents Nos. 1 and 2, Record, pp. 989 and 990).

The sheriff of St. Bernard, the chief executive law officer (Record, pp. 144 *et seq.*) and the president of the police jury of the parish of St. Bernard, the presiding officer of the parochial legislative body, (Record, pp. 172 *et seq.*) and who was at the time the lieutenant governor of the State of Louisiana, both testify as to the personnel of, and the instructions given to this expedition, while Alcide Guiterrez (Record, pp. 152 *et seq.*) and Raymond Roberto (Record, pp. 158 *et seq.*) who were members of the expeditionary party, both testify as to the results of the expedition; that non-resident Mississippi oystermen were found fishing oysters in Louisiana waters, and that they were, in accordance with the provisions of the Louisiana oyster law, notified that they must stop fishing and move out of the Louisiana waters. These Mississippians then complained to the Mississippi authorities of their ejection from Louisiana waters by the Louisiana officers, and this, in due course, led to a conference in New Orleans, Louisiana, between Mr. Albert Estopinal, Jr., the district attorney, or prosecuting law officer of the parish of St. Bernard, and a Judge J. H. Neville, who undoubtedly had been, and was understood by Louisiana to then still be, the district attorney, or chief prosecuting law officer, of Hancock county, State of Mississippi (Record, pp. 162 *et seq.*). It is true that the Mississippi evidence may now show that Judge Neville had just resigned the office of district attorney of Hancock county, State of Mississippi, or that his term had just expired, and that he was, in the interview hereafter referred to, acting in his private capacity as an attorney-at-law; but the record will also show that Louisiana did not so understand it. On this subject, Mr.

Albert Estopinal, Jr., district attorney of the parish of St. Bernard, State of Louisiana (Record, p. 163), testified as follows, in reference to his conference with Judge Neville of Mississippi, to wit:

Q. "Who was Judge Neville, will you please state?"
A. "He was at that time, the district attorney, if they call him such, over in Hancock county, I believe, State of Mississippi."
Q. "Did he so represent himself to you?"
A. "Yes, sir; it was in his capacity as prosecuting or district attorney over there that he consulted with me in regard to this matter."

In discussing the subject of probable results in the event that the authorities of the parish of St. Bernard persisted in their then intention of excluding Mississippi and other non-resident oyster fishermen from Louisiana waters, Mr. Estopinal further testifies, in relation to his conference with Judge Neville of Mississippi, as follows:

Q. "Did he in any way give any expression as to what the attitude of the Mississippi authorities would be in the event that Louisiana, or the parish of St. Bernard, persisted in her intention."
A. "Yes, sir; he, as district attorney, was quite determined to oppose the contention of the Louisiana people."

* * * * * * *

Q. "Did he, in any way, indicate the extent to which this resistance would be carried."
A. "My recollection is, that he stated there would be an armed conflict. That there would be blood shed. The fact is that the judge, that the district attorney, Mr. Neville appeared to be very anxious and very zealous to do something for the Mississippi people, and as I said a moment ago, he went on to state that the Mississippi authorities would contest any such right of the State of Louisiana as contended by Louisiana, represented in this particular instance by the parish of St. Bernard."

It is well to state at this point that before the adoption and enforcement of the act of the Louisiana legislature excluding non-resident oyster fishermen from Louisiana waters, Mississippi oyster fishermen had been accustomed to fish oysters all through the Louisiana waters, east of the Mississippi river, even down through the parish of Plaquemines, which latter parish is not in any way included in Mississippi's present claim, and that Louisiana was not excluding non-residents from any particular disputed area, but was enforcing a law applying to all her waters. This is shown by the testimony of the Mississippi witnesses taken in connection with Mississippi's present contention. The map, Mississippi "A" (Record, p. 88), shows Drum bay, Live Oak bay, California bay, Scow pass, Martin island, Mitchell islands, and Julius pass, all to the south of the red-ink line thereon, and therefore beyond the Mississippi claim. Yet Mr. B. R. Clements, a Mississippi witness (Record, p. 1216), testified as follows:

Q. "Did you ever fish as far south as Drum bay?"
A. "Yes, sir."
Q. "Did you ever fish as far south as Live Oak bay?"
A. "Yes, sir; no, I did not know it by that name then."
Q. "Did you consider Drum bay and California bay in Mississippi or Louisiana?"
A. "Well, we could not say, Judge. We considered the whole business, there, in Mississippi at that time, because we were never restrained from catching anything and nobody told us anything about it."

The testimony of this, Mississippi's first witness, is typical of all of her other witnesses on this point. They considered that it was wrong for Louisiana, as a State, to restrict to her own citizens the benefit and privilege of her oyster fisheries, and resisted this exercise by Louisiana of her legal right, and did not then raise a complaint as to boundary. The question of boundary arose only as an after conclusion, when it became necessary to, in some way, meet Louisiana's aggressive attitude.

Reference is made to the conference of the district attorney of the parish of St. Bernard and the presumed district attorney from the State of Mississippi for the purpose of showing the official character that the dispute was taking on, and the sort of conflict that was likely to follow aggressive action by the two States. Nothing definite, however, appears to have come from the conferences of these officials of the two States *except a suggestion of litigation to settle the question* until January 19, 1901, when at the instance of the Louisiana legislative commission already referred to as appointed under the provisions of act 159 of 1900 to study the Louisiana oyster industry, and at the instance of committees appointed from the police juries of the Louisiana parishes of St. Bernard and Plaquemines whose oyster waters were being invaded by Mississippi oyster fishermen (Record, p. 990, document No. 3, and Record, p. 1091, document No. 61), a meeting of the State officials of Louisiana was held in New Orleans, Louisiana, to consider the subject of the dispute with the State of Mississippi, and the invasion by nonresidents of the Louisiana oyster waters (Record, p. 20, Exhibit "A"). The meeting was largely attended, was presided over by his excellency, William W. Heard, then governor of the State of Louisiana, and with its occurence, the subject of the trouble ceased to be a matter of parochial concern, and from the Louisiana point of view at once became a State matter. The result of the meeting was that the governor of the State of Louisiana appointed a commission of five (5) members and by an official communication addressed to the governor of the State of Mississippi, requested that official, on behalf of his State, and in order to have the matter considered by the State of Mississippi as a State, to appoint a similar commission, which two commissions might confer and see if it were possible to affect an amicable settlement of the dispute between the two States (Record, p. 22, Exhibit "B").

On February 9, 1901, his excellency, A. H. Longino,

then governor of the State of Mississippi, appointed a similar commission on behalf of his State, and officially advised the governor of Louisiana to that effect (Record, p. 23, Exhibit "C").

These two commissions held a joint conference in New Orleans, Louisiana, March 26, 1901, and thoroughly discussed the subject of dispute. Even then Mississippi's present definite contention had not as yet been disclosed, as will be seen by a reference to the minutes of the meeting (Record, p. 24, Exhibit "D"); but Louisiana's position was clearly defined, and a map showing Louisiana's contention as to the deep-water channel boundary in the disputed area was presented to the Mississippi commission. This map is known as Exhibit "E," and is bound with the Louisiana Atlas of Maps, page 60. The Mississippi Amicable Boundary Commission after some delay and a study of the subject made a reply to the Louisiana commission July 20, 1901, stating that it was in its opinion impossible to effect an amicable extrajudicial settlement of the dispute (Record, p. 25, Exhibit "F"), and concluding its report with the following important sentence, to wit:

"*It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.*" (Italics ours.)

A report to the same effect was likewise submitted by the Mississippi commission to his excellency, A. H. Longino, governor of Mississippi, on October 2, 1901, (Record, p. 2021, Mississippi document No. 78) to whom was also submitted a minority report by two members of the same commission, (Record, p. 2028, Mississippi document No. 79). His Excellency, A. H. Longino, governor of Mississippi, in turn, in January, 1902, in his annual message, submitted to the legislature of the State of Mississippi, then in session, a report concerning his actions in endeavoring to effect an amicable settlement of the dispute with the State of Louisiana

(Record, p. 993, document No. 6, and Record, p. 2031, Mississippi document No. 80) and referred to the suggested and contemplated friendly suit in this honorable court, thus acquainting the Mississippi legislature with that fact. Anticipating that the matter would be settled in this way, and no doubt considering that it would be ample time to make provisions for the defense of the suit after it had been instituted, the legislature of the State of Mississippi took no action at that time on the report of its governor. On the other hand, the State of Mississippi, at this session of its legislature, did adopt a new law controlling her oyster waters and oyster industry, (chapter No. 58 of the Laws of Mississippi of 1902), which indirectly tended to bring this matter to a crisis. This law created a State oyster commission, vested with the entire control of the Mississippi oyster territory and industry. The creation of this commission took the control of Mississippi oyster industry entirely out of the hands of the several coast county authorities, where it had been previously lodged, and centralized it in this State body, a department of the State government of the State of Mississippi, which was, by the terms of the law creating it, authorized to establish a system of patrol of the Mississippi oyster waters, and to maintain patrol boats to enforce the Mississippi oyster law in her territory.

In July, 1902, the State of Louisiana followed the example of the State of Mississippi, and adopted act No. 153 of 1902, page 274, creating the Oyster Commission of Louisiana, which was also created a department of the State government of the State of Louisiana; vested with the full control of the oyster industry of Louisiana, authorized to establish patrol boats, and maintain an armed patrol of Louisiana oyster waters, to protect Louisiana's rights and enforce her oyster laws in her waters.

This legislation of the two States, as just stated, brought the subject of the boundary dispute between the two States to a crisis, as both commissions had the legal authority and

financial ability, as well as the armed vessels and men to enforce their construction and interpretation of their respective rights and ideas as to boundaries, and had there been no danger of an armed conflict before, one was now likely to occur, unless some arrangement was made as to boundaries whereby a *modus vivendi* should be established until the dispute between the States as to their boundary could be judicially determined. The oyster commissions of both States appreciated these facts. Mr. James M. Breaux, president of the oyster commission of Louisiana (Record, pp. 805 *et seq.*) testified on this subject as follows:

Q. "Do you know what the provisions, and did you know at the time, what the provisions of the Louisiana law were in regard to the jurisdiction and control of the Oyster Commission of Louisiana over the oyster waters of the State of Louisiana?"

A. "Yes, sir."

Q. "Did you, at the time, consider that the territory which we commonly call now, the neutral territory, was part of the State of Louisiana?"

A. "Yes, sir."

Q. "Would you or would you not have considered it necessary, in the absence of an amicable agreement between the two States, to have enforced the Louisiana law in what is now called the neutral territory?"

A. "Beyond a doubt."

Q. "Were you authorized by the Louisiana law, as the Oyster Commission of Louisiana, to maintain an armed patrol boat in patrolling the waters of the State of Louisiana and enforcing the Louisiana law?"

A. "We were."

Q. "Did you maintain such a patrol boat in that territory?"

A. "We did."

Q. "In the event there had been resistance on the part of the authorities of the State of Mississippi or the people of the State of Mississippi to the enforcement of the Louisiana law in that territory, would you or would you not, at that time, have felt compelled to have recourse to your armed patrol boat to enforce Louisiana's rights in that territory?"

A. "Certainly, I would."

* * * * * * *

Q. "Mr. Breaux, you, of course, know there was an agreement which happily avoided any crisis. Suppose there had been no such agreement at that time, what would you have done as president of the Oyster Commission of Louisiana in regard to this disputed territory?"

A. "I would have protected the oyster territory of Louisiana in any way—well, with armed force, as we had equipped our patrol boat for that purpose."

Q. "Was this boat actually armed?"

A. "It was, yes, sir."

Q. "At the time, and just immediately prior to this conference which occurred in September, 1902, was there any danger of a conflict, and if so, on what do you base your idea?"

A. "Was there any danger of a conflict before the understanding between the two commissions?"

Q. "Yes, sir."

A. "Well, we thought there would be probable danger of a conflict, yes, sir; in other words, we were satisfied there would be, unless there would be an agreement made between the two commissions, and as president of the Oyster Commission of Louisiana, I was determined to protect the Louisiana territory."

We make this extract from Mr. Breaux's testimony for the purpose of showing the critical condition that affairs had assumed before Louisiana filed her bill of complaint and instituted this suit. In anticipation of this conflict, and to avoid it, the Oyster Commissions of Louisiana and Mississippi met in joint conference in the city of New Orleans, Louisiana, on September 9, 1902, and after a full discussion of the conditions existing adopted the following joint resolution.

"On motion of Commissioner F. J. Ladner of Mississippi, seconded by Commissioner N. H. Nunez of Louisiana, the following resolution was adopted:

"*Be it resolved by the Oyster Commissions of the States of Louisiana and Mississippi, in joint conference*, That all the water territory embraced within the following limits, to wit:

"Beginning at a point in the center of the mouth of Pearl river, thence in a southeasterly direction to Malheureux point, thence in an easterly and northeasterly direction fol-

lowing the shore lines to Grand pass, thence along the west shore line of Grand pass, thence easterly to the southernmost point of Sun Down island, thence in a northeasterly direction to the center of the deep-water channel, called Cat Island pass, and thence following the deep-water channel, westwardly, passing between Grassy island and St. Joseph lighthouse, to the point of beginning, *shall, pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted,* remain a common fishing ground to be fished by boats of either State in accordance with, and upon compliance with, the laws of either State, and inspectors and officers of the respective commissions (oyster) will govern themselves accordingly" (Record, p. 991, document No. 4). (Italics ours.)

The adoption of this agreement established a neutral territory between the two States, pending the judicial determination of the boundary dispute, and permitted the two commissions to operate without danger of a conflict, provided the issues were speedily settled by suit. The neutral territory did not include all of the disputed territory. Louisiana would not consent to this. By it complete temporary jurisdiction was given, however, to Mississippi over all the waters of Mississippi sound, north of the deep-water channel, which waters Louisiana concedes belong to Mississippi. The waters of Mississippi sound between the deep-water channel and the north shore line of the Louisiana marshes were neutral; and all waters of the Louisiana marshes south of the Louisiana shore line were given into the exclusive jurisdiction of Louisiana, as Louisiana would not even temporarily recognize the right of Mississippi therein.

As appears from the agreement, this was but a *modus vivendi,* pending the judicial determination of the disputed boundary, and was adopted by the official authorities of the two States to prevent the serious conflict which would have inevitably followed in the absence of any such provision, and the resulting conflict of authority.

Louisiana then, on October 20, 1902, filed her motion in

this honorable court, asking permission to file her bill of complaint against the State of Mississippi, and the bill of complaint was ordered filed (Record, p. 3).

To show that Mississippi also regarded the issues as *State* issues from her point of view, it is to be noted that even after the institution of this suit by Louisiana, the governor of Mississippi endeavored to secure an amendment of the *modus vivendi* agreement of September 9, 1902 (Record, p. 992, document No. 5), which agreement had been made by the Oyster Commission of Mississippi one of the departments of government of the State of Mississippi.

As we have previously stated the legislature of the State of Mississippi had by the governor's message (Record, p. 2031, Mississippi document No. 80) been advised that a friendly suit would be instituted by the State of Louisiana to settle the disputed boundary, and that by the governor's second message (Record, p. 2032, Mississippi document No. 81) the legislature of the State of Mississippi was advised of the actual institution of the suit by the State of Louisiana and was informed that the State of Mississippi, officially, claimed ownership of the disputed territory and that, owing to the great importance of the suit to the State of Mississippi, special counsel should be employed for its defense. The legislature of the State of Mississippi then took official cognizance of the subject-matter of the boundary suit instituted by the State of Louisiana and through legislative committees made a report (Record, p. 2108, Mississippi document No. 86) and we today find the interests of the State of Mississippi represented here not only officially by her attorney general and by the ablest special counsel which she, as a State, could find within her own borders, but also assisted by one of the present-day great authorities on international law.

On this subject, therefore, of the official character of this controversy between the two States, in recapitulation, we find that the controversy in an official way began when the officials of the parish of St. Bernard, State of Louisiana, ex-

cluded the Mississippi oyster fishermen from Louisiana waters. This was followed by the conference between Mr. Estopinal, a district attorney of Louisiana, and Mr. Neville, who was supposed, as district attorney, to officially represent the State of Mississippi. Then came the correspondence between the governors of the two States in their official capacities, followed by the appointment and conference of their two commissions and the suggestion of the Mississippi commission. Then followed the conference and agreement of the oyster commissions of the two States, all recognizing the absolute necessity of a judicial determination of the issues in dispute; and finally the legislatures of the two States, at all times fully advised of the progress of the negotiations and proceedings, on the one part ratified what had been done and on the other part took the necessary steps to secure a defense of the suit that had been instituted against her. This certainly constitutes an admission of the existence of a boundary controversy between the two States in their sovereign capacity.

Let us now for a moment consider the authority by which the State of Louisiana, in her sovereign capacity, acted in the institution of this suit.

The State of Louisiana, in presenting her bill of complaint to your honors, acted by instructions and authority of his excellency, William W. Heard, governor of Louisiana, and made her appearance through him, and through her attorney general, Judge Walter Guion, the latter appearing in accordance with the provisions of act No. 65 of the Louisiana legislature of 1884, which in part provides as follows:

"*Be it enacted by the General Assembly of the State of Louisiana*, That the attorney general be, and he is hereby authorized and empowered to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State" * * * (Record, p. 1176.)

To place the question of authority of the governor and attorney general of the State of Louisiana in instituting

this suit beyond any question of dispute, and to show that the State of Louisiana stood ready to abide by the consequences of your honors' eventual decision in this case, the legislature of Louisiana adopted act No. 26 of its session of 1904, reading as follows:

"*Be it resolved by the senate of the State of Louisiana, the house of representatives concurring*, That the action of his excellency, William W. Heard, governor, in instituting in the Supreme Court of the United States, on the part of the State of Louisiana, a suit against the State of Mississippi to determine the water boundary between the two States be approved, ratified and confirmed" (Record, p. 1173, document No. 99).

There is thus shown by the record the existence of abundant authority of a positive character warranting the institution of this suit by these officials, and all of this is independent of the authority that naturally exists in a Governor of any of our States to take, in a comparative emergency, such action as would best protect the interests of his State.

The fact that the act of Congress creating the State of Louisiana gave that State all islands within there leagues, or nine miles, of her *coast*, and that the act of Congress creating the State of Mississippi gave that State all islands within six leagues, or eighteen miles, of her *shore*, and that some islands within nine miles of the Louisiana *coast* were also within eighteen miles of the Mississippi *shore*, gave a basis from which the boundary controversy between the two States could legitimately and logically arise.

We submit that the foregoing recapitulation of facts unquestionably shows a controversy between the two States as such, and such as comes fully within the constitutional provision.

But not alone were questions of ownership, sovereignty, and legal jurisdiction, as general propositions, at issue in this boundary controversy between these two States. Financial values of great magnitude were also involved in the

question of ownership of the disputed territory. This is shown in many ways by the record. The legislature of the State of Mississippi itself, in January, 1904, received a report, through a committee appointed for that purpose, showing the area of the disputed territory to exceed three hundred (300) square miles, and that the lowest estimate placed upon its value was two millions of dollars ($2,000,000) (Record, p. 2108, Mississippi document No. 86). This estimate of value is confirmed by the testimony of Mr. W. K. M. Dukate, a large Mississippi oyster packer, who testified that he and his associates would be willing to pay the State a rental of two hundred thousand dollars ($200,000.) per annum for the exclusive privilege of fishing oysters in the disputed territory, provided he and his associates were protected in their rights by the State owning the territory (Record, p. 372).

The ownership of all the land that had not been previously sold by the State and the ownership of all of the water area in the disputed territory, being the bottoms of navigable waters of the State of Louisiana, was vested in and claimed by the State of Louisiana in her sovereign capacity and no individuals had any private rights therein. This water area had a positive value of great magnitude. The State of Louisiana, under her oyster law was vested with the ownership of these oyster water bottoms, and authorized to rent them for the purposes of oyster cultivation for which she received a direct rental through her oyster commission of one dollar ($1) per acre per annum and a further revenue of two cents (2c.) per barrel from each barrel of oysters gathered, either from these leased bedding grounds, or from the natural oyster reefs, which were also her property in absolute ownership.

Sections 9 and 10 of act 153 of 1902, pp. 281 and 282.

The value of the direct, positive, financial interest which the State of Louisiana, in her sovereign capacity had and

has in this case will therefore extend into the millio
dollars. Capitalizing at 4 per cent. (4 %) Mr. Duk
annual rental offer of two hundred thousand do
($200,000) would place a value of five millions of do
($5,000,000) on these water bottoms, not considering or
cluding the value of the thousands of acres of sea ma
land above water, included in the disputed territory.

We therefore submit that from the above statement
facts made up from the record, it appears beyond ques
of doubt that the governor and attorney general of the S
of Louisiana were authorized to bring this suit and file a
of complaint on behalf of the State of Louisiana seek
relief at the hands of your honors against the State
Mississippi.

That there exists between the States of Louisiana a
Mississippi, in their sovereign capacity as States, a dispu
or controversy affecting the boundary line separating the
in the locality in contention of a character to justify th
suit.

That the two States, in their sovereign capacities, ha
large financial interests at stake in this litigation.

That serious results would flow from the conflict of la
and official authority, were not the dispute judicially dete
mined by the tribunal having jurisdiction of such causes
action; and that a condition of affairs has been shown t
exist that warrants the appeal to and intervention of th
Supreme Court of the United States.

That this is true is shown by the fact that after you
honors had overruled Mississippi's demurrer denying th
existence of a boundary dispute between the two States i
their sovereign capacities, she filed her answer and cross-bil
(Record, p. 74), in which pleading she officially denie
Louisiana's ownership of the disputed area, made specific
and positive claim that the area belonged to her, and se
forth and urged the adoption of a boundary line different
from that claimed by Louisiana; thus, when forced to it,

finally confessing in her sovereign capacity a judicial admission of the existence of a serious controversy between the two States, and confirming the correctness of your honors' original ruling that a cause of action did exist, justifying your taking jurisdiction of this case.

That the facts, proven by the record, justify a dismissal and overruling of respondent's demurrer, is amply sustained by our jurisprudence.

The last clause of section 2, article III of the Constitution of the United States grants jurisdiction to this honorable court—"*to controversies between two or more States*, between a State and citizens of another State" etc. (Italics are our own.) It therefore becomes necessary in order to establish the jurisdiction of this honorable court, to inquire if the allegations made in the bill of complaint, are borne out by the evidence in the record, as showing a "controversy between two or more States" in the language of the Constitution. And in order to determine that issue it must first be determined what a "controversy between two or more States" is in its constitutional sense. Webster's International Dictionary, in common with the other lexicons defines the word "controversy" to be a contention; dispute; debate; discussion; agitation of contrary opinions;" in a secondary sense "quarrel; strife; cause of variance; difference;" and in a still further sense "a suit in law or equity; a question of right" which last he designates as obsolete. It was contended by counsel for respondent herein, (the State of Mississippi) both in their demurrer and by an attempt to prove by evidence at some length in the record that the allegations of complainant's bill were not true and correct and that this case now at issue before this honorable court was not a controversy between the two States, in their sovereign capacities, in a constitutional sense, but was simply a contention and controversy between individual citizens of the two States, and that Louisiana, the complainant was lending her

aid as a sovereign, by instituting this suit, to her citizens, merely to vindicate their individual rights in the premises.

The article in the present Constitution of the United States, was preceded by an article in the prior "Articles of Confederation" which provided under article X, that power should be granted to Congress to erect a tribunal to have jurisdiction over "all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever." The change from the former tribunal under the Articles of Confederation, to the Supreme Court of the United States, and the reasons therefor are fully set forth in No. LXXX of the Federalist. In the case of Rhode Island *vs.* Massachusetts, 12 Peters, p. 719, this honorable court, in a case of boundary between the two States, rules that the jurisdiction granted to it was as broad as that given to Congress under the former Articles of Confederation. In that cause, as in this, the respondent and defendant moved, on the part of the State of Massachusetts "to dismiss the bill on the ground, that the court had no jurisdiction of the cause" (p. 670). In the opinion of the court, delivered by Mr. Associate Justice Baldwin, the question of jurisdiction on boundary suits between States is fully reviewed, and the jurisdiction maintained. On page 721, reference is made to the judiciary act of 1789 organizing the Supreme Court, in execution of the Constitution, and the decision is to the effect that any question or issue as to boundaries between two or more States of the Union, falls within the original jurisdiction of this honorable court. Although Taney, Ch. J., dissented from the decision of the court on other grounds he was careful to say on page 752 "I do not doubt the power of this court to hear and determine a controversy between States, or between individuals, in relation to boundaries of the States, where the suit is brought to try a right of property in the soil or any other right which is properly the subject of judicial cognizance and decision, and which depends upon the true boundary line," but based

his dissent on the ground that Rhode Island, the complainant, did not claim property in the soil in the disputed territory, but only sovereignty and jurisdiction over it. In cases other than those of boundaries this honorable court has taken jurisdiction of cases wherein the pecuniary interests of States have been involved as in State of Pennsylvania *vs.* The Wheeling Bridge Co., 13 Howard, 589; S. C. *vs.* Georgia, 93 U. S., 381. In the latter cause this court said:

"It is argued that this court can take cognizance of no question which concerns alone the rights of a State in her political or sovereign character; that to sustain the suit she must have some proprietary interest which is affected by the defendant. This question has been raised and discussed in almost every case brought before us by a State, in virtue of the original jurisdiction of this court. We do not find it necessary to make any decision on this point as applicable in the case before us."

However, in other decisions this honorable court has declared that in order to vest original jurisdiction a State must have proprietary interest as claimed by Taney, C. J., and Daniel, associate justice, in their dissenting opinions in 13 Howard, and so did the majority of this honorable court in 127 U. S., 287 *et seq.*, and also Louisiana *vs.* Texas, 176 U. S., p. 1. On page 22, 176 U. S., one of the grounds on which the demurrer of the respondent, The State of Texas, was maintained and the bill dismissed was "In our judgment this bill does not set up the facts which show that the State of Texas has so authorized or confirmed the alleged action of her health officer as to make it her own or from which it necessarily follows that the two States are in controversy within the meaning of the Constitution. Finally we are unable to hold that the bill may be maintained as presenting a case of controversy between "a State and citizens of another State."

In the case of The State of Pennsylvania *vs.* The Wheeling Bridge Co. *et al.*, 13 Howard, 519, the State of Pennsylvania

sought an injunction to remove the obstruction in the shape of the bridge, which interfered with the navigation of the Ohio river and interfered with the revenues of the State derived from valuable public works, canals and railways, constructed at great expense as channels of commerce for the transportation of passengers and goods from which a large revenue, as tolls, was received by the State. The respondents set up in their answer "that the State of Pennsylvania had no corporate capacity to institute the suit in the supreme court to vindicate the rights of her citizens; that the State is only a nominal party, whose name was, without proper authority, used by individuals" (p. 558). The question of jurisdiction was fully argued and this honorable court decided (p. 578) "that the State of Pennsylvania has been and will be injured in her public works, in such manner as not only to authorize the bringing of this suit, but to entitle her to the relief prayed for," just as in the present suit Louisiana's pecuniary, financial, and proprietary interests are involved.

In Alabama *vs.* Georgia, 23 Howard, 505, no question of jurisdiction was raised in a suit turning on the interpretation of certain words defining a boundary line, as in the present case.

In Missouri *vs.* Iowa, 7 Howard, 660, there was no question raised as to the jurisdiction of this honorable court in a controversy over boundaries between the two States, but the issue was over the interpretation of the limits defined in the acts of Congress admitting the States, both States claiming full possession, ownership, and enjoyment of the disputed area, as in the suit at bar.

In Florida *vs.* Georgia, 17 Howard, 478, the question was one of boundary between the two States, but the decision goes no further than to discuss the proper process, pleading and procedure in such cases.

In Virginia *vs.* West Virginia, 11 Wallace, 29, a question of boundary was raised, and a demurrer and motion to dis-

miss was filed on the ground that this honorable court had no jurisdiction inasmuch as the issue raised was political and the demurrer was sustained on this and other incidental grounds, among which was that Virginia had by formal act consented to the fixing of that boundary. The demurrer was sustained and the suit dismissed.

This case does not apply in any way to our case.

In New Jersey *vs.* New York, 5 Peters, 284, a controversy arose over the boundary between the two States, and questions were raised and decided more as to jurisdiction and the proper process thereunder; on both of which branches the suit and jurisdiction were maintained.

In the case of Missouri *vs.* Illinois and the Sanitary District of Chicago, 180 U. S., 208, to a bill in equity brought by Missouri seeking an injunction enjoining and prohibiting the emptying of sewerage etc. into a canal entering the Mississippi river, "to the detriment and irreparable and continuing damage and injury to the lives and health of the citizens and inhabitants of the State of Missouri," respondents and defendants demurred to the jurisdiction of this honorable court at length, and in substance that the cause of action was not one between the States in their corporate capacities, and did not constitute such a controversy between the States as contemplated by the Constitution of the United States, and that no property rights were involved therein (pp. 216, *et seq.*). Your honors overruled the demurrer in a lengthy, exhaustive, and able opinion reviewing the whole subject and citing and quoting from all prior adjudications relating thereto, and decided that the bill disclosed sufficient cause to show the interest of the two States. It is true that Mr. Chief Justice Fuller, with whom concurred Messrs. Associate Justices Harlan and White, dissented, but solely on the ground that it was not alleged or claimed that the State of Illinois through its proper officers had taken any action in the premises, the dissenting opinion saying:

"Controversies between the States of this Union are made justiceable by the Constitution, because other modes of determining them were surrendered; and before that jurisdiction which is intended to supply the place of the means usually resorted to by independent sovereignties to terminate their differences, can be invoked it must appear that the States are in direct antagonism as States. Clearly this bill makes out no such state of case."

In the present case we have shown that Mississippi's officers have acted officially.

In Kansas *vs.* Colorado, 185 U. S., 125, in a cause between two States, in regard to the use of the waters of a river, a demurrer was filed to the jurisdiction of the supreme court on the ground that the State of Kansas as a corporate sovereignty had no proprietary interest in the cause of action, but was only lending its name to advance the private interests of certain private corporations and individuals, and that there was, therefore, no such controversy between the States as the Constitution contemplated. This honorable court after reviewing fully all the precedent decisions on this question of jurisdiction, overruled the demurrer, or rather in effect referred it to the merits, as to the proof of the allegations, stating that in an important cause between two sovereign States it would not stand on mere technicalities.

It will be thus seen that from the synopsis of the evidence which we have already presented, together with the citations and quotations from the decisions and opinions of this honorable court that the allegations contained in the bill of complaint have been fully sustained and show a cause of action vesting jurisdiction in this honorable court in this cause. First: as being a suit between States in their corporate capacity in regard to boundary and involving proprietary interest. Second: that the officers of the State of Louisiana brought this suit under full authority from the State and that it is not a controversy between individual citizens of the State,

but that Mississippi's officers had acted in their official capacities. Third: that there was imminent danger of a violent clash over the boundary line between the officers and citizens of the two States. But even this, although we believe it was abundantly shown, was not in our opinion necessary to give this honorable court jurisdiction, as we nowhere find in any of the boundary cases which we have cited and from which we have quoted that there has been alleged or proved any threat or danger of violent conflict between the States, but in all of these cases it would seem that the mere question of a dispute over the boundaries of States was sufficient to give the court jurisdiction irrespective of the fact as to whether there was any imminent danger of violent or forcible conflict between the States, or the citizens thereof.

We think therefore that we have conclusively shown by the evidence and by judicial authority that the claim of the State of Mississippi, respondent herein in this demurrer, is utterly without foundation and that this honorable court is sully seized with jurisdiction in this cause under the provisions of the Constitution of the United States relating to controversies between States.

STATEMENT OF THE CASE.

This suit is instituted by the State of Louisiana in her sovereign capacity as a State against the State of Mississippi in her sovereign capacity as a State to secure a judicial determination of a boundary line separating her in part from the State of Mississippi, and to obtain a decree requiring the State of Mississippi to recognize and observe said boundary line.

Geographically, the State of Louisiana lies on the gulf of Mexico, and is the central Gulf State of the Union, while the State of Mississippi, fronting on Mississippi sound to her south, lies just to the east and north of Louisiana. Both are sovereign sister States in our North American Republic.

Louisiana was the first seat of settlement in that great territory purchased by the United States from the French Republic in 1803, and Mississippi takes her name from that great American river that drains, through the Mississippi valley, over half of the area of our country, and forms the greatest extent of the State of Mississippi's western boundary.

In this proceeding, the State of Louisiana claims a certain line to be the proper boundary line separating her in part from the State of Mississippi, while the State of Mississippi disputes the correctness of the Louisiana line and contends for a separate and distinct line of her own designation, as being the proper boundary to separate the two States.

The area in dispute is located between these two lines, the Louisiana line on the north and the Mississippi line on the south, and consists of more than three hundred (300) square miles of land and water, valued at from two millions ($2,000,000) to five millions of dollars ($5,000,000) by reason of its rich oyster-producing properties, and is now claimed by each State in its sovereign capacity to be its property, to the exclusion of any rights by the other State. This disputed area lies to the east of the southern portion of Louisiana and south of the western portion of Mississippi and embraces the waters of Lake Borgne and Mississippi sound which contain certain sea marsh islands, named Grassy, Half Moon or Grand, Round and Le Petit Pass islands and an island called *Isle à Pitre*. The disputed area in fact extends into the *peninsula* of St. Bernard, Louisiana, or the *Louisiana marshes*, which form part of the *coast* of the State of Louisiana, until the boundary line claimed by Mississippi is reached at a distance of eighteen miles from her main shore, parallel to which the Mississippi boundary line is then claimed to run.

Mississippi sound is an arm of the gulf of Mexico, extending up in between the States of Louisiana and Mississippi at this point, and ends in a body of water, also an arm, inlet or estuary of the gulf, called Lake Borgne. This latter body

of water is not a *lake* in the true geographical sense, because it is a salt-water body of water opening into Mississippi sound, and, as its French name, *Borgne*, implies, it is *one-eyed* in that it has one wide eye or opening into said sound.

Louisiana contends that the proper boundary line separating her from Mississippi in the disputed area is the line of the deep-water sailing channel through this water area, extending from the mouth of Pearl river and emptying into the open waters of the gulf of Mexico, and she has set forth this line in detail on her map, Exhibit "E," bound in the Louisiana Atlas of Maps, page 60, and on diagram No. 1, Record, p. 4.

Mississippi contends that the proper boundary line separating her from the State of Louisiana in the disputed area is a line parallel to her main shore and eighteen miles distant therefrom, and she has set forth this line on her map, Mississippi "A," bound in the Mississippi Atlas of Maps, page 1, also found in the Record, p. 88.

In other words the State of Mississippi, in her defense on the merits to the bill of complaint filed herein by the State of Louisiana:

First. Denies that the deep-water channel sailing line extending from the mouth of Pearl river and emptying into the open water of the gulf of Mexico is the proper boundary line there separating the dominions of the two States.

Second. Contends that she owns the sea marsh islands which we have named as lying south of that deep-water sailing channel line, and

Third. Contends that she owns a portion of the peninsula of St. Bernard, in the State of Louisiana, namely, that portion of the area commonly called the *Louisiana marshes*, which would come within the projection of her eighteen-mile line.

The State of Louisiana, on the other hand, contends, as set forth in her bill of complaint, that—

First. Louisiana owns the *peninsula of St. Bernard* in its entirety, because it is and always has been part of her parish or county of St. Bernard, and that these *Louisiana marshes* at the eastern extremity of her St. Bernard peninsula form part of the *coast* line of the State of Louisiana.

Second. Louisiana owns these islands lying in Lake Borgne and Mississippi sound between that *coast* line and the deep-water channel line, because these islands were given to Louisiana by the act of Congress making her a State, giving her all islands within three leagues, or nine miles of her *coast* and that Congress could not, five years later, take these islands away from Louisiana and give them to Mississippi, and

Third. That the deep-water sailing channel line emerging from the mouth of Pearl river and emptying into the gulf of Mexico is, in truth and fact, the proper water boundary line between the two States in that locality; that it has in fact been recognized as such by both States and is so recognized by all rules of international law.

This statement, made as briefly as the facts will permit, we consider a fair presentation of the substance of the dispute between the two States. And we would now propose to show how the record and the law of the case establish the correctness of the claims of the State of Louisiana in all their details. This leads us therefore to a consideration of the

MERITS OF THE CASE.

As we have previously stated the area in dispute, as bounded by the different lines contended for by each State, is composed of land and water, ownership of and sovereignty

over the land carrying with it jurisdiction, ownership and sovereignty over the adjacent waters as established by international law.

On the merits of the case, as we now approach them, we will proceed to show that the record establishes conclusively that the whole disputed area has always, and does now, belong to, is the property, and forms part, of the State of Louisiana.

This fact we will establish by showing that, of the disputed area,

First. The State of Louisiana owns the peninsula of St. Bernard in its entirety.

Second. The State of Louisiana owns the islands lying north of this peninsula and claimed by her.

This, with the water area, comprises the whole disputed territory.

Louisiana's title to and ownership of this territory we can establish—

I. By the words themselves of the act of Congress, creating Louisiana a State.

II. By the establishment of the deep-water sailing channel line as the proper boundary, south of and on the Louisiana side of which these lands and waters lie.

III. By prescription, usucaption, acquiesence and acknowledgment in favor of Louisiana, and by her exercise of acts of ownership over said territory.

We shall therefore consider the first of these propositions, namely:

I.

THAT THE STATE OF LOUISIANA BY THE WORDS OF THE LAW OWNS THE PENINSULA OF ST. BERNARD IN ITS ENTIRETY AND THE ISLANDS IN DISPUTE, TOGETHER COMPOSING THE DISPUTED AREA.

While the ownership of the St. Bernard peninsula in its entirety is closely related to the ownership of the islands in dispute we nevertheless feel that it is best to treat this subject in two parts, considering first the ownership of the peninsula and second that of the islands and we shall therefore now consider and discuss Louisiana's ownership of the peninsula of St. Bernard.

FIRST.

The State of Louisiana was admitted as a State into the Union of the United States of America by an act of Congress approved April 6, 1812 (Record, p. 1022, document No. 24), and the following was the language used as describing the geographical and territorial limits of the State to wit:

"Beginning at the mouth of River Sabine, thence by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; *including all islands within three leagues of the coast*, etc." * * * (Italics ours.)

A sketch showing the limits of the State of Louisiana as thus defined is to be found in the Record, p. 4, as diagram No. 1, made part of the bill of complaint. It will be noted that the point of starting the description begins at the lower left-hand corner of the map or the southwest corner of the State and thence proceeds around the State to the point of beginning. It is to be noted also that the area described in the act of Congress as being contained within the foregoing bounds, is part "of the territory or country ceded under the name of 'Louisiana' by the treaty of Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France."

A few days later by an act of Congress, approved April 14, 1812, additional territory was added to the State of Louisiana (Record, p. 1023, document No. 25) embraced within the following limits to wit:

"Beginning at the junction of the River Iberville with the River Mississippi; thence along the middle of the Iberville, the Amite river, and the Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl river; thence up the said eastern branch of Pearl river to the thirty-first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become, and form part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State."

A glance at diagram No. 2 (Record, p. 4), following the red line shown on the east of the State, will show the added territory. The River Iberville is called on this map Bayou Manchac, by which name that stream is now known, and it will be found at the southwest, or lower left-hand corner, of the added territory.

The following outline sketch, taken from the Bulletin of the United States Geological Survey (Record, p. 1032), will

tend to more clearly indicate the boundary outlines of the State of Louisiana.



HISTORICAL DIAGRAM OF LOUISIANA.

We find in the first act providing for the creation of the State of Louisiana the same general eastern boundary as we will hereafter show was adopted in the several treaties affecting this country in its former transfers, except the words "gulf of Mexico" are used in place of the word "sea," although both refer to the same body of water. In order to reach the open gulf of Mexico from the middle of Lakes Maurepas and Pontchartrain, it was necessary, as we know today, for the line to extend through the Rigolets into Lake Borgne, as the "Rigolets" was the main channel connecting these two bodies of water. To get from Lake Borgne into the open water of the gulf of Mexico, beyond Chandeleur islands and around to the western boundary of Louisiana, it was necessary to follow the deep-water channel, north of Half Moon or Grand island through Mississippi sound, and thence by the pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico and around to the western boundary of Louisiana. This is the same boundary contended for by Louisiana today, except that by a subsequent act of Congress, just mentioned and quoted from, part of the eastern line of Louisiana was moved eastward to the middle of Pearl river.

The effect of this act of Congress increasing Louisiana's limits was to move part of the eastern boundary eastward from the Mississippi river to Pearl river, and to give to Louisiana that country lying south of the Mississippi territory; that is, south of the thirty-first degree of north latitude, and north of the southern boundary formed by the River Iberville, the middle of Lakes Maurepas and Pontchartrain and the Rigolets.

The Rigolets as seen from maps Nos. 7 and 59, (Louisiana Atlas of Maps, pages 2 and 53) is a strait or *gut* connecting the waters of Lakes Pontchartrain and Borgne, both of which are in fact salt-water bodies of water and were originally arms of the sea (Record, p. 335, testimony of Dr. W. C. Stubbs).

After the adoption of this act of April 14, 1812, the eastern boundary line of the State of Louisiana entered Lake Borgne to the south, by Pearl river in place of the Rigolets. Map Exhibit "E" (Louisiana Atlas of Maps, page 60). In its extension to the eastward of the junction of Pearl river and Lake Borgne, the boundary line remained the same; that is, the deep-water channel north of Half Moon or Grand island, thence through Mississippi sound by the channel or pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico.

This necessarily puts the peninsula of St. Bernard entirely in the State of Louisiana.

Many maps showing this general locality have been made since Louisiana became a State and every one of them have recognized the peninsula of St. Bernard as, in its entirety, inclusive of the *Louisiana marshes*, forming a part of the State of Louisiana. An examination of the maps of this country made at a date prior to the creation of Louisiana as a State as well as of those at the time of her being given statehood and for the next few years thereafter, show the St. Bernard peninsula to be geographically a true part of the State of Louisiana or of the area of country that was to form said State; that the said St. Bernard peninsula projected

itself as a distinct and well-defined arm of land out into the waters of the gulf of Mexico, branching off as an arm or projection from what was and is, indisputably, the main body of the land composing the State of Louisiana and forming part of it.

Of the maps collected by the State of Louisiana and offered in evidence in her atlas of maps, the following of an early date show the peninsula of St. Bernard to be naturally, topographically, and geographically a part of the present State of Louisiana, to wit:

1st. Carte Reduite des Costes de la Louisiane, prepared for the French admiralty by M. Le Duc de Choiseul in the year 1764. Map No. 8*a*, Atlas, p. 3.

2d. Map of the course of the Mississippi river from the Belize to Fort Charters, prepared by Lieutenant Ross of the British army in the year 1765. Map No. 11*a*, Atlas, p. 4.

3d. Map of the outlets of the Mississippi river, prepared by the Dutch in the year 1766. Map No. 9*a*, Atlas, p. 3.

4th. Map of the coast of West Florida and Louisiana, prepared by Thomas Jeffreys, geographer to His Majesty the King of England, in the year 1775. Map No. 10*a*, Atlas, p. 4.

5th. A plan of the coast of west Florida and Louisiana prepared by George Gauld, M. A., for the British admiralty in the year 1778. Map No. 63, Atlas, p. 56.

6th. Ellicott's survey of the *southern boundary* of the United States as a commissioner for the United States in that Government's treaty with Spain to establish that line, 1798 to 1801. Maps Nos. 50 and 51, Atlas, p. 46.

7th. Carte Genéral du Terretóire d'Orléans, prepared by B. Lafon in the year 1806. Map No. 19, Atlas, p. 8.

8th. A general map of the seat of war in Louisiana and West Florida. This refers to the war of 1812, between the United States and the British, which ended in the battle of New Orleans, and the map was made by Lacarrier Latour,

an engineer officer serving with General Jackson. Map No. 34*a*, Atlas, p. 32.

These maps were all of a period before Louisiana was created a State and represented the cartography of the country in so far as it was possible to lay it before the Congress of the United States if any such thing was done at the time that Congress was creating, or preparing to create, the State of Louisiana. If Congress saw these maps and had them before it, then it is to be presumed that it had in mind the marshy outline of the State of Louisiana when it made use of the word *coast* in describing this outline as distinguishable from the word *shore* subsequently used in the act creating the State of Mississippi, the word *shore* implying more stability of soil and definiteness of geological outline than that indicated by *coast*.

As indicating what it was presumed Congress had intended as forming the limits of the State of Louisiana, we have but to continue our examination of these maps, and we find that those immediately following the creation of the State of Louisiana recognized her ownership of the St. Bernard peninsula, to wit:

9th. New chart of the West Indies, gulf of Mexico and northern provinces of South America, prepared by Joseph Dessieu in the year 1813. Map No. 58*a*, Atlas, p. 52.

10th. Map of Louisiana, prepared by M. Cary in the year 1814. Map No. 48, Atlas, p. 45.

No. 11. A map of the State of Louisiana, prepared by Wm. Darby in the year 1816. Map No. 20*a*, Atlas, p. 9. Accompanying the second edition of this map, published in 1817, there was a letter-press explanation of some features contained on the map, as follows: "On the map accompanying the book is the following entry on the peninsula which is part of the present parish of St. Bernard, 'This peninsula has never been surveyed northeast of Bayou Terre aux Bœufs; the coast and interior remain but imperfectly known. The surface is flat, and but little elevated above the level of the

sea'" (document No. 68, p. 1140, Record). And again the same author says in his Immigrants' Guide, published in 1818: "The force of the sea is broken by the long peninsula that bounds Lake Borgne on the southeast and by a chain of islands south of Malheureux islands, Marianne islands, Cat island, Ship island, Isle aux Petit Bois, and Dauphin island. The bottom of this strait is soft sand" (document 69, Record, p. 1141). The author is speaking of what is now known as the Mississippi sound and is describing how the force is broken by the chain of islands and the peninsula of St. Bernard.

No. 12. Map of the United States with the contiguous British and Spanish possessions, prepared by John Melish in the year 1816. Map No. 57*a*, Atlas, p. 51. The boundaries on this map are those recognized by the United States and Spain as correct in the treaty between the said powers in the year 1819 concerning the cession of East and West Florida, which treaty was ratified in the year 1822 (Record, p. 1144).

No. 13. Map of Louisiana and Mississippi, prepared by H. S. Tanner in the year 1819. Map No. 66*a*, Atlas, p. 59.

If we were to follow our investigation down through the past century to the date this suit was instituted, we would find that every cartographer in the *world* has recognized Louisiana's ownership of the St. Bernard peninsula in its entirety, and not one has, on any map, indicated that Mississippi had any rights therein.

Even if it be that Congress did not have any maps before it when considering and passing the act creating the State of Louisiana, then we say it is provable by other means that what forms today the peninsula and parish of St. Bernard formed part of the province of Louisiana as acquired by the United States from France and formed part of the territory placed by Congress within the limits of the State of Louisiana.

This fact that the peninsula of St. Bernard was part of

ouisiana, part of the island of Orleans, and part of the ter-
tory of Orleans, and part of the State of Louisiana, is
so established from the record, in the report made by Mr.
homas Jefferson, then President of the United States, to
ongress, November 14, 1803 (Record, pp. 1015 *et seq.*, Docu-
ent No. 19), entitled "An Account of Louisiana," from
hich we make the following extract:

"The object of the following pages is to consolidate the
formation, respecting the present State of Louisiana fur-
shed to the Executive by several individuals among the
st informed on the subject.

"Of the province of Louisiana, no general map suffi-
ently accurate to be depended upon, has been published,
r has any been yet procured from a private source. It is,
deed, probable that surveys have never been made upon
extensive a scale as to afford the means of laying down
e various regions of a country, which, in some of its parts,
pear to have been but imperfectly explored."

* * * * * * *

We then find the further sub-title and comments.

"St. Bernard:"

"On the east side of the Mississippi, about five leagues
low New Orleans, and at the head of the English bend, is
ettlement known by the name of the Poblacion de St.
rnardo, or the Terre aux Bœufs, extending on both sides
a creek or drain, whose head is contiguous to the Missis-
pi, and which flowing eastward after a course of eighteen
gues, and dividing itself into two branches, falls into the
and Lake Borgne. This settlement consists of two
rishes, almost all the inhabitants of which are Spaniards
m the Canaries, who content themselves with raising
ls, corn and garden stuff for the market at New Orleans.
e lands cannot be cultivated to any great extent from the
nks of the creek on account of the vicinity of the marsh
hind them, but the place is susceptible of great improve-
nt and of affording another communication to small craft
from eight to ten feet draft, between the sea and the
ssissippi."

The stream of water thus referred to by President Jefferson as a creek or drain was Bayou Terre aux Bœufs seen on the maps of today (geological maps of St. Bernard, map No. 18, Atlas, p. 7), and the branches referred to, the one extending into Lake Borgne, is the Bayou la Loutre of today, and the other branch to the sea, or gulf of Mexico, has retained the original name of Bayou Terre aux Bœufs. These are the bayous that, it will be seen, are referred to by Dr. William C. Stubbs in his geological discussion of this section as forming in past ages by the deposit of their alluvion, the peninsula of St. Bernard. It will be noted also that the marshy characteristics of the country are also here mentioned by President Jefferson over a century ago; and more important still is the fact that an extension of this bayou eighteen leagues, or fifty-four miles, eastward from the Mississippi river would carry us right through the *Louisiana marshes*, the territory that Mississippi is claiming as hers today. President Jefferson's memoranda, data and information were purposely furnished to Congress with the express intent of providing that body with the best necessary and indisputable knowledge for its future guidance and action in erecting Territories and States from the newly acquired province. This communication of Mr. Jefferson's is presumably what Congress acted on, in fixing the boundaries of the new State of Louisiana. All of this, we respectfully submit, clearly establishes that under the act of Congress of 1812 creating the State of Louisiana, this St. Bernard peninsula formed then a part of the parish of St. Bernard, State of Louisiana, and Louisiana's title to it cannot now be denied by the State of Mississippi.

Let us now therefore take up our second proposition:

Second.

That the State of Louisiana owns the islands lying north of this peninsula and within nine miles distance therefrom.

We have just seen how the St. Bernard peninsula forms part of the parish of St. Bernard, and part of the State of Louisiana. This peninsula has a distinct coast line from Shell beach on the south shore of Lake Borgne up by Malheureux point on to Isle à Pitre at its northeast extremity. This coast line forms part of the *coast* of the State of Louisiana, as contemplated and understood by the Congress of the United States, when it passed the act creating the State of Louisiana and *giving her all islands within three leagues or nine miles of her coast.* The islands claimed by Louisiana in this suit are all within three leagues or nine miles of her said coast. According to the strict letter of the law, as set forth in the act of Congress, these islands are the property of the State of Louisiana, her ownership, under this legal title of donation, dating from April 6, 1812. Mississippi's claim as a State to islands within six leagues of her shore dates from the act of Congress approved December 10, 1817, or nearly six years subsequent to the date of Louisiana's claim. It is true that there were enabling and other acts passed at earlier dates concerning both States as Territories, the one as the Territory of Orleans and the other as the Territory of Mississippi, under which Louisiana could also prove priority of claim and title, but for the present we are considering only the acts of the Congress of the United States creating these two Territories into States and admitting them into the Union. It was only when they were admitted into the Union as States that they would be first able to claim the benefits of all constitutional provisions affecting the integrity of their domains. All previous congressional and other acts and legislation can be considered only in their relation as affording

an explanation of what Congress had really intended to do. The State of Louisiana, as a State had been given these islands as part of her territory and had owned them as such for a period of over five years before the State of Mississippi was created. Louisiana having the prior title to the islands is protected in her ownership thereof by the provisions of our Constitution, insuring to the States the integrity of their domains unless a change be made with the State's consent.

Article IV, section 3, of the Constitution of the United States provides in the second clause that—

"*Nor shall any State be formed by the junction of two or more States without the consent of the legislatures concerned as well as of the Congress.*"

It might perhaps be contended that section 3 of article IV of the Constitution of the United States in its prohibition as to taking territory from one State and adding it to another only referred to the creation of a new State or States out of the territory of "*two or more States*," but this would be a very narrow construction and interpretation, and the intent to the contrary is shown in the last clause of the same section, which provides that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; *and nothing in this Constitution shall be so construed as to prejudice* any claims of the United States, OR OF ANY PARTICULAR STATE." (Italics and capitals are ours.)

It follows, therefore, that all islands within nine miles of the Gulf shore (the littoral line) were by the act of 1812 made a part of the domain of Louisiana. Congress could not by the subsequent act (Mississippi) of 1817 take away any portion of the territory of the State of Louisiana and give it to the State of Mississippi "so as to prejudice any claims" of the particular State, Louisiana.

Further it is a general rule, that where there are two conicting titles, the elder shall be preferred. * * * So where there are conflicting rights as to real property, courts f equity will inquire, not which party was first in possesion, but under what instrument he was in possession, and when his right is dated in point of time; or if there be no nstrument, they will ask when did the right arise,—who ad the prior right" (Broome's Legal Maxims, 7th Am. ed. . 355, with authorities in note 5).

And this principle has been frequently applied by this onorable court in cases of boundaries between States where he grants to the colonies prior to the establishment of our Government have seemed to conflict. So in Rhode Island s. Massachusetts, 12 Peters, 658, it is said in the syllabus, "No court acts differently in deciding on boundary between States, than on lines between separate tracts of land," and hat the rules and principles of equity would equally apply between States, as between individuals. The conclusion herefore irresistibly follows from the above exposition of the facts and the law that the peninsula of St. Bernard in its entirety formed an integral part of the State of Louisiana, and that the islands within nine miles of the coast of that peninsula once given by Congress to Louisiana could not be subsequently given by Congress to the State of Mississippi.

II.

LOUISIANA'S TITLE TO THE DISPUTED AREA IS ESTABLISHED BY THE FACT THAT THE SAID AREA IS SOUTH OF AND ON THE LOUISIANA SIDE OF THE DEEP-WATER CHANNEL BOUNDARY LINE AND AS THIS DEEP-WATER CHANNEL SAILING LINE IS THE CORRECT WATER BOUNDARY BETWEEN THE STATES AT THIS POINT ALL LAND AND WATER SOUTH OF IT IS THE PROPERTY OF THE STATE OF LOUISIANA.

But if we suppose, for the sake of argument, that what we have already said as to the conclusiveness of Louisiana's claim under the boundaries laid down in the acts of Congress admitting her and the State of Mississippi into the Union is not deemed by your honors sufficiently clear to settle the issue in this case; and if there be any lingering doubt as to the plain intendment of Congress in adopting the language that is contained in these acts, then we say that Louisiana's claim to the disputed territory is clearly established by the fact that the deep-water sailing channel line in this region is the true boundary line between the two States and that if it be adopted as the true boundary it gives to Louisiana all of the disputed area.

Existence of Deep-water Channel.

This deep-water sailing channel line claimed by Louisiana as the proper boundary between the two States exists today and is shown on the United States Coast and Geodetic Survey of that section, (map No. 59, Louisiana Atlas of Maps, p. 33) as emerging from the mouth of Pearl river and extending east between Lower Point Clear and Grand island, it being called *Grand Island pass* at that point, and is shown by the coloring and the depth of the water indicated on the chart. From this point it separates into two branches, one extending

northeast, in which branch we have no interest; and the other branch extending eastward, the one we are interested in, is indicated by a black line as it passes on between Cat island and Isle à Pitre, which black line carries with it certain sailing directions, designating it as the sailing line. This extension of the main Grand Island Pass channel by the *sailing channel*, succeeded by the *South Pass* and *Cat Island channels*, constitute the deep-water channel claimed by the State of Louisiana to be the proper boundary line between the States in this region. That it exists to-day there is no dispute. That it has existed for the past one hundred years and was in existence when and before Louisiana was created a State we shall now proceed to show, and the further fact that it is the same as the channel of today. As establishing this fact we find that the legislature of the State of Mississippi by an act approved February 14, 1839, provided for a survey of the Mississippi coast (Record, p. 2120, Mississippi document No. 99).

An engineer named John Wheeler was employed by his excellency A. G. McNutt, governor of the State of Mississippi to make this survey and a report embodying the same. The survey and report are given in full in the record (Record, p. 1145, document No. 73) and the deep-water channel which we have just been describing is shown in detail in the sketch (Record, p. 1148) the depths of water constituting the channel being given. A comparison of this sketch of 1839 with the Coast and Geoedetic Survey map No. 59 of today will show the channels indicated by each to be the same channel.

If we now refer to the map made by Mr. George Gauld, M. A., for the British admiralty in the year 1778, or long before Louisiana was created a State, (map No. 63, Louisiana Atlas of Maps, p. 56,) we note, from the relative depths of water given, the existence of this same channel extending out to the gulf of Mexico southwest of Cat island, showing it to be the same channel noted on the maps in subsequent

years and which in fact was used in part by the British in the war of 1812 in attacking the city of New Orleans (map No. 34a, Louisiana Atlas of Maps, p. 32) which shows that a large part of this channel was used in the instance of the expedition going in the direction of Pearl river from the gulf of Mexico. It is true that this force started from a point in the next eastward channel between Cat and Ship islands but they soon took up the deep-water channel of today, and it will be noted that another part of the force entered between Cat island and Isle á Pitre showing the existence then of that deep-water pass forming also a part of the channel of today.

This channel is the only deep-water channel between the points in question, namely the mouth of Pearl river and the open waters of the gulf of Mexico and although the State of Mississippi proved that you could sail through the Louisiana marshes in certain places with very light draft boats no recognized channel through them was proven to exist.

In support of this proposition we cite the testimony of two of Mississippi's own witnesses, Captains William Goranflo and John Walker.

Captain Goranflo (Record, pp. 1247–'8) testifies that the deep-water channel we have just described is the deep-water sailing channel; that there is no other channel; and that it has always been there.

Captain Walker (Record, pp. 1270 to 1275) testifies that he knows the deep-water channel; knows it to be the one contended for by Louisiana as the boundary line; knows that it existed as the deep-water channel in the year 1856; and knows of no other channel.

Mr. J. B. Baylor, an assistant of the United States Coast and Geodetic Survey, who happened to be detailed in Louisiana on some surveying work in the neighborhood of the disputed territory, testified in this case while he was in Louisiana. Mr. Baylor had been one of your honors' commissioners in the boundary settlement between the States of

Virginia and Tennessee. Mr. Baylor testified (Record, p. 418) that he was familiar with the disputed area; that he knew the deep-water channel and designated it with the letters C C on map No. 17 (Louisiana Atlas of Maps, p. 6); that he knew of no other channel and that there was no channel recognized as such, through the Louisiana marshes.

We have now shown the existence in the past and today of this deep-water channel. It carried into the open gulf of Mexico the waters brought down by Pearl river and it is only reasonable to suppose that geologically it has existed ever since Pearl river has been a river, as it had its functions to perform in connection with said river in carrying its waters to the sea and was in fact the child of the current of those waters, being created by them.

We will now undertake to show in support of our third proposition that this deep-water channel, for the following reasons:

1st. Is a boundary created by nature and that the soils separated by it and forming the limits of the two States are of natural geological difference.

2d. That it is the boundary line that was recognized by England, France, and Spain in their ancient treaties affecting their separate interests in this country.

3d. That it was the boundary line as recognized by the acts of Congress and treaties of the United States referring to this section of the country and dividing it up.

4th. That it was the boundary line so recognized by the States of Louisiana and Mississippi in all their acts as the boundary separating them.

5th. That it is the proper boundary line between the two States as recognized by all rules of international law.

We will therefore consider these propositions in the order stated.

First.

That the deep-water channel is a boundary created by nature and that the soils separated by it and forming the limits of the two States are of natural geological difference.

We feel that we can under this heading show that nature made the deep-water channel her boundary in this area and that the subsequent enactments of man were but a confirmation of this basic principle.

In the 136 U. S., 479, Indiana vs. Kentucky, some stress was laid upon the geological character of the territory in dispute as compared with that of the two States and this geological affinity and similarity was held to be confirmatory of other evidence in the case.

A glance at any of the general maps of the United States filed in this cause and appearing in the Atlas of Maps will show that the State of Louisiana lies between the States of Mississippi to the east and Texas to the west. All these States border on the gulf of Mexico, except in this, that Mississippi's main land borders on Mississippi sound, an arm of the sea or gulf of Mexico, formed by a chain of large islands extending westward from Mobile bay in Alabama to Cat Island channel, separating Cat island from Isle à Pitre in Louisiana. The southern portion of Louisiana is fanlike in shape, and geologically is of alluvial formation, containing the delta of the Mississippi river. A part of this delta formation is the peninsula of the parish of St. Bernard which extends out eastwardly, south of the waters of Lake Borgne and Mississippi sound.

Beginning at the northeast corner of Louisiana, the boundary separating her from the State of Mississippi to her east is the thread of the channel of the Mississippi river. This boundary extends southward until it reaches the 31st de-

gree of north latitude, whence it then runs directly east along this degree of latitude until Pearl river is reached. It then extends south along the channel of that river, until it reaches Lake Borgne. Pearl river flows into Lake Borgne, Lake Borgne into Mississippi sound, and Mississippi sound into the open gulf of Mexico through South pass, separating Cat island from Isle à Pitre. There is and always has been a thread of flow, or a well-defined deep-water channel or sailing line, extending from the mouth of Pearl river into Lake Borgne, north of Half Moon or Grand island into Mississippi sound, and thence, through that sound, along the same well-defined channel between Cat island and Isle à Pitre, north of Chandeleur islands into the open waters of the gulf of Mexico. As this deep-water channel is but a natural continuation of the channel of Pearl river, the admitted boundary between certain portions of Louisiana and Mississippi, Louisiana contends and has always contended that it is and always has been the correct boundary line separating her from the State of Mississippi in these waters.

These same maps show the Mississippi river to be the main outlet of the great watershed in the center of the United States, formed by the ranges of the Allegheny and Rocky mountains. The delta of this great river is in, and forms today, the southern part of the State of Louisiana. Dr. William C. Stubbs, State geologist of the State of Louisiana, (Record, pp. 332 *et seq.*) testifies at length and interestingly concerning the geological history and formation of the State of Louisiana. Briefly stated, the substance of his testimony is that the State of Louisiana is formed by the alluvion of the Mississippi river, gathered from the soil of the twenty-nine States and Territories drained by this river, deposited along the banks of the river when there were no levees and discharged into the gulf of Mexico at its mouth, each year forming land which never existed before. The small particles of earth are carried in suspension by the waters of the river so long as these waters are in motion, and the load is

dropped as soon as the movement of the waters is suspended, either by the water overflowing the banks or discharging into the comparatively still waters of the gulf of Mexico. At each annual rise of this mighty river, it would overflow its banks and deposit a layer of alluvion, decreasing in thickness as the distance from the banks increased. Lateral streams were formed where the river would break through its banks, and these streams would in turn overflow, forming banks on each side of them, which would be built up by the annual overflow and deposit of alluvion. That the Louisiana alluvion was characteristic and could be readily recognized by any geologist; that one of the lateral streams branching off from the Mississippi river in ancient times was Bayou Terre aux Bœufs; that it was this bayou and its branch called Bayou la Loutre that by the deposit of its suspended sediment or alluvion formed what is today the parish and peninsula of St. Bernard (Record, p. 334).

A glance at the United States geological map No. 18 (Louisiana Atlas of Maps, p. 7) will show that Isle à Pitre forms the northeastern extremity of the St. Bernard peninsula; that it was just to the west of, and immediately adjacent to the deep-water channel boundary line claimed by Louisiana at that point. Just across this deep-water channel, and the first land immediately to the east of it, is Cat island which is admitted by Louisiana, on the deep-water channel theory, to be the property of the State of Mississippi. After leaving the mouth of Pearl river and the channel between Grand or Half Moon and St. Joseph islands, this point between Isle à Pitre and Cat island is the first where other lands of the two States nearest approach each other in the whole course of this water boundary line. Samples were taken of the earth of Isle à Pitre and Cat island (Record, p. 298, testimony of Alfred C. Ruiz) and have been offered in evidence and appear in the original, that of Isle à Pitre as sample No. 1, and that of Cat island as sample No. 2. These samples were submitted to Dr. Stubbs as an expert. He at once recog-

ized sample No. 1 taken from Isle à Pitre, on the Louisiana de of the channel, as detritus or alluvion brought down by ie Mississippi river and belonging to the same geological ormation as the other parts of Louisiana. Sample No. 2, aken from Cat island, Dr. Stubbs recognized (Record, pp. 34 and 342) as being of an entirely different formation and ause from sample No. 1, he claiming sample No. 2 to be a and washed up by the waves from the sea, similar to that f the whole of Mississippi's chain of islands to the east-ard. We thus see two different geological formations, one n each side of this deep-water channel, the different forma-ons belonging to the two different States, so that the deep-ater channel seems to have been a recognition of a bound-ry created by nature, and separating formations of natural ifference and distinction. All of the Mississippi islands irting her shore are of this sea-sand formation, while all ose of Louisiana are of this alluvial formation created by ie deposit of sediment or detritus of the Mississippi river nd its lateral tributary bayous, such as those geologically reating the lands forming the disputed area, and as this haracter of soil is the basis of the formation of Louisiana a State, this deep-water channel as a boundary is a recog-tion of natural geological proprieties in the separation of ie two States.

Second.

That the deep-water sailing channel line is the boundary that as recognized by England, France, and Spain in their ancient reaties affecting their separate interests in this country.

The adoption by the Congress of the United States, in the eation of the State of Louisiana, of the line extending down e Mississippi river to the River Iberville and thence rough the middle of Lakes Maurepas and Pontchartrain to e sea, as one of the boundaries of that State was not a new ie established for the first time but was in fact an affirma-

tion and recognition of an ancient line long since established, which in its extension to the open sea must follow the deep-water channel that we have been discussing. That this is true is shown by the treaties that have been negotiated between the various foreign nations from time to time owning this country.

In the treaty of peace between England, France and Spain adopted February 10, 1716, the following language is found in article VII on the subject of the boundary line separating the dominions of England and France in the New World, to wit:

"That for the future, the confines between the dominions of His Britannic Majesty, and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea" (Record, p. 1008, document No. 13).

With the information shown on the map No. 24, bound into the Atlas of Maps, p. 10½, we see that the River Iberville is known today by the name of Bayou Manchac and that it is there called Manchac or Iberville river. (See also Record, p. 4, diagram No. 1.) In order for this line, passing through the middle of Lakes Maurepas and Pontchartrain, to reach the open *sea*, it was necessary for it to pass through what is now called the "Rigolets," just west of the mouth of Pearl river, and thence to follow the deep-water channel through the upper end of Lake Borgne, north of Grand, or Half Moon, island, through Mississippi sound, by the deep-water pass between Cat island and Isle à Pitre, north of Chandeleur islands into the open gulf of Mexico, which was then commonly known as the *sea*. There was no other rational route for the extension of such a line to take in describing the respective limits of the nations at interest. According to this treaty, England retained the port of Mobile and its river and

erything east of the Rigolets. The island of Orleans, rmed by the River Iberville, Lakes Maurepas and Pontartrain, the Rigolets, the gulf of Mexico and the Mississpi river remained the property of France.

This same boundary line is found in another translation this treaty (Record, p. 1009, document No. 14).

In the treaty between the same nations, on February 10, 63 (Record, p. 1010, document No. 15), practically the me language is used in describing the boundary line sepating the British from the French territory and stating hat belonged to each nation. In an extract from this aty (Record, p. 1863, Mississippi document No. 1) article X provides for the cession by Spain to England of Florida d all that Spain possessed on the continent of North nerica.

In the treaty of September 3, 1783, between England and ain (Record, p. 1865, Mississippi document No. 2) England les East and West Florida back to Spain.

Then by the treaty of St. Idelfonso of October 1, 1800, ain ceded to France—

"The colony or province of Louisiana with the same ext that it now has in the hands of Spain, and that it had ien France possessed it, and such as it should be after the aties subsequently entered into between Spain and other ites" (Record, p. 1012, document No. 17).

On April 30, 1803, France ceded to the United States the ony or province of Louisiana (Record, p. 1012, document . 17), using exactly the same description used by Spain ceding the territory to her, and adding in article II the clusion of the adjacent islands belonging to Louisiana.

In all of these transfers of this territory, there never was y question but that the peninsula subsequently known *the peninsula of St. Bernard was part of the island of leans*, and that this island of Orleans was in fact partly rmed by the extension to the sea of the boundary line

coming down through the middle of Lakes Maurepas and Pontchartrain and finding its way to the sea by the deep-water channel claimed by Louisiana to be the correct water boundary line, separating her from Mississippi, and which has in fact always existed as a boundary line separating and designating different ownerships of country as lying on the respective sides of said boundary line, which was thus recognized by these treaties to exist and to be a proper boundary line to designate and separate their respective domains.

Third.

That the deep-water channel was in fact recognized by the Congress of the United States in its legislation and in the treaties referring to this section of the country, as the proper boundary, and according to which it divided it up.

We will now endeavor to show that just as the treaties of foreign countries recognized, in the words used, the deep-water channel as necessarily forming in part a portion of the boundaries of the province of Louisiana, so did the early acts of the Congress of the United States and the treaties which Congress negotiated in regard to that territory.

We have clearly shown how Louisiana was described prior to her acquisition by the United States. It now becomes necessary for the purpose of this case to ascertain what limits the laws of the United States placed upon her domain.

On March 26, 1804, the Congress of the United States adopted an act dividing the country acquired as Louisiana from France into two parts. The pertinent portions of this act read as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all that portion of the country ceded by France to the United States under the name of Louisiana which lies south of the Mississippi Territory and of an east-and-west line to commence on the Mississippi river at the thirty-third degree of

north latitude, and to extend west to the western boundary of said cession, shall constitute a Territory of the United States under the name of the Territory of Orleans, the government whereof shall be organized and administered as follows:"

* * * * * * *

"SECTION 12. The residue of the province of Louisiana ceded to the United States, shall be called the district of Louisiana, the government whereof shall be organized and administered as follows:"

* * * * * * *

It is true that the boundary description here given is not very elaborate, yet the words used are sufficient to show that Congress intended to include in the Territory of Orleans not only what had constituted the island of Orleans on the left or east bank of the Mississippi river, and referred to in the original treaties, but also further additional lands west of said river, and south of the thirty-third degree of north latitude, but which are not of special interest to us in this case, and the present discussion.

Congress regarded the lands to the east, that were south of the Mississippi Territory and which form the disputed area of today, as part of the original island of Orleans referred to in the original treaties and included in its treaty with France of April 30, 1803, and these were given to the Territory of Orleans, and her southeastern boundary was the original southeastern boundary of the island of Orleans. At that date, the Mississippi Territory did not extend south of the thirty-first degree of north latitude, and its domain did not reach the shore of Mississippi sound or the locality of the disputed area until many years later, as we will see when we come to consider the limits of the Territory, and subsequently, of the State of Mississippi, as fixed by contemporaneous acts of Congress. As we have already stated the transfer of the province of Louisiana by France to the United States included the island of Orleans. We have heretofore given the boundaries of this so-called island.

These boundaries, when extended through the centers of Lakes Maurepas and Pontchartrain, followed Louisiana's present deep-water channel into the sea. It, therefore, appears from the above description of the Territory of Orleans, that what was subsequently called the St. Bernard peninsula was part of the Territory of Orleans, when the Territory of Mississippi had not yet been extended to the waters of Mississippi sound.

The Territory of Orleans remained as such until February 20, 1811, when an act of Congress was approved, entitled:

"An act to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes."

According to this act of Congress, the Territory to form the future State of Louisiana was described as follows:

"That all the inhabitants of that part of the territory or country ceded under the name of Louisiana by the treaty made at Paris on the thirtieth of April, one thousand eight hundred and three between the United States and France, contained with the following limits—that is to say:

"Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude, thence due north to the northernmost part of the thirty-third degree of north latitude, thence along said parallel of latitude to the *River Mississippi, thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico*, thence, bounded by said gulf, to the place of beginning, including all islands within three leagues of the coast, etc., etc." (Record, p. 1018, document No. 21). (Italics ours.)

It will be noted from the above that the same language is used in describing the eastern boundary as was used in the ancient treaties, namely: the *Mississippi river to the River Iberville and the middle of that river and Lakes Maurepas and Pontchartrain to the sea or gulf of Mexico*. It is to be ob-

served that this entire eastern boundary of the State of Louisiana is a *water boundary*. The conclusion is therefore irresistible that in extending this water boundary to the open sea or gulf of Mexico or in connecting the middle of Lakes Maurepas and Pontchartrain with the open gulf of Mexico, a water boundary would be used and this naturally contemplates the Rigolets (map No. 7, Louisiana Atlas of Maps p. 2) and the deep-water sailing channel line as being the only natural and rational extension of this boundary line to the open waters of the gulf of Mexico, reaching round to the westward.

And it will be remembered that this identical eastern boundary line was given to Louisiana when she was created a State a little over one year later by the act of Congress approved April 6, 1812 (Record, p. 1022, document No. 24).

And it will be further noted that the addition of territory to the State of Louisiana by the act of Congress approved April 14, 1812 (Record, p. 1023, document No. 25), to which additional territory being added to the State the legislature of Louisiana gave its consent (Record, p. 1024, document No. 26), that the addition of this territory, *did not in any way affect the deep-water sailing channel line as the boundary in the disputed territory*, for the moving of the part of the eastern boundary east to Pearl river caused the boundary line, as it emerged from the channel or mouth of that river, to take up and follow the extension of the already existing deep-water sailing channel line, all of which we have endeavored to set forth on the map Exhibit "E," (Louisiana Atlas of Maps, p. 60) to which we respectfully direct your honors' special attention.

We think this clearly shows a recognition by Congress of the deep-water sailing channel line as being the proper boundary in the disputed area. Yet as additional proof of this fact a study of the legislation of Congress shows that it was clearly the intention of Congress, in all of its early legislation, that the State of Mississippi, either as a State or

previously as a Territory, should have no rights in the neighborhood of the locality, the ownership of which Mississippi disputes today.

The Domains of Mississippi.

The first reference to Mississippi in the acts of Congress is the one approved April 7, 1798 (Record, p. 1014, document 18) entitled:

"An act for an amicable settlement of the limits with the State of Georgia and authorizing the establishment of a government in the Mississippi Territory" the pertinent part of which reads as follows:

"SEC. 3. *Be it further enacted*, That all that tract of country bounded on the west by the River Mississippi, on the north by a line drawn due east from the mouth of the Yassous to the Chattahoochee river, *and on the south by the thirty-first degree of north latitude* shall be, and is hereby constituted one district to be called the Mississippi Territory."

* * * * * * *

(Italics ours.)

The Mississippi Territory, therefore, did not extend south of the thirty-first degree of north latitude. This is in conformity with the treaty between Spain and United States adopted October 27, 1795 (Record, p. 1011, document No. 16), wherein the following language is found in article II, to wit:

"To prevent all disputes on the subject of boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to wit:

"The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi at the northernmost part of the thirty-first degree of latitude, north of the equator, which from thence shall be drawn due east to the middle of the River Apalachicola or Chattahoochee, thence along the middle thereof

to its junction with the Flint, thence straight to the head of the St. Mary's river, and thence along the middle thereof to the Atlantic ocean."

It was to determine this thirty-first degree of north latitude that commissioners were subsequently appointed by the governments of Spain and the United States, and the American representative, Andrew Ellicott's projection of the line of the thirty-first degree of north latitude is shown in maps Nos. 50 and 51 bound into Louisiana's Atlas of Maps, p. 46, showing that the rights of the United States did not at the time extend south of the thirty-first degree of north latitude at that point.

To further show that the extension of the Territory of Mississippi had not reached the coast of the gulf of Mexico up to 1811, we beg to now refer to an act of Congress approved January 15, 1811 (Record, 1021, document No. 23), whereby the President of the United States, with the consent of the local authorities or in the event that any foreign government attempted to exercise sovereignty over same, was authorized to occupy and take possession of that country lying *east* of the River Perdido and south of the State of Georgia and *Mississippi Territory*. The River Perdido, as will be seen from the maps of today is in the State of Alabama, east of the State of Mississippi and flows into the gulf of Mexico between Mobile bay in Alabama and Pensacola bay in Florida. Mississippi certainly could not claim to own as far south as Mississippi sound or have any rights in the disputed area, when the locality, possession of which the United States was seeking, was not even then in possession of the United States, and the territory mentioned in the act of Congress is a great distance to the east and therefore not in the neighborhood of the disputed territory, and in fact formed a part of what was called *East* Florida and was not a part of *West* Florida.

A few days later than the act just mentioned, or on March

3, 1811, there was approved an act of Congress (Record, p. 1020, document 22), whereby it was provided that the act of Congress of January 15, 1811, in regard to the President of the United States taking possession of the country *east of the Perdido river* and *south of* the State of Georgia and *the Mississippi Territory*, and that this act also, should not be published until the end of the next session of Congress, unless with the consent of the President of the United States.

The purpose of this act was evidently to prevent the government of Spain from knowing what the United States Government was doing in regard to East and West Florida, until matters took a more definite shape. This is indicated by the resolution of Congress approved January 15, 1811 (Record, p. 1025, document No. 27), whereby it was specifically declared that the United States could not permit any foreign government to control the country adjoining its southern boundary.

An act of Congress was approved April 25, 1812 entitled: "An act for ascertaining the titles and claims to land in that part of Louisiana which lies east of the River Mississippi and island of Orleans (Record, p. 1025, document No. 28). In this act it clearly appears that the Mississippi Territory had not yet come south of the thirty-first degree of north latitude as the country mentioned in said act as part of Louisiana is divided into two land districts, which are designated as being separated by Pearl river, and are both said to be *south of the Mississippi Territory*.

There was approved, however, on May 14, 1812, or thirty-eight days subsequent to the creation of the State of Louisiana, on April 6, 1812, an act of Congress which proposed to enlarge the boundaries of the Mississippi Territory, (Record, p. 1027, document No. 30) using the following language, to wit:

"That all that portion of the territory lying east of Pear river, west of the Perdido, and south of the thirty-first degree of latitude be, and the same is hereby annexed to the Mississippi Territory, etc." * * *

Confining the added territory to that east of Pearl river was a recognition of the fact that the country west of Pearl river had already been added to the State of Louisiana by a previous act of Congress. It is very much to be doubted, however, if the country thus proposed to be added to the Mississippi Territory was actually at the time, that is, May 14, 1812, really in the possession of the United States Government to be so added, because it was only on February 13, 1813, or nine months later, that Congress passed an act entitled, "An act authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory, and west of the River Perdido (Record, p. 1027, document No. 29). In this act this country west of the Perdido, and which would mean the country east of Pearl river, for that west of Pearl river had already been incorporated into the State of Louisiana by an act of Congress concerning which there was no concealment, was spoken of as not then, February 12, 1813, being in possession of the United States Government, and the act was passed for the purpose of enabling the President to actually take possession of it. No southern boundary is mentioned in reference to this addition to the Mississippi Territory, but it is not to be presumed that it extended south of the north shore of Mississippi sound, because the St. Bernard peninsula lying to the south already formed a part of the State of Louisiana.

Admitting, however, that Mississippi did have the country south of the thirty-first degree of north latitude, and east of Pearl river added to her domains on May 14, 1812, it was subsequent to the fixing of the limits of the State of Louisiana, and even if her domains extended to the shores of Mississippi sound at that time, there was absolutely no conflict between her boundary and that of the State of Louisiana as set forth in the acts of Congress of the United States, because it was only in 1817 that reference was first made to islands within six leagues of her shore.

The present ground or basis of dispute on the part of the

State of Mississippi arises with the adoption by Congress of an act approved March 1, 1817, or five years after the State of Louisiana was admitted into the Union, entitled, "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government and for the admission of such into the Union on an equal footing with the original States" (Record, p. 1028, document No. 31), wherein, in describing the boundaries of the area to be included in the State to be formed, the act of Congress uses the following language in reference to the southern boundary in its extension from east to west, as the eastern boundary of the proposed State reaches the gulf of Mexico, to wit:

"Thence due south to the gulf of Mexico; thence westward, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne; thence up said river to the thirty-first degree of north latitude, thence west along said degree of latitude to the Mississippi river, thence up the same to the beginning."

The words, "including all islands within six leagues of the shore," is the legislation on which counsel for Mississippi hang all their hopes as injecting an element of uncertainty in the description of the boundaries of the two States. If these words were introduced in this Mississippi act by Congress because of any lack of familiarity by Congress with the locality being divided up, their presence would not give to Mississippi islands which had been given to Louisiana by acts of Congress adopted many years previous.

Darby, the expert cartographer, to whose map of 1816 we have previously alluded, and who perhaps of all other cartographers, engineers and surveyors, was from his extended experience in the vicinity of Louisiana and Mississippi better and more thoroughly acquainted with the topography of that section, then so remote, difficult of access, and comparatively unknown to the then law-givers, surveyors, and people

generally of the United States says in his letter press accompanying his 1817 second edition map:

"*The islands of Malheureux, Marianne, and Cat island are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possession of each State*" (Record, p. 1140). (Italics are our own.)

This calls attention to the error, if error it be, of Congress, and the oversight consists not "in framing the respective acts" for the admission of the two States, but in the drafting of the Mississippi act, more than five years after the Louisiana act, and embracing in the Mississippi act, islands which had already been granted to Louisiana. The oversight probably arose in this way: That Congress in defining the southern boundary of Mississippi as "thence westward, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne" overlooked the fact that as this southern boundary line of Mississippi approached the eastern mouth of Pearl river, the space and area of water between the northern coast of St. Bernard in Louisiana, and the southern shore of Mississippi near that point, was less than ten miles in width, and breadth, and that the islands granted to Louisiana more than five years before, were within three leagues or nine miles of her coast, and that the six leagues from the shore of Mississippi could not, at this point, be allowed without interfering with the prior grant to the State of Louisiana. And it is to be borne in mind that the second edition of Darby's map, and the letter press from which this extract is taken were both published in 1817, almost contemporaneously with the admission of Mississippi into the Union in the same year.

We shall presently show, however, that the presence, in the Mississippi act of the words referring to the islands, with a possible proper and legitimate construction, introduces

no element of confusion or uncertainty in the description of the boundaries of the two States. It will be noted, however, from the extract from the Mississippi act just quoted, that the eastern mouth of Pearl river, the thirty-first degree of north latitude, and the Mississippi river, previously fixed as forming the system of Louisiana's eastern boundary, are recognized, which shows an intention on the part of Congress not to interfere with the limits and domain of the State of Louisiana as already fixed and determined, and is we contend an affirmation of the correctness of our proposition that Congress intended in her acts to recognize the deep-water channel as the true boundary between the two States in this section.

Fourth.

That the deep-water channel as the boundary line was so recognized by both States of Louisiana and Mississippi as limiting their respective domains.

We would propose here to show that both the States of Louisiana and Mississippi have, in many of their previous official acts as States, recognized the deep-water sailing channel line as the proper boundary between them, in the disputed area. This recognition, respectively, by the States of Louisiana and Mississippi of the deep-water channel as the boundary line separating them, is shown by their acts in relation to the territory respectively on each side of this line, the one State claiming and exercising ownership in the area south and the other State claiming and exercising ownership in the area north of said deep-water channel, and in fact the volume of evidence in the record on this subject is overwhelming. We, however, propose in our discussion of this case to devote a branch to the special consideration of the subject of Louisiana's acquisition of her rights to the disputed territory by *prescription and usucaption* and to show

that the State of Mississippi has, not only acquiesced in Louisiana's ownership, but has officially recognized the same and we shall therefore defer any further discussion of this branch for the present and take it up under the special heading devoted to it.

Fifth.

That the deep-water sailing channel is the proper boundary line between the two States recognized by all rules of international law.

Aside from the documentary and other evidence which we have adduced, we think it plain that under the principles of international law that the boundary between these two States in this region should be fixed at the deep-water channel between the two States. The principles of international law have always been regarded and applied by this honorable court to boundary questions between the various States of the Union with as much force as international law is applied to States or nations foreign to each other, and as late as Kansas *vs.* Colorado, 185 U. S., 146, in deciding a question between those two States this honorable court said that, "Sitting as it were as an international, as well as a domestic tribunal, we apply Federal law, State law, and international law as the exigencies of the particular case demand." But, before quoting the commentators and decisions it will be well for us here to fix in advance the terminology of the various waters which will be mentioned in the international authorities. For instance the bodies of water adjoining the area in dispute herein are commonly known and called Lakes Borgne and Pontchartrain, taking the names of lakes from the French word "lac" which includes under that appellation estuaries or inlets of the sea, in this case, the gulf of Mexico, partly enclosed by

land as we will see in some of the quotations which we shall hereafter make.

Littré Dictionnaire de la Langue Française gives the definition of "lac" to be:

"Grand espace d'eau qui se trouve enclavé dans les terres."

But, in English such bodies of salt water would not be called lakes but estuaries, inlets or arms of the sea or gulf. Webster's International Dictionary defines "lake" to be "a large body of water contained in a depression of the earth's surface, and supplied from the drainage of a more or less extended surface." And the Century Dictionary and Encyclopedia defines "lake" to be "a body of water surrounded by land, *or not forming a part of the ocean* and occupying a depression below the ordinary drainage level of the region. Lakes are depressions or basins filled by streams flowing into them." (Italics are our own) "Inlet" is defined by Webster's International Dictionary to be "a bay or recess, as in the shore of a sea, lake, or a large river; a narrow strip of water running into the land or between islands." The Century Dictionary and Encyclopedia defines "inlet" to be "a water-way leading into a sea or a lake and forming part of it." This is also the definition in the English and American Encyclopedia of Law, volume 18, p. 130, taken from Black's Law Dictionary. "Sound" is defined by Webster's International Dictionary to be "a strait connecting two seas or connecting a sea or a lake with the ocean." The Century Dictionary and Encyclopedia gives "sound" as "a narrow passage of water, not a stream between the mainland and an isle, or a strait connecting two seas or connecting a sea and a lake, or connecting a sea or lake with the ocean." In 34 Louisiana's Annual, 838, the supreme court of Louisiana decided that Lake Pontchartrain, so called, is an arm of the sea.

The English and American Encyclopedia of Law, volume 2 (2d edition), p. 828, defines "arm of the sea:" "This

phrase designates a navigable body of water, where the tide flows and reflows, and so far only as the tide flows and reflows," and in notes 1 and 2 authorities are cited showing that "sounds" are arms of the sea.

Littré Dictionnaire de la Langue Française gives the definition of "arm of the sea" as follows:

8°. "Bras de mer" as "détroit, Ils sont separés par un bras de mer."

The meaning of the word "sea" in the treaty of peace of 1783, between the United States and Great Britain defining the boundaries of the United States, was given by the American claim, and acquiesced in by the British as follows: "The term 'sea' in its general sense embraced the whole body of salt waters. Its great subdivisions were designated by the names Atlantic ocean, Pacific ocean, etc. Each of them generically embraced all the bays, gulfs and inlets formed by the indentures of its shores or by adjacent islands." (Moore's International Arbitration, vol. 1, p. 102); and the bay of Fundy, the gulf of St. Lawrence and the bay of Chaleurs were considered parts of the sea (*ibid.*, pp. 114, 158, and note 3). Seashore has been frequently defined to be that portion of the land adjacent to the sea which is covered by the highest tides.

"Coast is defined to be the seaboard of a country" (Eng. and Am. Encyc. of Law, vol. 6, p. 171).

"In the Anna 5, C. Rob. (reprint 332, p. 373, orig.), on the question as to whether small mud islands at the mouth of the Mississippi, composed of earth and trees drifted down by the river, were part of the United States, Sir William Scott said, 'I think that the protection of territory is to be reckoned from these islands, and that they are the natural appendages of the coast on which they border and from which indeed they are formed."

And held the islands to be a part of the coast of the United States (Eng. and Am. Encyc. of Law, vol. 16 (2d edit.), p. 1131.) The Anna was captured on the outer side of one of these islands, which were estimated to be from two and a half to five miles from the mainland, and yet the islands were considered a part of the coast.

Mr. Justice Story in Thomas and Hatch, 3 Sumner, 178, defined "shore" to be the space between the margin of the water at a low stage, and the banks to be what it contains in its greatest flow; Lord Hale defined it as synonymous with flat; Mr. Justice Parker does the same in 6 Mass., 436, 439, and Chief Justice Marshall described the shore of a river as bordering on the water's edge. (See 23 Howard, 513, Alabama *vs.* Georgia.)

"Thalweg" a term now universally used by international law-writers to define water boundaries between States and nations, is a German word composed of two separate words, "thal," a valley, and "weg" way, meaning the middle or the deepest or most navigable channel. We have in English no one word which is its exact equivalent, but it is sometimes rendered as "fairway" or "midway" and "main channel."

Littre Dictionnarie de la Langue Française gives as a definition of canal—

"5me. Lit d'une riviere—Le fleuve offre partout un canal tranquille semblable a ces fluves qui se creussent un nouveau canal"

"6me. Reviere creusée du main d'homme."

Verbo "chénal 1er Passage practiqué dans une riviere ou a l'entrée du port. * * * Forme ancienne de canal."

Having given these preliminary definitions of the terms which we shall find used in the various extracts from the commentators or other authorities on international law which, we now propose to show, uniformly support

our contention, that the deepest navigable channel, or "thalweg" in sounds, bays or arms of the sea constitutes the boundary between riparian States and nations, we beg to refer to these authorities as follows:

Halleck's International Law, or Rules Regulating the Intercourse of States in Peace and War. A new edition, revised, with notes and cases, by Sir Sherston Baker, Bart., of Lincoln's Inn, barrister-at-law. London, 1878.

Vol. 1, chap. VI, p. 145.

No. 23. A river which flows, for its entire length, through the territory of a State, is regarded as forming part of its dominion, including the bays and estuaries formed by its junction with the sea. Where the entire portion of a navigable river is included within a single State, the part so enclosed is undoubtedly the property of such State. Where a navigable river forms the boundary of coterminous States, the middle of the channel—the *filum aquæ* or *thalweg*—is generally taken as the line of their separation, the presumption of law being, that the right of navigation is common to them both. But this presumption may be rebutted or destroyed by actual proof of the exclusive title of one of the riparian proprietors to the entire river. Such title may have been acquired by prior occupancy, purchase, cession, treaty, or any one of the modes by which other public territory may be acquired. But where the river not only separates the coterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in

which case the dividing line would be the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river and its bays would follow the same rule.[1]

No. 24. Where the dividing line of two States is water, as a river or lake, which is subject to changes, important questions may arise respecting the rights of property. Thus, where, by a gradual and insensible movement, the water advances on one side and recedes on the other, or by detrition on one side and deposit on the other, a portion of the soil is gradually transferred, there is evidently a loss to one State and an increase to the other. So also, where islands are washed away on one side of the channel, and new ones formed on the other, there is a corresponding change of territory. Again, suppose that the river or lake which constitutes the boundary has suddenly changed its bed, will this change produce a corresponding increase or diminution of territory to the adjacent proprietors? The Roman law determined with great care the effect of changes in the distribution of waters upon the ownership of private lands; and the influence of this law is manifest in the rules adopted by publicists with respect to international property.[2]

No. 25. Where the moving of the dividing water is so gradual as to be almost insensible, the changes produced are

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[1] Gundling, *Jus Nat.*, p. 248; Wolfius, *Jus Gentium*, Nos. 106–107; Stypmannus, *Jus Marit.*, etc., cap. V, n. 476–552; Merlin, *Repertoire*, voc. "alluvium;" Rayneval, *Droit de la Nature*, tome I, p. 307; De Cussy, *Droit Maritime*, liv. I, tit. II, No. 57.

[2] Rayneval, *Inst. de Droit Nat.*, liv. II, ch. XI; Pothier, *Œuvres de*, tome X, pp. 87, 88; Voet, *ad Pandects*, tome I, pp. 606, 607; Heineccius, *Recitaciones*, lib. II, tit. 1, Nos. 356–369; *Las Siete Partidas*, part. III, tit. p. 101; Gomez, *Elementos*, lib. II, tit. IV, No. 3; *Febrero Mexicana*, tome I, p. 161; *Sala Mexicana*, tome II, p. 62; Justinian, *Inst.*, lib. II, tit. I, Nos. 20–24; De Camp's *Manuel des Prop. Riv.*, passim; Chardon, *Droit á Alluvion*, passim.

not considered as acquisitions and losses of property, but the natural consequences of property already existing; because, the thing owned is naturally susceptible of this physical increase or decrease. In such a case, whether the dividing water belongs entirely to one State, or the boundary is the middle or *thalweg*, each party gains or loses accordingly as the increase or decrease is upon its side. The same rule applies to the gradual removal or formation of islands in a river or lake which divides States, or in a sea, within the territorial limits or *ligne de respect* of a State bordering upon the ocean. Moreover, a State has a certain right of preëmption to islands formed adjacent to its coast, even outside of this line of respect. But the case is very different where the river abandons its ancient bed and forms a new channel, or where a lake leaves its former banks and forms a new lake, or a series of new lakes; the boundaries of the State remain in the abandoned bed of the river, or the position formerly occupied by the lake.[1]

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[1] Grotius, De Jur. Bel. ac. Pac., lib. vii, chap. iii, No. 17; Ortolan Dominie International, Nos. 85–93; Heffter, Droit International, No. 69, note; Gunther, Europ. Volkerrecht, t. ii, p. 57; Pestel, Commentarii de Repub. Batav., No. 268; Bowyer, Universal Public Law, ch. xxviii; Riquelma, Derecho Pub. Int., lib. i, tit. i, chap. iv; Bello, Derecho Internacional, pt. i, cap. iii; Pando, Derecho Internacional, p. 99; Almeda, Derecho Publico, tome i, p. 199; Cushing, Opinions U. S. Att'ys Gen'l, vol. viii, p. 175; Crittenden, Opinions U. S. Att'ys Gen'l vol. v. pp. 264, 412; Puffendorf, De Jur. Nat. et Gent., lib. iv, chap. v, No. 8; Wolfius, Jus Gentium, Nos. 108, 109; Proudhon et Dumay, Domaine Public, tome iv, ch. lvi, sec. 7.

Extracts from "First Steps in International Law," by Sir Sherston Baker, Bart., London, 1899.

"Navigable Rivers as Boundaries," p. 68, No. 23.

A river which flows, for its entire length through the territory of a State, is regarded as forming part of its dominion, including the bays and estuaries formed by its junction with the sea. Where the entire upper portion of a navigable river is included within a single State, the part so enclosed is undoubtedly the property of such State. Where a navigable river forms the boundary of conterminous States, the middle of the channel—the *filum aquæ*, or *thalweg*—is generally taken as the line of their separation, the presumption of law being, that the right of navigation is common to them both. But this presumption may be rebutted by proof of the exclusive title of one of the riparian proprietors to the entire river. Such title may have been acquired by prior occupancy, purchase, cession, treaty, or any one of the modes by which other public territory may be acquired. Where the river not only separates the conterminous States, but also their territorial jurisdictions, the *thalweg*, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river, and its bays, would follow the same rule. A difference of opinion having for many years existed between Great Britain and the United States as to the meaning of the words "the middle of the channel," in the treaty of Washington of June 15, 1846, the matter was referred to the Emperor of Germany.

The treaty provided that the line of the boundary on the 49° parallel should be continued "westward along the said parallel of north latitude to the middle of the channel which separates the continent from Vancouver's island, and thence through the middle of the said channel and of Fuca straits to the Pacific ocean." In the middle of this channel lay the island of San Juan. Both countries contended for this island. The question was whether this channel should be run, as claimed by the British government, through the Rosario straits or through the canal of Haro, as claimed by the Government of the United States. The emperor gave his award in favor of the United States, October 21, 1872. But there is reason to believe that, had the fact of an existing third and middle channel dividing the group of islands been made part of the question, the emperor would have selected the middle channel.

Changes in Dividing Rivers and Lakes.

No. 24. Where the line of two States is water, as a river or lake, which is subject to changes, important questions may arise. Thus, where by a gradual and insensible movement, the water advances on one side and recedes on the other, or by detrition on one side and deposit on the other, a portion of the soil is gradually transferred, there is evidently a loss to one State, and an increase to the other. So, also, where islands are washed away on one side of the channel, and new ones formed on the other, there is a corresponding change of territory. Again, suppose that the river or lake which constitutes the boundary has suddenly changed its bed; will this change produce a corresponding increase or diminution of territory to the adjacent proprietors?

Effects on Boundaries.

No. 25. Where the moving of the dividing water is so gradual as to be almost insensible, the changes produced

are not considered as acquisitions and losses of property, but the natural consequences of property already existing; because the thing owned is naturally susceptible of this physical increase or decrease. In such a case, whether the dividing water belongs entirely to one State, or the boundary is the middle or *thalweg*, each party gains or loses accordingly as the increase or decrease is upon its side. The same rule applies to the gradual removal or formation of islands in a river or lake which divides States, or within the sea, within the territorial limits or *ligne de respect* of a State bordering upon the ocean. Moreover, a State has a certain right of preëmption to islands formed adjacent to its coast, even outside of this line of respect. But the case is very different where the river abandons its ancient bed and forms a new channel, or where a lake leaves its former banks and forms a new lake, or a series of new lakes; the boundaries of the State remain in the abandoned bed of the river, or in the position formerly occupied by the lake.

International Law: A Simple Statement of its Principles. By Herbert Wolcott Bowen. The Knickerbocker Press, G. P. Putnam's Sons, 1896.

29 (Page 10).

Filum Aquæ or *Thalweg*.

When nations are separated by water the middle of the channel (*filum aquæ* or *thalweg*) that is best adapted for navigation is the boundary line between them. In the absence of a superior channel, the middle of the stream is the boundary line, unless a larger title can be proved by one of the nations.

First Platform of International Law, by Sir Edward Shepherd Creasy, M. A., Professor of Jurisprudence in the Hon. The Four Inns of Court, Late Chief Justice of Ceylon, Emeritus Professor of History in University College, London; Sometime Fellow of King's College, Oxford. Printed at London, 1876.

Rule when a Navigable River is a Boundary, p. 221.

No. 230. "Where a navigable river forms the boundary of conterminous States, the middle of the (navigable) channel, the *thalweg*, is generally taken as the line of their separation, the presumption of law being that the right of navigation is common to them both.[1] But this presumption may be rebutted by actual proof of the exclusive title of one of the riparian proprietors to the entire river."[2] For, "a nation which has established itself upon one of the banks of a river prior to the occupation of the opposite bank by any other nation, may, with a view to its own security, reduce the channel of the river into possession without occupying the other bank. It may for this purpose either station an armed fleet upon its waters, and thereby occupy the fairway of the river, or it may erect armed forts upon its own bank and thereby command the fairway; and in either case it will be able effectively to exclude all other nations from the use of the river." That a nation which is settled on one only of the banks of a river may nevertheless have a right of empire over the entire river, is noticed by Grotius.[3] But though,

[1] Halleck, p. 138.

[2] Travers Twiss, p. 201.

[3] The original passage in Grotius is, "Quanquam res in dubio, ut diximus, imperia ad medietatem fluminis utrinque pertingunt, fieri tatem potuit, et contigisse alicubi videmus, ut flumen totum parti uni accederet, quia scilicet ripæ alterius imperium serius occupato jam flumine coepisset; aut quia eum in modum pactionibus esset definita." Lib. 2, c. iii, sect. 18.

as I have said in case of any "doubt, the jurisdiction on each side reach to the middle of the river that runs between them, yet it may be, and in some places it has actually happened, that the river belongs wholly to one party, either because the other nation had not yet possession of the other bank until later, when their neighbors were already in possession of the whole river, or else because matters were so stipulated by some treaty." The sanction, which Usucapion, or established possession, in such a case gives to the claim of a nation to exclude other nations from the use of a river, has not been overlooked by Vattel: "A long and undisputed possession establishes the right of a nation, otherwise there could be no peace, no stability between them; and notorious facts must be admitted to prove possession. Thus, when from time immemorial a nation has without contradiction exercised the sovereignty upon a river which forms its boundary, nobody can dispute with that nation the supreme dominion over it."[1]

The *Thalweg* and the *Medium Filum*.

No. 231. It has been stated that where a navigable river separates neighboring States, the *thalweg*, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water, the *medium filum aquæ*, was regarded as the boundary line; and it will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now ordered to be the line of demarcation. Dr. Travers Twiss[2] on this subject quotes and agrees with Kluber:—"Pour ce qui est des fleuves et lacs frontieres, dont la rive opposee est

[1] Travers Twiss, p. 202.
[2] P. 206, citing Kluber "Droit des Gens," sect. 133.

également occupée, leur milieu, y compris les îles que traverse la ligne du milieu, separe ordinairement les territories. Au lieu de cette ligne on a nouvellement choisi pour frontiere le '*thalweg*' c'est-a-dire le chemin variable que prennent les bateliers quand ils sont aval, ou plutot le milieu de ce chemin." He goes on to observe that "Grotius and Vattel speak of *the middle of the river* as the line of demarcation between two jurisdictions, but the modern publicists and statesmen prefer the more accurate and more equitable boundary of the navigable *mid-channel*. If there be more than one channel of a river, the deepest channel is regarded as the navigable mid-channel for the purpose of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed.

The islands on either side of the mid-channel are regarded as appendages to either bank; and if they have once been taken possession of by the nation to whose bank they are appendant, a change in the mid-channel of the river will not operate to deprive the nation of its possession, although the water-frontier line will follow the change of the mid-channel."

Common Cause of Dispute when River Flows Through Other Territories.

No. 232. The chief disputes connected with rivers have arisen in cases where a navigable river, during part of its course, flows through the territory of a State, or forms its boundary, that river having passed or passing through the territory of some other state before it reaches the sea."

Pages 221–224, Inclusive.

The Law of Nations, Considered as Independent Political Communities by Sir Travers Twiss, D. C. L., Regius Professor of Civil Law in the University of Oxford and One of Her Majesty's Counsel. Printed at Oxford and London, 1869.

Territorial Seas Distinguished from Jurisdictional Waters.

Paragraph 2; section 174; page 251. Puffendorf,[1] to the same effect says, "that gulfs and channels or arms of the sea are, according to the regular course, supposed to belong to the people with whose lands they are encompassed." Whenever a nation has an exclusive right over an entire sea, or over a bay, or over straits, no other nation can claim a right of navigation therein against its will. But in case the opposite sides of a bay or strait are inhabited by different nations, each nation has a right to go to the central line, drawn at low-water mark, as the limit of its maritime territory.[2] But although the territorial limit of either nation for purposes of absolute jurisdiction may not extend beyond the central deep-water line, yet the right of *innocent use* of the entire bay or strait for the purposes of navigation or passage may be common to both nations. Such a right does not destroy the territorial jurisdiction of each nation as far as the middle of the stream, but it is in the nature of an *easement*, as it is called in English law, or a *servitude*, as it is termed in the Roman law.[3] It is in fact analogous to the right of *private way* over the land of another. The right of passage and navigation must exist as a common

[1] De Jure Belli et Pacis, L. 11, c. 3, No. 8; Law of Nature and of Nations, L. IV, c. 5, No. 8.

[2] Note 2, *ibid.*

[3] Note 3, Instit. 11, tit. 3. De Servitutibus. Hugo, historie de Droit Romain, t. 1, No. 202. Kluber.

right in all those cases, where such passage or navigation is ordinarily used by both nations, and is indispensable for their common access to their own shores. A river or bay may be so narrow, or so irregular, or so liable to difficulties from winds, waves and currents, that it cannot be navigated by either nation, without each having a right of passing over the whole waters at all times. If in such a case no exclusive right is recognized in either nation the constant use by both is a conclusive proof of a common right of passage and navigation in both.

A Treatise on International Law, by William Edward Hall, M. A. Fifth Edition. Edited by J. B. Atlay, M. A., of Lincoln's Inn, Barrister-at-law. Oxford and London. 1904.

Boundaries of State Territory, Page 122.

The boundaries of State territory may consist either in arbitrary lines drawn from one definite natural or artificial point to another, or they may be defined by such natural features of a country as rivers or ranges of hills. In the latter case more than one principle of demarcation is possible; certain general rules therefore have been accepted which provide for instances in which from the absence of express agreement or for other reasons there is doubt or ignorance as to the frontier which may justly be claimed. Where a boundary follows mountains or hills, the water divide constitutes the frontier. Where it follows a river, and it is not proved that either of the riparian States possesses a good title to the whole bed, their territories are separated by a line running down the middle, except where the stream is navigable, in which case the center of the deepest channel, or, as it is usually called, the thalweg, is taken as the boundary. In lakes, there being no necessary track of navigation,

the line of demarcation is drawn in the middle. When a State occupies the lands upon one side of a river or lake before those on the opposite bank have been appropriated by another power, it can establish property by occupation in the whole of the bordering waters, as its right to occupy is not limited by the rights of any other State; and as it must be supposed to wish to have all the advantages to be derived from sole possession, it is a presumption of law that occupation has taken place. If, on the other hand, opposite shores have been occupied at the same time, or if priority of occupation can be proved by neither of the riparian States, there is a presumption in favor of equal rights, and a State claiming to hold the entirety of a stream or lake must give evidence of its title, either by producing treaties, or by showing that it has exercised continuous ownership over the waters claimed. Upon whatever grounds property in the entirety of a stream or lake is established, would it seem in all cases to carry with it a right to the opposite bank as accessory to the use of the stream, and perhaps it even gives a right to a sufficient margin for defensive and revenue purposes, when the title is derived from occupation, or from a treaty of which the object is to mark out a political frontier. In 1648 Sweden, by receiving a cession of the River Oder from the empire under the treaty of Osnabruck, was held to have acquired territory to the exaggerated extent of two German miles from its bank as an inseparable accessory to the stream; and in the more recent case of the Netze in 1773 Prussia claimed with success that the cession of the stream should be interpreted to mean a cession of its shore. Where, however, the property in a river is vested by agreement in one of two riparian States for the purpose of bringing to an end disputes arising out of the use of its waters for mills and factories, as in the case of a treaty concluded in 1816 between Sardinia and the Republic of Geneva, by which the Foron was handed over to the latter,

it would be unreasonable to interpret a convention as granting more than is barely necessary for its object.[1]

Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the

[1] Grotius, lib. ii, c. iii, No. 18; Wolff, Jus. Gentium, Nos. 106–107; Vattel, liv. i, ch. xxii, No. 266; De Martens, Precis, No. 39; the Twee Gebroeders, iii, Rob., 339–40; Bluntschli, Nos. 297–8, 301; Twiss, i., Nos. 143–4. An instance of property by occupation is afforded by the occupation of the River Paraguay between the territory of the Republic of Paraguay and the Gran Chaco, which was effected by the Republic, and maintained until after the war with Brazil and the Argentine Confederation.

Sir Travers Twiss points out with justice that the doctrine which regards the shore as attendant upon the river, when the latter is owned wholly by one power, might lead, if generally applied, to great complications; and indicates that when it is wished to keep the control of the river in the hands of one only of the riparian owners, it is better to make stipulations such as those contained with respect to the southern channel of the Danube in the treaty of Adrianople, than to allow the common law of the matter to operate. By that treaty it was agreed that the right bank of the Danube from the confluence of the Pruth to the St. George's mouth should continue to belong to Turkey, but that it should remain uninhabited for a distance inland of about six miles, and that no establishments of any kind should be formed within the best of land thus marked out. Stipulations of such severity could rarely be needed, and in most cases could not be carried out; but the end aimed at, viz., the prevention of any use of the borders of the river for offensive or defensive purposes, and of any interference with navigation, could be obtained by prohibiting the erection of forts within a certain distance of the banks, and if necessary by specifying the places to which highlands or railways might be brought down.

shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water, and either form a line more or less parallel with land or compose systems of their own, in both cases enclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba, the Archipielago de los Canarios stretches from sixty to eighty miles from the mainland to La Isla de Pinos; its length from the Jardines bank to Cape Frances is over a hundred miles. It is enclosed partly by some islands, mainly by banks, which are always awash, but upon which as the tides are very slight, the depth of water is at no time sufficient to permit of navigation. Spaces along these banks, many miles in length, are unbroken by a single inlet; the water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait, twenty miles or so in width, but not more than six miles of channel intervene between two banks, which rise to within seven or eight feet from the surface, and which do not consequently admit of the passage of sea-going vessels. In cases of this sort the question whether the interior waters are, or are not, lakes enclosed within the territory, must always depend upon the depths of the banks, and the width of the entrances. Each must be judged upon its own merits. But in the instance cited, there can be little doubt that the whole Archipielago de los Canarios is a mere salt-water lake, and that the boundary of the land of Cuba runs along the exterior edge of the banks.

"Programme d'un Cours de Droit des Gens pour servir a L'Etude privee et aux Lecons Universitaires, par Alphonse River, Professeur de Bruxelles." Printed at Paris and Bruxelles, 1889.

Section 14. Les Frontiers.

Page 46—2 Montagnes frontieres: ligne de faite. Rivieres: la frontiere peut etre sur l'une des rives (ci-dessus, section 13). Si elle est dans le lit de la riviere, c'est, d'apres les traites recents, generalement le *thalweg*, c'est-a-dire la ligne la plus profonde selon laquelle se dirige le fil de l'eau. Changement de lit; ile, pont. Frontieres dans les lacs, dans la mer.

Translation.

Section 14. The Frontiers.

Page 46. 2 frontier mountains; actual line. Rivers; the frontier can be on one of the banks (as below in section 13). If it is in the bed of the river, it is according to recent treaties, generally the *thalweg*, that is to say the deepest line according to which the thread of the water directs itself. Change of the bed; island bridge. Frontiers in the lakes, in the sea.

De Marteus, Droit des Gens., tom. 1, (2eme edit.) No. 39, p. 134, lays down the rule that where ordinary unnavigable rivers form the boundary between two States, "que chacune des deux nations est maîtresse de la rivière et des îles qui s'y trouvent jusqu' au milieu de la rivière * * * Dans les fleuves navigables, c'est le courant du fleuve qu'on a communement en vue, en convenant de prendre le milieu pour limite." Thus adopting the channel theory, or fixing the boundary line "*usque ad filum.*" In section No. 40, p. 141, under the heading of "Des Détroits de Mer, des Golfes,

et de la Mer voisine" the same author says "Ce qui vient d'être dit des rivières et des lacs est également applicable aux détroits de mer et aux golfes, surtout en tant que ceux-ci ne passent pas la largeur ordinaire des rivières, ou la double portée du canon" and he cites in the foot-note (*b*) Pfeffel Principes du Droit Naturel liv. III, chap. IV, § 15; Pestel Selecta Capita Juris gentium maritimi. § 9; Gunther L.V.R. 1, II, p. 38 et suiv.

Translation.

"That each of the two nations is mistress of the river and the islands which are situated in the middle of the river. * * * In navigable rivers it is the current of the river which is commonly had in view in agreeing to take the middle for the boundary." * * * "What we have just said in regard to rivers and lakes is equally applicable to the straits or gulfs of the sea, especially those which do not exceed the ordinary width of rivers or double the distance that a cannon can carry."

Lorsqu'une rivière forme la limite, et qu'elle n'est pas devenue propriété exclusive d'un des états riverains, on admêt dans la doute que la frontière passe par le milieu de la rivière.

Le thalwege des rivières navigables est dans le doute regarde comme le milieu" & in the note "le mot allemand *thalweg* est même devenu français depuis le traité de Lunéville, 9 fevrier, 1801, art. III" and further "aussi preférе-t-on depuis quelques années prendre pour la ligne de démarcation dans les rivières navigables le chemin (thalweg) suivi par les bateaux qui descendent le courant" Bluntschli, Le Droit International Codifie, cinquième edition, 1895. §§ 298, 299, pp. 184, 185.

Translation.

"When a river forms the boundary, and has not become the exclusive property of one of the riparian States, it is admitted in the doubt that the frontier is in the middle of the river. The thalweg of navigable rivers is in case of doubt regarded as the middle. * * * The German word 'thalweg' has even become French since the treaty of Luneville, the 9th of February, 1801, article III. * * * It has been also preferred since many years to take for the line of demarcation in navigable rivers the road (thalweg) followed by the boats which descend the current." * * *

The same author says in § 301, p. 185, "Le milieu d'un lac sert également de ligne de démarcation entre les deux états riverains, a moins qu'une autre limite n'ait été consacrée par l'usage ou par les traités. On reconnait dans la règle aux habitants des deux rives le droit de libre navigation. 1. On doit prendre ici pour ligne frontière le milieu du lac, parcequ'il n'y a pas ou presque pas de thalweg des lacs" plainly conveying the intimation that where there is a main channel or thalweg, the center of it is the boundary line. And again the same author says in § 316, p. 194, "Les lacs font partie du territoire de l'état qui les entoure. Lorsqu'ils sont situés entre plusieurs états; ils sont traités par analogie, comme les fleuves et les rivières."

"The middle of a lake serves equally as the line of demarcation, as between two riparian States, at least when no other line has been consecrated by usage or treaties. The rule is recognized to allow the inhabitants of both banks the right of free navigation. 1. We must take here for the boundary line the middle of the lake because there is not or generally not any thalweg in the lakes. * * * Lakes are a part of the territory of the State which encloses them. When they are situated between several States they are treated by analogy as streams and rivers."

P. Pradier Fodéré, in his "Traité de Droit International Européen et Américain, suivant les progrès de la Science et de la Pratique Contemporaines," 1885, one of the most modern and exhaustive works on international law, in seven volumes, says in section 657, tome 2eme, p. 202: "*d. Les lacs formés dans le voisinage immédiat de la haute mer*—Si l'eau maritime qui baigne les côtes est censée appartenir aux États riverains, il en est plus forte raison de même pour les eaux de mer qui sont en deça des côtes, c'est à dire pour les lacs formés dans le voisinage immédiat de la mer libre. Ces lacs doivent être considérés comme appartenant à l'État ou aux États dans le territoire desquels ils se trouvent, aux mêmes conditions que les mers fermées ou reputées telles (V. *supra* Nos. 641, 642, 643, 645, 646); *et comme ils sont generalement en communication avec la mer on doit les soumettre aux mêmes règles que les fleuves internationaux.* (V. *infra* 690 *et suiv.*, 699 *et suiv.*)" (The italics are our own.)

Translation.

"THE LAKES FORMED IN THE IMMEDIATE NEIGHBORHOOD OF THE HIGH SEA.—If the maritime water which bays the coast is considered to belong to the riparian States there is still greater reason that the waters of the sea which touch the coast should be the same, that is to say, if the lakes form in the immediate neighborhood of the sea. These lakes ought to be considered as belonging to the State or to the States in whose territory they lie, under the same conditions that the enclosed seas are all reputed as such, *and as they are generally in communication with or connected with the sea they ought to be considered under the same rules as international rivers.*" (The italics are our own.) * * *

Referring to these sections 690, 699, *et seq.*, the author collates all the authorities on the subject of boundaries on rivers between States, at too great length to be quoted in full here, but we condense from his text the following: Under the older

authors such as Grotius and Vattel the delimitation extended to the middle of the stream, and with them is the more modern author G. F. de Martens, who, however, fixes the line in navigable rivers at the channel; he quotes Kluber as at first favoring the middle of the stream as the line, but he adds: "Cependant il (Kluber) annonce qu'au lieu de cette ligne on à récemment choisi pour frontière le thalwoge, c'est à dire le chemin (variable) que prennent les bateaux quand ils descendent le fleuve, ou plûtôt le milieu de ce chemin" (V. *infra* No. 639). Our author further says: "Heffter dit que 'Si un fleuve sépare deux États, l'empire de l'un et de l'autre s'étend juste au milieu du fleuve, sauf convention contraire,' mais il ajoute, néanmoins que" quelquefois le chénal dit thalweg, a servi de limite (V. *infra* 693.)

Translation.

"Nevertheless he (Kluber) announces that in lieu of this line the thalweg has been recently chosen as the frontier, that is to say, the road (variable) that the vessels take when they descend the river, or rather the middle of this road." * * * Heffter says that if a river separates two States, the dominion of one and the other extends to the middle of the river unless there be a convention to the contrary, but he adds, nevertheless, that sometimes the channel, called the thalweg, has served as the boundary.

The author also quotes Bluntschli as laying down the middle of the river as the boundary line, but neglects to quote, as we have already done, the qualifying phrase of Bluntschli: "Aussi prefóre-t-on depuis quelques annees prendre pour la ligne de demarcation dans les rivières navigables le chemin (thalweg) suivi par les bateaux qui descendent le courant." P. Pradier Fodéré quotes Wheaton and Calvo as advocating the middle of the stream as the proper boundary. In sections 692, 693, 694 he sustains the thalweg or channel theory, as being the most natural, just

and reasonable, and as the one now most generally and universally adopted by civilized nations, instancing France, Germany, Russia, Prussia, Austria, Italy, Great Britain, Bavaria, all of which countries have in their treaties, and some in their congresses, recognized the thalweg or middle of the channel as the proper boundary. In section 695, page 230, he explains that "la limite indiquée par le thalweg c'est a dire le milieu du chénal" does not follow mathematically always the middle in all the variations of the channel, but says: "L'on se contente d'ordinaire d'observer la course des bateaux de plus fort tonnage, et on l'indique au moyen de signaux fixes et de boúées, ces jalons permettant de tracer graphiquement la ligne médiane avec une exactitude suffisante" and he cites in note 2, 1879, chap. II, p. 74, Engelhardt-Du régime conventionel des fleuves internationales.

Translation.

"Also it has been preferred since several years to take for the line of demarcation in navigable rivers the road (thalweg) followed by the boats which descend the current." * * * "It is considered sufficient ordinarily to observe the course of vessels of the heaviest tonnage and to indicate by means of fixed signs and buoys, the channel; these marks permitting to graphically trace the middle line with sufficient exactness.

It will thus be seen that according to the writers of international law the deep-water channel or thalweg theory is now almost universally adopted in regard to boundaries on water parts of the sea or gulf, whether they be sounds, bays, straits, gulfs, estuaries, or other arms of the sea, with the same force and applicability as to interior rivers, streams or lakes. Of course, there are but few judicial decisions, that is to say, decisions of the courts upon this point, because it is seldom, if ever, that such cases come up before the courts of any country, but the same principle has been fre-

quently maintained in treaties between foreign nations, as well as by arbitration tribunals, which are, of course, in a manner a very high order of judicial tribunals. However, there is one case in which this honorable court selected the channel or midway of the bay between New York and New Jersey as the proper boundary.

In Devoe Manufacturing Company, 108 U. S., 401, the question was at issue in regard to the boundary line between New York and New Jersey, under an agreement between the two States, the case coming up on an application for a writ of prohibition. The jurisdiction of the State of New Jersey was claimed, on the interpretation of the agreement to the boundary line, to extend "down to the bay of New York, and to the channel or midway of the said bay," and the court sustained the claim, and denied the application for the writ.

We have already seen that the thalweg theory or deep-channel theory was adopted in the French treaty of Luneville in the year 1801, and subsequently early in the century the King of the Netherlands, as arbitrator between the United States and Great Britain, in establishing the north-eastern boundary between the United States and Canada, 1831, adopted the "thalweg" in regard to the rivers and the bay of Fundy, as the true boundary line, under international law. (See p. 12, Translation Northeastern Boundary Arbitration, Washington, printed at the office of the United States *Telegraph*, to be found in Congressional Library.) The translator in a note says "Thalweg—a German compound word—thal, valley—weg, way. It means here the deepest channel of the river."

So in what is commonly known as "the San Juan water boundary" a controversy in regard to the boundary between the United States and Great Britain, Emperor William I of Germany, the chosen arbitrator, gave the award in favor of the United States, at Berlin, October 21, 1871, by deciding "that the boundary line between the territories of Her

Britannic Majesty and the United States should be drawn through the Haro channel." The emperor, arbitrator, in his award says that he has arrived at his decision "after hearing the report made to us by the experts and jurists summoned by us upon the interchanged memorials and their appendices." This sustained the American claim and the British immediately withdrew their military garrison from the island of San Juan, which was south of the Haro channel and the United States took possession.

It also gave to the Americans, as said by President Grant in his message of December 2, 1892, "the important archipelago of islands lying between the continent and Vancouver's island." Although in the emperor arbitrator's award there is no mention, *eo nomine* of the thalweg, yet it is plainly seen that the decision is based on the deep-channel theory as applicable to arms and sounds of the sea, such as the straits of San Juan de Fuca and the Haro channel, and in the subsequent definition of the boundary signed by Hamilton Fish, U. S. Secretary of State, Edward Thornton, British Minister, and James C. Prevost, British representative, the boundary line is said to be prolonged until "*it reaches the center of the fairway of the straits of San Juan de Fuca*"—fairway being the nearest English equivalent to thalweg. The "experts and jurists" mentioned by the Emperor William as those on whose reports he relied and based his decision were according to Prof. John Basset Moore three in number, viz: "Dr. Grimm, vice-president of the supreme ecart at Berlin; Dr. Kiepert, the eminent pupil of Carl Ritter; and Dr. Goldschmidt, the member of the supreme commercial court at Leipsic;" International Arbitrations by Prof. John Basset Moore, vol. I, p. 229, where this arbitration case is very fully treated. We regret that we have been unable to obtain the reports and opinions of these eminent German juri-consults so as to lay them before your honors, as we doubt not that they evidence the profound and exhaustive study of the subject, which charac-

terizes German scientists, especially German jurists. Senator Foster of Louisiana kindly made application to the United States Secretary of State to ask the gracious offices of our minister at Berlin to obtain copies of these reports, and although the request was properly and promptly made, the German government declined, as we have since been informed, is its usual practice, to furnish copies, although we offered to defray all expenses and fees.

Another case in which the "thalweg" was adopted as the boundary line was the arbitration case between Roumania and Bulgaria. By the treaty of Paris, 1858, at the Congress of Powers, the navigation of the Danube river was placed under the control of an international commission, and in 1878 by the treaty of Berlin the powers of that commission were much enlarged. Under the second article of that treaty, a commission was instituted to fix the boundaries of Roumania and Bulgaria. This commission consisted of seven members, one named by the Emperor of Germany, one by the Emperor of Russia, one by the President of the French Republic, one by the Queen of Great Britain, one by the King of Italy; one by the Sultan of Turkey; and one by the Emperor of Austria. This commission, unanimously, on the 17th of December, 1878, at Constantinople, fixed the southern boundary of Roumania and the northern boundary of Bulgaria as the "thalweg" of the River Danube (*vide* State Papers, vol. 70, 1878, 1879, pp. 514 *et seq.*). Although the Russian commissioner did not sign the award when made, he gave his adhesion to it in a note August 16–28, 1880—note, p. 514.

So, in the "Treaty between the Argentine Republic and Chile, defining the boundaries between the two countries (Tierra del Fuego, neutrality of straits of Magellan, etc.), signed at Buenos Ayres, July 23, 1881. Ratifications exchanged at Santiago, October 22, 1881, translation," the plenipotentiaries of the two powers, although not designating the channel boundary as the "thalweg," yet adopted the

deep-water channel as the boundary, and thereby fixed the nationality of the islands on either side of it. They divided Tierra del Fuego, giving the western portion to Chile, and the eastern portion to the Argentine Republic, and in article II said "in regard to the other islands, Isla de los Estados belongs to the Argentine Republic" (this island lies off in the Atlantic opposite and adjacent to the eastern portion of Tierra del Fuego), "with the isles next to it, and the other islands in the Atlantic and east of Tierra del Fuego, and the coast of Patagonia; while to Chile belong all the islands south of Beagle channel, down to Cape Horn, and those west of Tierra del Fuego" (*vide* State Papers, vol. 72, 1880, 1881, pp. 1103 *et seq.*). The maps of this territory show that Beagle channel is a part of the waterway running between the Atlantic and Pacific, and it will thus be seen that the thalweg or channel theory was adopted, and the ownership of the islands determined according to whether they were east or west of that channel; those west going to Chile and those east to the Argentine Republic.

The commissioners on the part of the United States and Great Britain, Porter, for the United States, and Barclay, for Great Britain, fixed the boundary in the so-called Detroit river, under the sixth and seventh articles of the treaty of Ghent at the deep-water channel (thalweg), giving Hog island, or Belle Isle, to the Americans, as lying south of the channel. See Gannett's Boundaries (3d edit., pp. 12 *et seq.*, report dated 18th of June, 1822), and see map N–III photo-lithographic copies of original charts in State Department, by the U.S. Light House Board, November, 1891. We have said the "so-called Detroit river," because the English name of river is a misnomer, as the body of water is not a river, but a strait between two lakes and properly called by the French "D'etroit," that is a "strait."

That this deep-water channel or thalweg has been generally held to be the true boundary between Louisiana and Mississippi by citizens of both States we have already shown

by evidence of witnesses and Mr. Hodgkins of the Coast and Geodetic Survey in his report on the boundary question between Louisiana and Mississippi, says, in regard to the cartographers and others that "there seems to have been a general consensus that the passage called Cat Island channel divides the jurisdiction of the two States" (Record, p. 1001). He also says on page 1003:

"It is also worth noticing that the principal channel into Lake Borgne lies to the northward of the islands between them and Lower Point Clear. From all the information at hand, therefore, it would appear that the boundary between the States probably takes the course indicated on the final tracing, *i. e.*, north of the Malheureux islands, and thence through the Cat Island channel to the gulf of Mexico."

In the Alaskan boundary case, which was decided by an arbitration tribunal, consisting of "six impartial jurists," namely, Baron Alverstone, Lord Chief Justice of England; Mr. Elihu Root, present Secretary of State and ex-Secretary of War of the United States; Henry Cabot Lodge, U. S. Senator from Massachusetts; George Turner, U. S. Senator from Washington; Sir Louis Amable Jette, K. M. G., lieutenant governor of the province of Quebec, and Allen Bristol Aylesworth, one of His Majesty's counsel, the award by the majority of the commission including the three American representatives, joined with Baron Alverstone, Lord Chief Justice of England, decided that the middle of the Portland channel was the proper boundary line, and included Wales island, to the north of which the channel passed. This award was made October 20, 1903 (*vide* Foreign Relations of the United States, 1903, pages 544 and 545). This sustained the American construction in regard to the "thalweg" and the island lying south of it.

In concluding upon this question of the application of the "thalweg" we cannot more forcibly state its applicability than by quoting what our distinguished opponent here, Dr.

Hannis Taylor, said in his argument before the Alaskan boundary commission when he said—"What I claim that I have demonstrated beyond all question to this tribunal is that the boundary set by that treaty between these two nations was that estuary, that arm of the sea which is one unbroken whole, a fjord, a canal, which had in it two channels, and that there was no kind of designation or inscription intended to indicate which one of the subordinate divisions, which one of the channels of the indivisible whole was intended as the boundary. Therefore, I say that no case has ever arisen between nations where there was a more ideal basis, a more perfect predicate upon which to apply the doctrine of the thalweg, to discriminate by operation of law which one of the two channels is the real boundary, when the body of water as a totality and an indivisible whole was set up as the boundary." The learned doctor then goes on to quote from Sir Travers Twiss, Bluntschli, Hall, Wheaton, and David Dudley Field, giving the following quotation from David Dudley Field's International Code—"*Boundary by stream of channel 30.*—The limits of national territory bounded by a river or other stream, or by a strait, sound, or arm of the sea, the other shore of which is the territory of another nation, extend outward to a point equidistant from the territory of the nation occupying the opposite shore; or if there be a stream or navigable channel, to the thread of the stream, that is to say, to the mid-channel; or, if there be several channels, to the middle of the principal one." Dr. Taylor adds in relation to this quotation—"That is the clean-cut, definite statement of David Dudley Field as to an arm of the sea that is a boundary between two countries, and he rests his statement upon the authority of Bluntschli."

If this be good international law, as contended by Dr. Taylor, as between the United States and England in interpreting the treaty between Russia and England, where it became necessary to interpret the meaning of the latter treaty, then the same rule would be applicable to the interpretation of

the boundary in this case between Louisiana and Mississippi, where there is any doubt as to the boundaries in the acts of Congress, according to the general principles of international law. It would thus appear that according to Dr. Taylor, himself one of the opposing counsel in the present cause, that he at least and his side would be hoisted by his own petard, and we would respectfully refer this honorable court to his argument in full on this particular topic, to be found at pages 535 *et seq.* of the record of the Alaskan boundary tribunal for the 13th day, Wednesday, September 30, 1903.

III.

Louisiana's title to the disputed territory confirmed by prescription, usucaption, acquiesence, and specific acknowledgment by the State of Mississippi.

First. There is a mass of evidence in the record showing that the State of Louisiana has uniformly acted in relation to the disputed territory as though it were hers; that she has asserted title thereto, and has exercised acts of ownership and sovereignty over same.

Second. There is a mass of evidence in the record showing that the various departments of the United States Government have in their interpretations of the acts of Congress, creating respectively the States of Louisiana and Mississippi, recognized and affirmed Louisiana's ownership of the disputed area.

Third. Finally there is a mass of evidence in the record showing that the State of Mississippi has never asserted title to the area, when she should have done so, if she had any claim; and that she has, by her official maps, recognized Louisiana's ownership of the disputed area.

We shall therefore consider the evidence under these subheadings and in doing so we will consider first what Louisiana has actively and affirmatively done in regard to her ownership of the disputed territory.

First.

Recognition by Louisiana of the deep-water channel as her boundary in the disputed territory, and her long, continuous, and undisputed acts of ownership and exercise of sovereignty over said area.

This is, after the United States statutory provisions on the subject of the boundary of the States of Louisiana and Mississippi, the next most important phase of this case, because the State of Mississippi after acquiescing for nearly one hundred years in Louisiana's ownership of the disputed territory will not now be permitted to set up a claim to the territory because she has become aware of its value.

As we have previously stated the disputed territory consists of land and water, and is bounded on the north by the deep-water channel. The land has not much value, being low-lying, tide-level sea marsh, valued at twenty-five cents an acre, while the waters really present the cause of dispute on account of their oyster-producing qualities. Jurisdiction of, and sovereignty over, the land carries with it, under international law, jurisdiction and control of the surrounding waters. The extension of the eighteen miles, or six-league line, of Mississippi projects her claim a great distance down into the Louisiana mainland, or St. Bernard peninsula, as will be seen by referring to the red-ink line on Mississippi's map "A" (Record, p. 88). The claim of Mississippi would also include the land forming Half Moon or Grand island, Grassy island, Malheureux island and Isle à Pitre, which islands are all, in a way, north of the Louisiana main shore line, but are south of the deep-water channel.

When Louisiana was to be created a State, by the enabling act of Congress, February 20, 1811, section 3, of the said act, provided that all of the waste and unappropriated land in said State should be and remain the property of the United States Government (Record, p. 1019, document No. 21). The National Government for many years had these public lands of Louisiana in course of being surveyed. The disputed area of today includes lands and waters located in the following townships in the southeastern land district of Louisiana, east of the Mississippi river, to wit:

Township 10 south, range 17 east; township 10 south, range 18 east.

Township 11 south, range 17 east; township 11 south, range 18 east.

Township 10 south, range 20 east; township 11 south, range 19 east.

Township 11 south, range 20 east; township 12 south, range 16 east.

Township 12 south, range 17 east; township 12 south, range 18 east.

Township 12 south, range 19 east; township 12 south, range 20 east.

Township 13 south, range 16 east; township 13 south, range 17 east.

Township 13 south, range 18 east; township 13 south, range 19 east.

Township 13 south, range 20 east.

Record, p. 730, testimony of Mr. H. C. Smith.

The lands in these townships were surveyed by surveyors in the employ of the United States Government, the surveys being made about the year 1842, and all of these lands were surveyed as being in, and forming part of, the State of Louisiana. This data is all given in photolithographic plats of the township surveys appearing in the record as:

Document No. 7, Record, p. 994.
Document No. 38, Record, pp. 1046–1047*h*—45.
Document No. 39, Record, p. 1047*i*—46.
Document No. 40, Record, p. 1047*j*—47.
Document No. 41, Record, p. 1047*k*—48.
Document No. 42, Record, p. 1047*l*—49.
Document No. 43, Record, p. 1047*m*—50.
Document No. 44, Record, p. 1047*a*—38.
Document No. 45, Record, p. 1047*b*—39.
Document No. 46, Record, p. 1047*c*—40.
Document No. 47, Record, p. 1047*d*—41.
Document No. 48, Record, p. 1047*e*—42.
Document No. 49, Record, p. 1047*f*—43.
Document No. 50, Record, p. 1047*g*—44.

It will be recalled that by the acts of Congress of the United States of 1849 and 1850, called the swamp-land grants, the United States authorized the return to certain States of the swamp and overflowed lands within their respective limits, in order that these lands might be reclaimed, protected from overflow and brought into use. Acting under authority of these acts, which provided that the respective States should make application for the lands to the Commissioner of the General Land Office of the United States, the State of Louisiana made application to the United States Government for the approval to her of these lands south of the deep-water channel as being part of her territory and situated within her limits. All of these lands selected by Louisiana and lying south of the deep-water channel were approved to the State of Louisiana May 6, 1852, and thereafter the private title thereto and absolute ownership thereof was vested in the State of Louisiana. All of these facts are shown by certified extracts from the books of the United States land office at New Orleans, Louisiana, where these transfers were recorded (Record, pp. 27 to 46, both inclusive, Exhibit G). It is also shown by certified copies of the lists of swamp and overflowed lands, unfit for cultivation, se-

lected as surveyed and approved to the State of Louisiana, appearing in the record as documents Nos. 62 and 63 (Record, pp. 1091 to 1103, inclusive).

These lands *in the disputed territory* were then by the State of Louisiana offered for sale through her register of her State land office, and sales of same were from time to time made by the State of Louisiana to individuals as shown by the following extracts from document No. 64, being an abstract of entries from the tract books of the land register of the State of Louisiana (Record, pp. 1105 to 1115, both inclusive) and from the patents issued to these lands by the State of Louisiana, to wit:

January 12, 1853.—Mary C. Gordon, certificate No. 449. Lands in township 13 south, range 16 east (Record, p. 1111, and also Record, p. 1149, document No. 74) patent No. 726.

July 5, 1854.—W. A. Gordon, certificate No. 772 N. S. Lands in township 13 south, range 16 east (Record, pp. 1111 and 1150, document No. 75), being patent No. 7850.

July 24, 1854.—Bernard Bermudez, certificate No. 801 N. S. Lands in township 13 south, range 16 east (Record, p. 1111).

April 28, 1859.—Mrs. Ann Gordon, certificate No. 5696 N. S. H. Lands in township 12 south, range 18 east (Record, p. 1108).

November 18, 1859.—Henry Florence, certificate No. 7785 N. S. H. Lands in township 11 south, range 18 east (Record, p. 1105).

February 28, 1861.—Louis Palms, certificate No. 10350 N. S. H. Lands in township 13 south, range 16 east (Record, p. 1111).

May 30, 1861.—Louis Palms, certificate No. 3485. Lands in township 13 south, range 16 east (Record, p. 1111), and patent No. 10331 (Record, p. 1151, document No. 76).

November 25, 1854.—A. W. Morse, certificate No. 52 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 143 (Record, p. 1153, document No. 78).

November 29, 1864.—F. M. Stevens, certificate No. 55 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 144 (Record, p. 1152, document No. 77).

January 7, 1865.—Bertrand Plongas, certificate No. 92 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112).

January 9, 1865.—Henry McGuinn, certificate No. 106 N. S. G. Lands in township 13 south, range 17 east (Record, p. 1112), patent No. 1176 (Record, p. 1154, document No. 79).

March 20, 1867.—Richard Pindall, patent No. 194. Lands in township 10 south, range 20 east (Record, p. 47, Exhibit "H").

March 20, 1867.—Richard Pindall, patent No. 195. Lands in township 10 south, range 20 east (Record, p. 48, Exhibit "I").

March 20, 1867.—Richard Pindall, patent No. 196. Lands in township 10 south, range 20 east (Record, p. 49, Exhibit "J").

March 20, 1867.—Richard Pindall, patent No. 193. Lands in township 14 south, range 16 east (Record, p. 1155, document No. 80).

August 28, 1869.—Annie Duncan, certificate No. 358 N. S. D. Lands in township 13 south, range 17 east (Record, p. 1112).

August 28, 1869.—Alexander Duncan, certificate No. 359 N. S. D. Lands in township 13 south, range 17 east (Record, p. 1112).

August 22, 1873.—Stephen Moloche, certificate No. 1288 N. S. D. Lands in township 13 south, range 16 east (Record, p. 1110).

March 15, 1887.—J. C. Gilmore, certificate No. 571 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 706 (Record, p. 1156, document No. 81).

April 7, 1887.—J. C. Gilmore, certificate No. 595 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1109), patent No. 751 (Record, p. 1158, document No. 83).

April 7, 1887.—J. C. Gilmore, certificate No. 594 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 750 (Record, p. 1157, document No. 82).

April 11, 1887.—W. V. Gilmore, certificate No. 601 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 761 (Record, p. 1159, document No. 84).

June 11, 1887.—W. V. Gilmore, certificate No. 659, N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 870 (Record, p. 1161, document No. 85).

September 12, 1887.—Samuel L. Gilmore, certificate No. 719 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1110), patent No. 961 (Record, p. 1162, document No. 86).

November 7, 1887.—J. C. Gilmore, certificate No. 770 N. S. L. Lands in township 11 south, range 19 east (Record, p. 1105), patent No. 1039 (Record, p. 1163, document No. 87).

November 7, 1887.—J. C. Gilmore, certificate No. 769 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 1038 (Record, p. 64, document No. 88).

November 7 1887.—J. C. Gilmore, certificate No. 771 N. S. L. Lands in township 12 south, range 20 east (Record, p. 1110), patent No. 1040 (Record, p 1165, document No. 89).

April 27, 1894.—S. Moloche, certificate No. 2805 N. S. L. Lands in township 11 south, range 19 east (Record, p. 1106), patent No. 5094 (Record, p. 1050, document No. 53).

April 27, 1894.—S. Moloche, certificate No. 2806 N. S. L. Lands in township 11 south, range 20 east (Record, p. 1107), patent No. 5095 (Record, p. 1051, document No. 54).

April 27, 1894.—J. C. Gilmore, certificate No. 2804. Lands in township 11 south, range 20 east (Record, p. 1106), patent No. 5093 (Record, p. 1049, document No. 52).

In furtherance of the object of better protecting the lands of the parishes of St. Bernard and Plaquemines from the overflow by the annual high waters of the Mississippi river, as contemplated by the swamp land grant acts of Congress,

the legislature of the State of Louisiana adopted act No. 14 of 1892, which created the Lake Borgne Basin levee district, and provided a board of commissioners therefor as a department of the State government. This board of commissioners was authorized to levy taxes on the property within the limits of its district, which taxes were to be used in establishing a protective levee system for the district to prevent annual overflows. The act also provided that as a means of raising further revenues to better enable the board of commissioners to discharge its duties, the register of the State land office was authorized to transfer and deed to the board of commissioners for the Lake Borgne Basin levee district, all of the unsold lands belonging to the State of Louisiana, lying within the limits of the levee district. The limits of this levee district included the whole of the parish of St. Bernard and a portion of the parish of Plaquemines. This deed was executed April 2, 1895, and a certified copy appears in the record as document No. 55 (Record, pp. 1052 to 1081). It transferred from the State of Louisiana to the said levee board, as a special department of the State government, three hundred and eighty-four thousand nine hundred and forty-one and 17/100 acres of State lands in the parish of St. Bernard. Of the lands in the parish of St. Bernard involved in and forming part of the area now in dispute with the State of Mississippi, there were transferred lands in the following townships, to-wit:

Township 11 south, range 17 east.....	8,960	acres.
Township 11 south, range 18 east..... ..	4,920	"
Township 11 south, range 17 east..... ..	12,160	"
Township 11 south, range 20 east.....	4,360	"
Township 12 south, range 16 east.....	7,040	"
Township 12 south, range 17 east.....	21,120	"
Township 12 south, range 18 east.....	19,611.40	"
Township 12 south, range 19 east.....	21,120	"
Township 12 south, range 20 east.....	12,120	"
Township 12 south, range 21 east.....	640	"

Township 13 south, range 16 east.....	11,134.36	acres.
Township 13 south, range 17 east.....	20,760	"
Township 13 south, range 18 east.....	22,400	"
Township 13 south, range 19 east.....	20,480	"
Township 13 south, range 20 east.....	15,360	"
Total.....	201,985.76	

This transfer was supposed to convey to the said levee board all of the State lands in the parish of St. Bernard, and included all of the unsold land in the disputed territory, except as omissions might be developed and corrected. When this land was transferred by the State to the Lake Borgne Basin levee district, an entry was made by the register of the State land office in his tract book as appears from document No. 64 (Record, pp. 1105 to 1115).

The board of commissioners for the Lake Borgne Basin levee district, which was nothing more or less than a department of the State government of the State of Louisiana, as we have stated, created for a special purpose, having these lands on hand was authorized by law to sell same, and did make sales thereof to individuals as follows:

September 16, 1898.—To Chas. Sanger of Bay St. Louis, Mississippi, 4,320 acres in township 11 south, range 19 east, parish of St. Bernard (Record, p. 1083, document No. 57).

June 17, 1899.—To Geo. H. Dunbar, of New Orleans, Louisiana, 5,122 24 acres in township 11 south, range 19 east, township 11 south, range 20 east, and township 12 south, range 18 east (Record, p. 1085, document No. 58).

March 14, 1902.—To Lazaro Lopez and William W. M. Dukate, of Biloxi, Mississippi, 510 acres in township 12 south, range 18 east (Record, p. 995, document No. 8).

March 7, 1902.—To Geo. Ruppel, of New Orleans, Louisiana, 620 acres in township 11 south, range 20 east, and township 12 south, range 20 east (Record, p. 1087, document No. 59).

These lands acquired from the State by various individuals were in due course in some instances sold by them to other individuals and corporations, and the rights of ownership and power to transfer enjoyed under the laws of Louisiana, and no contention was ever made as to the State of Mississippi having any right in the lands. In fact, as appears from the record, citizens of Mississippi came to Louisiana and bought these lands, though they were in the heart of the present disputed area created by the present contention of the State of Mississippi.

Isle à Pitre is the main and most important island now claimed by the State of Mississippi under her present island theory of defense. It is composed of sections 23, 24, 25, 26, 27, 28, 32, 33, and 34 of township 10 south, range 20 east, southeastern district of Louisiana, east of the Mississippi river. Yet we find these lands approved to the State of Louisiana by the Commissioner of the General Land Office of the United States May 7, 1852 (Record, p. 1091, document No. 62), as being in and forming part of the State of Louisiana. In turn the State of Louisiana patented these lands to Richard Pindall in 1867 (Record, pp. 47–48–49 and 1155, Exhibits H, I, and J, and document No. 80). Richard Pindall sold these lands to Henry J. Leovy of New Orleans, Louisiana, in 1867 (Exhibits K & Z, Record, pp. 50 and 57). Henry J. Leovy sold them to J. C. Gilmore of New Orleans, Louisiana, in 1892 (Exhibits L and M, Record, pp. 53 and 55), and J. C. Gilmore sold them to the Louisiana Navigation Company, Limited (Record, p. 1081, document No. 56), by which company, Isle à Pitre, the *piece de resistance* of Mississippi's claim in the disputed territory, and other lands are now owned under a chain of title and undisturbed possession extending from 1852 to date, or a period of over fifty years.

In addition to these acts of ownership and sovereignty shown by the sale of these lands in the heart of the disputed territory, and, in fact, composing its whole landed area, other

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acts showing Louisiana's exercise of sovereignty abound in the record.

In all of her official maps, the State of Louisiana claims the peninsula of St. Bernard as her property (maps No. 30, section No. 1, Louisiana Atlas of Maps, p. 24), and in these maps the area in dispute is recognized as forming part of the parish of St. Bernard, a territorial governmental subdivision of the State of Louisiana.

Your honors' special attention is called to a map of Louisiana, representing the several land districts, by W. J. McCulloh, surveyor general of Louisiana, October 1, 1859 (map No. 16, Atlas, p. 5) as distinctly claiming at that date the disputed area to be part of the State of Louisiana, and dividing said area into townships and ranges.

The official map of the parish of St. Bernard (map No. 52, Louisiana Atlas of Maps, p. 47) shows every acre of the landed portion of the disputed territory to be carefully divided into townships, ranges and sections, and claimed to form part of said parish of St. Bernard, including all islands south of the deep-water channel. This is also confirmatory of the testimony of the various citizens of St. Bernard parish to the effect that they had always regarded this area as forming part of the parish of St. Bernard. We make part of this brief a photographic reproduction of this official map of the parish of St. Bernard.

According to the laws of Louisiana, the State taxes, or alimony, are collected by the county or parish officials on all lands, and other property located within the limits of the respective parishes, and when collected, are remitted by these officials to the State treasurer. The State of Louisiana has for years been exercising her sovereignty and collecting taxes on these lands in the disputed territory in cases where the lands were privately owned (Record, p. 772, testimony of E. E. Nunez, sheriff and *ex-officio* tax collector). The lands forming Isle à Pitre, claimed by Mississippi, under her island

theory of ownership, have been paying taxes to the State o Louisiana for years.

Certified copies of the *assessment-rolls* of the parish of S Bernard, made up annually, and showing the lands subjec to State, parish and levee district taxation, and the amoun of such taxes are to be found in the record (Record, pp. 111 to 1136, document No. 65). It is true that these assessment rolls as given in the record, do not go back beyond the yea 1889, but this is explained by the fact that the assessment rolls of previous years were kept in the county or parish court-house of the parish of St. Bernard, which building, with all its contents, was destroyed by fire in the year 188 (Record, p. 149, testimony of Mr. E. E. Nunez, sheriff and *ex-officio* tax collector of the parish of St. Bernard). With the destruction of these official records, a temporary condition of chaos as to tax and land matters necessarily resulted in the parish of St. Bernard, and the State legislature of Louisiana came to her assistance, enacting special legislation to suit the requirements of her peculiar situation (act No. 6 of the Acts of the Louisiana Legislature of 1884, p. 13). To make up the annual listing of property for purposes of taxation, reference was always had to the assessment-rolls of the previous year, and to the transfers of property appearing of record in the conveyance office of the clerk of court in the parish of St. Bernard. With all of these records destroyed, it required a great length of time and an entirely different course of action to get these properties back again on the tax-rolls, the process being gradual and difficult (Record, p. 748, testimony of A. C. Gonzales, assessor). This destruction by fire of these old records, therefore, accounts for our inability to produce copies of them today, and is the reason why we are unable to go back beyond the year 1889, in presently producing this character of evidence or old parish maps of St. Bernard. From the date the records are given, the collection of taxes by the State of Louisiana from these privately owned lands in the disputed area is continuous and con-

secutive, and the rolls in each succeeding year show the changes that have occurred in the individual ownership of the respective properties. By referring for instance, to Record, p. 1120, we see that in the year 1893, Mr. J. C. Gilmore is listed as the owner of the whole of Isle à Pitre in addition to other lands, and that taxes were paid to the State of Louisiana thereon, and that for the year 1903 (Record, p. 1134) they appear as assessed to the Louisiana Navigation Company.

We have already shown, under another heading, in stating our cause of action in this case, acts by the local or parish officials wherein political and police control and jurisdiction was exercised by the St. Bernard officials over the disputed area, notably in the case of the expulsion of non-resident oyster fishermen, when the oyster law was enacted confining to citizens of Louisiana the privilege of fishing oysters from Louisiana waters. Other acts of police control and jurisdiction by Louisiana officials over this general territory, are shown by the record. Mr. Albert Estopinal, lieutenant governor of the State of Louisiana, testifies (Record, p. 180) to an incident occurring many years ago, where a murder was committed in the St. Bernard sea marsh, that the murderer was taken either to Hancock or Harrison county, Mississippi, to be tried; that the Mississippi judge refused to try the case because of lack of jurisdiction, the crime having been committed in Louisiana and that the murderer was subsequently taken back to the parish of St. Bernard in Louisiana where he was tried. Mr. A. S. Cowand (Record, pp. 562 *et seq.*) testifies apparently to the same incident but more in detail as occurring between the years 1857 and 1860, and says that in Grand pass, which separates Isle à Pitre from the main Louisiana marshes, there were, on an Italian holiday, a number of luggers, a character of sailboat, gathered together, the boats being manned by Italians, who got to drinking, which ended in a fight, in which one of the *dagoes* was killed by another, who was

taken to Pass Christian in Harrison county, State of Mississippi, by the others who tried to get the sheriff of that county to take the prisoner in charge; that this Mississippi official refused to act, claiming that the murder had occurred in Louisiana and that he had no jurisdiction; that the prisoner was then turned over to the sheriff of the parish of St. Bernard, Louisiana, where he was tried, convicted and sent to the penitentiary from Terre aux Bœufs in said parish. Mr. Cowand also refers to another incident where a man was drowned at Half Moon or Grand island, and the Mississippi coroner refused to hold an inquest on the body, because he had no jurisdiction, as Half Moon or Grand island was in Louisiana. The destruction of these records also, by fire in the court-house already referred to prevented us from offering official copies of the records of these trials.

As appears from the testimony of Mr. H. C. Smith, parish surveyor of the parish of St. Bernard (Record, pp. 737 *et seq.*), and who was subsequently chief surveyor of the Oyster Commission of Louisiana, the State of Louisiana was continuously exercising jurisdiction in the disputed area by leasing, under the terms of her oyster law, to private parties on the basis of a direct rental, portions of the water bottoms of said locality for the purpose of oyster cultivation.

The disputed territory consists largely of what is known as the *Louisiana marshes*. The name is itself a quasi-recognition of title and ownership in the State of Louisiana. In the XVII paragraph of her answer in this case, the State of Mississippi admits that the marshes have since time immemorial been known as the *Louisiana* marshes, yet she introduced a number of witnesses to prove that they were also known as the *Grand* marshes. Every Louisiana witness, with knowledge of the subject, testified that they were known as the *Louisiana* marshes, while almost every Mississippi witness, who claimed that they were called the Grand marsh, admitted that they were, with as great frequency, called the *Louisiana* marshes. Louisiana then in-

troduced a number of witnesses who were accustomed to visit, year after year, the summer resorts such as Waveland, Bay St. Louis, Pass Christian, Mississippi City and Biloxi, on the main southern shore of the State of Mississippi, and who were, therefore, thrown into daily contact with the citizens of Mississippi at home and under unsuspicious circumstances; and they all, without exception, testify that these marshes were universally called the *Louisiana* marshes by these Mississippians (Record, p. 876 *et seq.*, testimony of Mr. John M. Parker; p. 880 of Mr. Alexander Brewster; p. 885 of Mr. Emile J. O'Brien; p. 891 of Mr. Thomas T. Barr; p. 909 of Justice Frank A. Monroe of the supreme court of the State of Louisiana; p. 916 of Capt. Steve Maloche; p. 922 of Judge Lawrence O. Donnell; p. 927 of Mr. Oswald Ogden; p. 929 of Dr. Jos. T. Scott; p. 932 of Mr. Louis H. Fairchild; p. 935 of Mr. E. H. Farrar; p. 971 of Mr. Louis Cucullu). Of these gentlemen the following, Capt. Steve Meloche, p. 916; Judge Lawrance O'Donnell, p. 922; Mr. Oswald Ogden, p. 927, and Mr. E. H. Farrar, p. 935, all testify that it was generally understood that the deep-water channel was the proper boundary between the States, and Judge O'Donnell, p. 924, refers to a case in which he was counsel, wherein a number of years ago some parties were arrested for violating the then oyster law, and upon it being proved that the offense was committed on the north side of the deep-water channel, the Louisiana judge discharged the accused on the ground that the offense, if any, had been committed in the State of Mississippi, and that he had no jurisdiction. As will be seen by reference to the testimony of His Excellency Governor W. W. Heard, of Louisiana (Record, p. 191), he himself had had pointed out to him by a Mississippian, the Cat Island channel as the true boundary between the two States.

An apt illustration of this universal recognition of the disputed territory as being the property of the State of

Louisiana and within the limits of that State is gathered from the following facts:

"There is a very short bayou, called Three-mile bayou which connects the waters of Mississippi sound and those of the Louisiana marshes. It is one of the three bayous cutting the coast line of the Louisiana marsh, and is much frequented by oyster fishermen (map No. 59, Louisiana Atlas of Maps, p. 53). Messrs. Eugene Ahrens, Jr. (Record, pp. 848 *et seq.*), and Edward Wentzell (Record, pp. 911 *et seq.*), two thrifty and industrious Mississippians, desiring to avail themselves of the commercial opportunities presented in the congregation of oyster fishermen at Three-mile bayou, proceeded to this point and there erected a building in which they conducted a store and bar-room. In due course, they had billheads printed for their firm's business. These billheads had to be localized so far as the place of business was concerned, which was designated as Three Mile, *Louisiana*, as appears from the billheads in the record (Record, pp. 1166 *et seq.*, documents Nos. 90, 91, 92, 93, 94 and 95). The dates on some of the billheads, found in the building, show that they were doing business there in 1901 and 1902. This is further confirmed by the United States Post-Office stamped date appearing on an envelope received from the United States Treasury Department and containing their United States internal-revenue liquor license, for their liquor business done at Three Mile, *Louisiana* (Record, p. 1171, document No. 96). In connection with the location of their place of business, Mr. Edward Wentzell (Record, p. 917) testifies as follows:

Q. "Will you look at this map No. 59, map of Louisiana, and upon being shown Isle à Pitre to the east, and Malheureux point to the west, and Bay St. Louis immediately north, is this the Three-mile bayou, right along the shore between Isle à Pitre and Malheureux point, at which you conducted your establishment?"

A. "Yes, sir."

Q. "Is that the Three-mile bayou to which you had refer-

ence when you printed your billhead as Three Mile, Louisiana?"

A. "Yes, sir; the same place, our place was located right there, right inside of the marsh."

Q. "And you thought then you were in Louisiana when you had those billheads printed?"

A. "Yes, sir; I did."

We, therefore, submit that we have clearly established that the State of Louisiana has consistently and continuously asserted her ownership of and sovereignty over the disputed area, in that the State of Louisiana owned the landed area thereof, and exercised the right to sell the same; that she collected her taxes on those lands there located, belonging to private parties; that she showed by her maps and the action of her State and parish officials that she was sovereign of said area and exercised police control thereof, and that private individuals were protected in their rights by the power of the State, and exercised uninterruptedly their private ownership without dispute or contest by the State of Mississippi. Louisiana's exercise of sovereignty and ownership must now be respected by Mississippi.

Second.

That the various departments of Government of the United States in their interpretation of the acts of Congress respectively creating the States of Louisiana and Mississippi have uniformly recognized Louisiana's ownership of the disputed area.

Having heretofore shown the statutory provisions of the United States on the subject of the boundaries of the States of Louisiana and Mississippi, we must now consider how these statutory provisions were interpreted and construed by the United States officials who would, in due course, be called upon to exercise jurisdiction in regard thereto.

United States Coast and Geodetic Survey.—In making this investigation we will first consider this department of our

National Government, which is perhaps the best informed on the subject of the water boundaries of our several States, as it is specially required, by the United States laws, to survey the coast of the United States, in which undertaking this department, or its predecessors, has been engaged for nearly a hundred years, and the area presently in dispute is part of the coast of the United States.

In boundary controversies that have heretofore developed between other States of the Union, representatives of this department have frequently rendered expert services, sometimes under direct appointment of this honorable court. One of the most expert of these representatives or assistants of the United States Coast and Geodetic Survey Service is Mr. William Chandler Hodgkins who has in his past experience as an expert been identified with the following boundary settlements between the following States of this Union, to wit:

Pennsylvania and Delaware.
Missouri and Iowa.
Maryland and Virginia.
Virginia and Tennessee.

He settled a county boundary between the counties of Spartansburg and Greenville, South Carolina, was the American representative with the English surveying party in the matter of the Alaskan boundary dispute between the United States and England, and was the American agent in charge of the American maps in the recent hearing and settlement of the Alaskan boundary dispute that took place in England (Record, pp. 444 *et seq.*).

As we have previously mentioned, when the commissions appointed by the governors of Louisiana and Mississippi were trying to effect an amicable settlement of the boundary dispute, back in January, 1901, a Mr. F. A. McLain, a United States Congressman from the State of Mississippi wrote a letter January 27, 1901, to the Superintendent of this department asking that official for information in regard to the

boundary line between Louisiana and Mississippi in the present disputed area (Record, p. 997, document No. 9). This letter from Mr. McLain was no doubt prompted by the occurrence of the boundary meeting in New Orleans, January 19, 1901 (Record, p. 20, Exhibit "A"), as it was dated just eight days subsequent to that meeting, and the day following the date of the letter of the governor of Louisiana to the governor of Mississippi, namely January 26, 1901 (Record, p. 22, Exhibit "B"). As the letter itself explained, it was written at the request of I. Heidenheim of Biloxi, Mississippi, who was subsequently chairman of a committee appointed to gather up the Mississippi evidence for her defense of this suit (Record, p. 1705, testimony of Mr. I. Heidenheim).

To return to the subject, this request of Mississippi Congressman McLain, for information as to the proper water boundary between the two States of Louisiana and Mississippi in the disputed territory, was referred, by the Superintendent of the United States Coast and Geodetic Survey for a report, to Assistant William Chandler Hodgkins, whose expert qualifications, for making an unbiased, intelligent and exhaustive report we have just given.

This report was made by Mr. Hodgkins January 30, 1901, and was forwarded to Mr. McLain February 8, 1901 (Record, p. 997, document No. 9). The report, and the accompanying sketches, are reproduced in full in the record (Record, p. 997, document 11) and merit the careful consideration of your Honors. The issues and points submitted to Mr. Hodgkins were the identical issues involved in this suit now before your Honors for decision. Mr. Hodgkins' report shows logically and conclusively, after considering the subject in all of its phases, that the correct boundary between the two States in the locality in dispute is the deep-water sailing channel line contended for by Louisiana. Louisiana's counsel, by a streak of good luck stumbled on this report in their researches just before evidence began to be taken.

Although it was a report from a disinterested United States

official and was absolutely decisive of the disputed issu
although it was made at the request of a Congressman fr
Mississippi, who had been asked to get the report by a g
tleman who subsequently appears in this case, in the rol
chairman of the defense's committee on evidence; althou
it was made at a time when the two States were endeavori
to amicably and extrajudicially settle their differences,
mention of it was then, or ever subsequently, made by M
sissippi; and although it was promptly forwarded by t
U. S. Coast and Geodetic Survey to Mr. McLain, no Miss
sippian ever thereafter knew of its existence or had seen
In order to explain this rather perplexing condition
affairs, Louisiana's counsel caused the said Mr. F. A. McL
to be summoned as a witness in this case, so that his tes
mony might elucidate the subject, but although four separ
subpœnas were issued (Record, p. 985), the United Stat
marshal was never able to serve him and secure his atten
ance.

It is a pity that the report of Mr. Hodgkins never reach
the officials of the State of Mississippi for its effect mig
have caused them to so act as to prevent the necessity f
this suit, unless it be that it was better to hold on till a fin
decree of your honors' court excluded them even from th
neutral territory.

United States Geological Survey.—This department of th
National Government published in the year 1900 its Bulleti
No. 171, devoted specially to a consideration and discussio
of the boundaries of the States and Territories forming ou
Union, and giving a history of the changes in the bounda
ries as they have occurred. We have extracted from th
bulletin and reproduced in the record all that is said on th
subject of the States of Louisiana and Mississippi as well a
the outline sketches of both States (Record, p. 1030, docu
ment No. 33). According to the opinion of this departmen
Louisiana was originally bounded by the deep-water chan
nel and is the owner of the area in dispute today. That is

such is the conclusion we would draw from the report and sketches.

There is no questioning of, or uncertainty about, the fact that this department recognizes Louisiana's ownership of the St. Bernard peninsula. This is shown on the geological map of the disputed area, map No. 18 (Louisiana Atlas of Maps, p. 7) which is perhaps the best map extant of the disputed area. An inspection of this map will show the words "St. Bernard" immediately under the north shore line of the St. Bernard peninsula, commonly called the Louisiana marshes.

United States Commission of Fish and Fisheries.—By a joint resolution of the State of Louisiana, adopted in 1897 (Record, p. 2033), this department of the National Government was requested to make an investigation and report upon certain technical matters in connection with the oyster industry of that State which would require a visit to and inspection of the oyster fields of Louisiana. The investigation was made in February, 1898, by the United States Fish Commission steamer *Fish Hawk* in charge of Lieutenant Swift; and the investigations were conducted and a report made by Dr. H. F. Moore.

These investigations began in the parish of St. Bernard, State of Louisiana, and the study of the local oyster conditions was extended through other parishes of the State. A map was made of the area investigated in St. Bernard parish and the map is reproduced in the record, page 6, as diagram No. 4. This map shows that the area investigated and reported on, as being in St. Bernard parish, Louisiana, was in fact the area that constitutes the disputed territory of today. In other words, without any previous suggestions or instructions from any one on the subject, Dr. Moore and Lieutenant Swift entered the disputed area of today, naturally understanding that it was a part of and within the limits of the State of Louisiana and they, by their acts, so reported that in the opinion of this department the area, from the data they had, was naturally supposed to belong to the State

of Louisiana. An extract from this report of Dr. Moore appears in the record (Record, p. 2033) wherein the conditions existing in the early part of the year 1898 in the disputed area are set forth. The location of the Louisiana oyster reefs in the disputed area is accurately set forth in the map above referred to and the whole incident is a clear recognition of Louisiana's ownership.

General Land Office of the United States.—This department has in charge the general surveying of the area of our country and as far back as the year 1842 began the detail survey of the land forming the disputed area. Township plats showing the detail in each township appear in the record as documents Nos. 7 and 38 to 50, the latter both included, record beginning at page 1046. Document No. 7, is found in Record, p. 994.

This survey shows the disputed area of today to be comprised within the following townships, to wit:

T. 10 south, ranges 17, 18 and 20 E.

T. 11 south, ranses 17, 18, 19 and 20 E.

T. 12 south, ranges 16, 17, 18, 19 and 20 E.

T. 13 south, ranges 16, 17, 18, 19 and 20 E.

The survey further showed the following to be the location of the islands south of the deep-water channel line, to wit:

Marsh island as section 26, T. 10 S., R. 17 E.

Half Moon or *Grand island* as being comprised of—

Section 36, T. 10 S., R. 17 E.

Sections 29, 31, 32 and 33, T. 10 S., R. 18 E.

Section 1, T. 11 S., R. 17 E.

Sections 5 and 6, T. 11 S., R. 18 E.

The above islands are immediately south of the deep-water channel and just alongside of it.

Unnamed island as sections 2 and 11, T. 11 S., R. 17 E.

Petit Pass island as sections 14 and 23, T. 11 S., R. 17 E. See township plat, Record, p. 1047*a*—38.

Isle à Pitre as sections 23, 24, 25, 26, 27, 28, 32, 33, and 34 of T. 10 S., R. 20 E.

All of these islands and other lands are designated as being in the southeastern land district of Louisiana, east of the Mississippi river, and as forming part of the State of Louisiana.

When the State of Louisiana, in the year 1852, under the swamp-land grants of Congress of 1849 and 1850 selected these islands and other lands as being within her State limits and enuring to her under the provisions of the acts of Congress just referred to, this department of the National Government on May 6, 1852, recognized the correctness of Louisiana's claim to these lands and they were promptly approved and patented to her as a State (Exhibit "G," Record, pp. 27 to 46, both inclusive; documents Nos. 62 and 63, Record, pp. 1091 to 1103). This was a specific recognition of Louisiana's ownership of the lands composing the disputed area.

And similar action was taken by this department of the National Government in the matter of the application of the State of Mississippi to the United States for the lands enuring to that State under the provisions of the swamp-land grants of Congress.

Mr. E. H. Wall, State land commissioner of the State of Mississippi, a witness for the State of Mississippi, testified, on cross-examination (Record, pp. 1755 *et seq.*), that the State of Mississippi had in former years applied to the United States Government for the lands enuring to that State under the swamp land grants of 1849 and 1850 and had received her swamp lands, and he admitted that the State of Mississippi had never selected and had never had approved to her, as shown by the books of the State land office of Mississippi, any lands in the disputed area of today. This testimony further shows that the State of Mississippi did have in her land-office books a record of the land forming St. Joseph's island, and as this island lies immediately north of the deep-water channel, it is a recognition of the deep-water channel

as the boundary and that the rights of the State of Mississippi did not extend south of that channel.

The General Land Office of the United States has been equally and uniformly consistent in its recognition of Louisiana's ownership of the disputed area in all the maps it has caused to be made of the States of Louisiana and Mississippi respectively, as will be seen by a reference to the following maps appearing in our Atlas of Maps, to wit:

State of Louisiana, 1879, Map No. 35, Atlas, p. 33.
State of Louisiana, 1886, Map No. 36, Atlas, p. 34.
State of Louisiana, 1887, Map No. 61, Atlas, p. 54.
State of Louisiana, 1896, Map No. 39, Atlas, p. 36.
State of Mississippi, 1890, Map No. 37, Atlas, p. 35.

We therefore submit that it has been proven from the first to the last, by United States statutory enactments and by the interpretation of same by our National Government's official departments, that the area in dispute has been consistently and uniformly recognized as the property of the State of Louisiana, and that the deep-water channel has been recognized as the proper water boundary in that locality.

Third.

Recognition by the State of Mississippi of the disputed territory as being the property of the State of Louisiana, and that her present boundary pretension is but a matter of recent creation after long years of recognition of, and acquiescence in, Louisiana's ownership and sovereignty.

It was only after the oyster fishermen of Mississippi by their wasteful system of fishing had either fished up or destroyed all of the Mississippi oysters of any value that these fishermen began to invade Louisiana waters in search of the bivalve.

Until recent years the Louisiana fisheries were open to all, but are now closed to all except her citizens, a plan that was

initiated by many of the oyster-producing States of the Atlantic coast, as we have previously mentioned.

It was the exercise of this right by Louisiana that incurred Mississippi's displeasure and brought on this boundary suit. We now propose to show how, prior to this, the State of Mississippi never made any claim to the disputed territory, but officially recognized it as belonging to Louisiana.

The lands forming the disputed territory have existed since Louisiana and Mississippi were created States, nearly one hundred years ago, yet Mississippi has, not only had no title or ownership thereto, but has never sought in over fifty years to find out why she was not given a title thereto, tacitly recognizing Louisiana's prior and better claim.

Mr. E. H. Wall, State land commissioner of Mississippi, was summoned by Mississippi as a defense witness in this case. He testified (Record, p. 1755) that there is no record on the books of the land office of the State of Mississippi showing Mississippi to have any interest in the landed part of the disputed area. He testified further that the former governors of Mississippi had, as representing that State, asked the United States for the swamp lands to which Mississippi would be entitled under the United States swamp-land grants of 1850. He stated further that Governor Vardaman of Mississippi, elected governor of said State *after this suit had been instituted by the State of Louisiana*, had recently written and asked the Secretary of the Interior of the United States for everything within the 18-mile limit, but had at that date, August 20, 1904, received no reply so far as he was able to ascertain. In other words, it was after Louisiana had owned these lands for over fifty years by deed of the United States that Mississippi was first inquiring why she did not own them.

The State of Mississippi is to be presumed to know, or at least to have ascertained, what lands she was entitled to receive under the swamp-land grants of the United States

Congress of 1849 and 1850. As a matter of fact, she did select her lands under those acts, and the lands selected were approved to her, but never did she make a pretense of claiming to own, nor did she try to select, under those laws, any of the sea marsh islands in Mississippi sound and Lake Borgne now claimed by her for the first time in her defense of this suit, filed after over fifty years' possession of these lands by the State of Louisiana, nor did she ever make, until now, any claim to the sea marsh lands in the Louisiana marshes in the St. Bernard peninsula. Not only did she fail to initiate any proceedings of her own accord, during these many years, to have her ownership of these lands recognized, and the title to the lands placed of record in the books of her State land commissioner, but even when her attention was called to it by an application for some of these lands in the disputed area today, she took no steps to secure title, but through her State land commissioner admitted that she had no title to the lands.

Mr. Casimier Harvey, (Record, pp. 952 *et seq.*), a resident and citizen of Back Bay, Biloxi, State of Mississippi, where he was born 59 years ago, testified that he wanted to buy the lands around Creole gap, which divides Isle à Pitre into two parts, and is part of the disputed area of today, and that he wrote, or caused a letter to be written, to the State land commissioner of the State of Mississippi at Jackson, Mississippi, applying for these lands, and that his letter was returned by the said State official of Mississippi with a statement to the effect that no record of Mississippi's ownership of said lands appeared on the records of his office, and that, necessarily, he could not make title to said lands. That was about the year 1887, and still no step was taken by the State of Mississippi to secure title to these lands, and as testified to by Mr. E. H. Wall, Mississippi State land commissioner, no steps were taken to claim title to these presently disputed lands until Governor Vardaman of Mississippi, who took his office January 19, 1904, *two years after this suit was instituted,*

made claim to them on behalf of the State, or at least initiated inquiries to that end (Record, pp. 1759 and 1756).

Mississippians cannot allege that they did not know that these lands were privately owned. Mr. Joseph C. Gilmore, who owned Isle à Pitre, and who was troubled by parties removing shells from his property, testifies (Record, p. 764) that he caused an advertisement to be published in the Pass Christians (Miss.) *Beacon* and the Biloxi (Miss.) *Herald*, Mississippi coast newspapers, that the Gilmore brothers prohibited trespassing on their property and yet no protest came from any Mississippi officials.

As acts and instances wherein the State of Mississippi has recognized the State of Louisiana's ownership of the disputed area, in addition to the striking example of her failure to claim under the swamp-land grants of Congress the swamp lands in the Louisiana marshes which she is now claiming, may be mentioned the following:

The legislature of the State of Mississippi passed an act entitled, "An act to provide for a survey of the Mississippi coast," under which the governor of the State of Mississippi was authorized to contract with an engineer and surveyor for the performance of the work. Under authority of this act, his excellency A. G. McNutt, then governor of the State of Mississippi, contracted with a Mr. John Wheeler, engineer and surveyor, to make the survey and a report. The survey was made by Mr. Wheeler, who submitted his report to the governor of Mississippi December 13, 1839, which report included a detailed sketch of the coast of Mississippi (Record, pp. 1145 *et seq.*, document 73), and owing to its important bearing on the issues of this case, we reproduce both the sketch and report in full in the record. A reference to the sketch (Record, p. 1148) shows:

First. The existence of the deep-water channel claimed by Louisiana to be the proper boundary in the waters of Lake Borgne and Mississippi sound, as emerging from Pearl

river and extending out into the open waters of the gulf of Mexico, north of Chandeleur islands.

Second. Emerging from the Rigolets, the old Louisiana eastern channel boundary of 1803, at this point, and how this Rigolets channel runs into the Pearl River channel, as it proceeds eastward to the gulf of Mexico.

Third. That no claim was made by the State of Mississippi that the lands of the St. Bernard peninsula formed any part of the coast of the State of Mississippi.

The territory lying south of the deep-water channel is shown in an outline to be of peninsular formation, no name is given to it on the sketch, and no claim is made to it, although the depth of the channel between Cat island and Isle à Pitre is given. It is also true that Isle à Pitre, at the point of the St. Bernard peninsula is not, on said sketch, called by that name, nor given any individuality. It is designated merely as forming part of the general territory, south of the deep-water channel, to which the State of Mississippi made no claim.

If there be any doubt upon this point, by reason of the fact that the recognition of Louisiana's ownership and Mississippi's disclaimer of ownership, is purely negative, this doubt is settled in favor of a definite recognition by Mississippi of Louisiana's ownership, by reference to the written report (Record, p. 1147, next to last paragraph) where this territory, southwest of the deep-water channel or South pass, is called the *Louisiana marsh*. It is to be noted that the report only discusses Horn, Pilit Bois, Cat and Ship islands as belonging to Mississippi and these are east of the disputed territory.

Taking the sketch and report together, they clearly indicate a recognition by the State of Mississippi of Louisiana's then ownership of the area disputed by Mississippi today.

As we have already stated, in an earlier part of our brief, no cartographer, of the United States or elsewhere, has ever made a map recognizing any rights of the State of Mississippi in the St. Bernard peninsula. We now announce the fact, most important to a decision of the issues of this case;

That the official maps of the State of Mississippi recognize Louisiana's ownership of the disputed territory.

On October 26, 1866, there was approved by the then governor of the State of Mississippi, Mr. Benjamin F. Humphreys, an act of the legislature of the State of Mississippi entitled, "An act to create the office of State engineer for the purpose of compiling a new State map under certain conditions" (Record, pp. 1729 *et seq.*).

As will be seen by reference to the act, this map was to be official, and three copies were to be furnished to each county in the State of Mississippi, so that it is to be presumed that the coast counties of Mississippi received their share.

On May 10, 1871, there was also approved by Mr. J. L. Alcorn, then governor of the State of Mississippi, another act of the legislature of the State of Mississippi entitled, "An act to grant aid for the purpose of revising and publishing an official map of the State" (Record, pp. 1730 *et seq.*)

Capt. T. S. Hardee, appointed State engineer of the State of Mississippi under the provisions of the two above-mentioned acts of the Mississippi legislature, made an official map of the State of Mississippi, which was approved May 10, 1871, by his excellency, J. L. Alcorn, then governor of the State of Mississippi.

In the evidence offered by the State of Louisiana, one of these maps is found under the number 46 bound in the Louisiana Atlas of Maps, p. 43. This official map of the State of Mississippi specially, by its coloring, recognizes Louisiana's ownership of the disputed territory. Counsel for the State of Mississippi appreciated the serious effect,

against their present contention, that the offering of this map would have, and they thereupon proceeded to attack it in every way possible, their main contention being that as the map was approved by a *reconstruction* governor that it was not deserving of credence and respect, and they proceeded, by the testimony of ex-Governor Robert Lowry (Record, p. 1711) and others, to show that Governor Alcorn was a radical or Republican governor elected by the elements that were in control after the civil war. In contrast to him, they eulogized the merits and honesty of his excellency Benj. F. Humphreys, who was the Democratic governor preceding Governor Alcorn, and the Mississippi witnesses admitted that anything that Governor Humphreys approved must be corrrect and free from suspicion. With these facts once in the record, Louisiana's counsel then established a fact, that was apparently unknown to counsel for the State of Mississippi, namely, that there was a previous issue of this same official map of the State of Mississippi made by Captain T. S. Hardee, that this previous issue was, as to Mississippi's recognition of Louisiana's ownership of the disputed territory, exactly the same as the Alcorn map, that this official map had been made by authority of the act of the Mississippi legislature approved October 26, 1866 (Record, pp. 1729 *et seq.*); and that this official map of the State of Mississippi which thus plainly, clearly, distinctly and officially recognized Louisiana's ownership of the presently disputed territory had been approved by that paragon of probity, honesty and propriety, his excellency Benjamin F. Humphreys, governor of the State of Mississippi (map No. 65, Louisiana Atlas of Maps, p. 58), and as the map is an important recognition of Louisiana's ownership of the disputed area, as shown by the coloring, we reproduce here in our brief a colored photographic reprint of the disputed area as shown on said map, together with a reproduction of the governor's approval.

Nor is this the only instance where, by the official maps of Mississippi, that State has recognized Louisiana's ownership of and sovereignty over the area in dispute today.

Notable among the other maps may be mentioned the following:

1st. Official map of the State of Mississippi published in accordance with an act of the State legislature approved March 8, 1882, by the State board of immigration and agriculture and prepared under the directions of E. G. Wall, commissioner (map No. 32, Louisiana Atlas of Maps, p. 30).

2d. Rand, McNally & Co.'s sectional map of Mississippi, *compiled from the records of the office of the surveyor general and of the board of immigration and agriculture, Jackson, Miss.* (map No. 44, Louisiana Atlas of Maps, p. 41).

3d. Railroad commissioners' map of Mississippi (map No. 64, Louisiana Atlas of Maps, p. 57).

In fact, as we have previously stated, after a most exhaustive research, we have failed to find any map of either Louisiana or Mississippi, covering the area in dispute, which recognized or showed that the State of Mississippi had any right in or to the area she is claiming today, save and except the lone, solitary, instance of the Mississippi railroad commission map issued in 1904, *two years after this suit was instituted*, wherein, on the Eighteen-mile Island theory, Mississippi for the first time cartographically extends her claims into the St. Bernard, Louisiana, peninsula, which action on the part of the State of Mississippi is, we submit, a confession of the absolute weakness of her prior claim, to such an extent as to preclude its serious consideration today (map No. 71, Mississippi Atlas of Maps, p. 4), and Louisiana is justified in claiming that the State of Mississippi has officially recognized Louisiana's prior and better claim to the disputed area

and that this area is part of Louisiana because it is south of the deep-water channel which separates the two States as the true boundary line.

With this statement of the facts upon which Louisiana bases her plea of title by prescription, usucaption and acquiescence, we now furnish the following authority on the international law of prescription:

Priority of Right, Acquiescence, Prescription, Assertion of Title, Ownership and Sovereignty as Derived Therefrom.

These various sources of title and ownership are generally treated by the commentators on international law, under one general heading. Pradier-Fodéré treats them under the heading "Comment les États acquierent la propriété territoriale," "How States acquire territorial property;" Tom. II, Droit International Public, § 781, p. 337, from which author we prefer to quote as being more thorough, and exhaustive and he collates the opinions of all the great international law-writers, and criticises their unmethodical treatment of the various manners of acquiring property by States and nations. He says that Klüber, and G. F. De Martens "n'admettent que l'occupation et les conventions; les autres comme Heffter citent la cession, les accroissements naturels, l'occupation, Wheaton parle de l'occupation, de la conquête, de la cession, confirmées par la presumption qui resulte d'un long laps de temps, ou par des traités et d'autres contrats avec les États etrangers. Suivant Bluntschli il faut compter parmi les moyens d'acquérir la propriété la prise de possession ou occupation, la cession, l'incorporation (dans trois cas) la conquête, la prescription, l'echange (dans un cas) l'accession. Dudley Field admet l'occupation, l'accession, (comprenant l'alluvion) la cession, la conquête. Pasquale-Fiore en seigne que les Etats acquierent la propriété territoriale par l'occupation, les traités, la conquête, la prescription, l'accession, et dans certains cas la succes-

sion, et le testament. Calvo par la prise de possession, la cession, l'incorporation (dans trois cas), la conquête, la prescription, l'alluvion, l'occupation de contrees desertes." Our author comments on this diversity of opinion and the want of precision, which he says throws the subject into somewhat of confusion, and in order to systematize the treatment of the subject, and discuss it in something like order, he recurs to the civil law, from which international law is derived, as to the various manners of acquiring property by individuals. In §§ 782, 783, 784, 785, p. 338 *et seq.*, he first discusses "occupation," and sums up the doctrine that the occupation must be with the idea of permanent control and possession. and in § 791 *et seq.*, p. 345, he treats the question "Mais comment cette prise de possession se conservera t'elle?" He cites G. F. De Martens who agrees with Vattel, that the actual occupation must continue in some form, by cultivation, or some such actual use, drawing material, &c., therefrom, and not by mere signs, crosses, inscriptions, and other figurative occupation. He says that, on the other hand, Klüber and Bynkershoëk contend that there need not be actual continuous corporeal possession "a titre de proprietaire," but it is sufficient if "tous les signes extérieurs qui marquent l'occupation et la possession continue," and it is sufficient if these signs serve to show that there has been no intention of abandonment of occupation or possession. He further says that Heffter seems to hesitate to pronounce himself between these two doctrines, "De simples declarations verbales, dit-il, des signes incertains d'une appropriation projetée, lorsqu'ils sont contredits par les faits, et qu'ils rendent l'intention douteuse ne pourvont pas être regardés comme un titre valable, bien que la pratique des nations ne soit quelque fois prévalue de mesures semblables." The author (Fodéré) coincides in the opinion of Vattel and De Martens, and says that the civilized nations of the world do not regard the mere discovery or claiming territory, without

a continued possession and occupation, as giving either title, ownership or sovereignty.

Translation.

G. F. De Martens—"Only admitting that occupation and conventions; the others as Heffter cited cession, natural increase, occupation; Wheaton speaks of occupation, cession confirmed by presumption which results from the long lapse of time, or by treaties and other contracts with foreign States. Following Bluntschli we must account among the means of acquiring property or taking possession or occupation, cession, incorporation (in three cases), conquest, prescription, exchange (in one case) accession. Dudley Field admits occupation, accession (including alluvion), cession, conquest. Pasquale-Fiore teaches that the States acquire territorial property by occupation, treaties, conquest, prescription, accession and in certain cases succession, and testament. Calvo, by the taking of possession, cession, incorporation (in three cases), conquest, prescription, alluvion and occupation of abandoned countries." * * * "But how is this taking of possession continued and kept," it must be "under title of propriety" with "all the exterior signs which mark occupation and continuous." * * * "Simple verbal declaration" says he "uncertain signs of a projected appropriation when they are contradicted by acts, which render the intention doubtful cannot be regarded as a good title, especially where the parties of nations do not allow to prevail similar measures."

Under section 820, p. 381 Fodéré discusses prescription, confining it to that class of prescription, which is known in the civil law as "prescription acquisitive ou usucaption." In section 821, p. 382, he propounds the question "La prescription est-elle de droit naturel ou seulement de droit civil?" "Is prescription from natural law or only from the civil law," and says that Grotius assigns it to the civil law,

as according to natural law long possession should not necessarily constitute title or ownership. Cujas, he says, also assigns it to the civil law and rejects it from both natural and international law. Merlin, he says, contends that it is both natural and civil law, as being essentially equitable. Fodéré seems to think that it is not natural but civil law, but says, " Mais en réalité il importe peu que la prescription soit de droit naturel ou de droit civil ; il suffit qu'elle soit utile et qu'elle réponde aux exigences, non seulement de l'intérét privé, mais encore et surtout de l'intérêt général. 822, Cette consideration me seurva a resondre la question de savoir si la prescription existe et peutêtre invoquée en droit naturel, question trés débattue et sur laquelle les auteurs ont jété peu de lumière." In section 823 he cites and quotes G. F. De Martens to the effect that, in international law, when a nation or a State sees another State or nation take possession of and acquire by occupation a portion of its territory, and so continues for a long time without any claim by the first nation, which remains silent, there is a tacit renunciation of ownership and an acquiescence in the ownership of the second occupant and possessor. On page 384, Martens is quoted as saying in regard to presciption " L'avantage mutuel des nations semble a la vérité, exiger qu'on la reconnaisse ; on pourrait donc en faire un principe de droit naturel social par rapport a ces nations reconnues pour vivre dans une société générale ; cependant on n'a rien gagné encore tant qu'on ne peut fixer l'espacede temps necessaire pour l'acquisition ou pour l'extinction des droits par prescription ; et il est evident que le droit naturel ne peut pas fixer cet espace de temps avec la precision nécessaire" Fodéré cites Klüber and Heffter as in effect opposed to the doctrine of absolute prescription, as a part of international law, but Fodéré adds " Il est vrai que Heffter domet la renonciation tacite resultant d'un abandon voluntaire qui met la possession à l'abri de toute contestation, el que parmi les cas d'abandon empor-

tant renonciation il range la présumption d'abandon qui resulte d'une tres longue possession non contestée et non interrompue" Mais dit il "c'est toujours aux principes de la renonciation qu'il faut recourir en pareille question ; la prescription est purement une question de fait" and again Fodéré says quoting from De Martens "tandis qu'elles-memes se curent en devoir d'empêcher par les declarations faites à temps que les presomptions qu'elles ont fait noirtre n'induisent d'autres nations dans une erreur préjudiciable, elles paraissent avoner par la obligation de rompre lesilence a l'egard des droits qu'elles ne veulent pas abandonner" "L'usage constant et approuve des nations, dit Wheaton, montre que, quelque soit le nom que l'ondonne a ce droit, la possession non interrompue par un *État* d'un territoire ou de toute autre bien pendant un certain laps de temps exclut les droits de tout autre *État* a cet égard, de meme que le droit naturel et civil de toutes les nations civilisées assure a un particulier la propriété exclusive d'un bien qu'il a possédé pendant un certain temps sans que personne ait prétendre y avoir les droits."

In section 825 Fodéré contends that prescription is a fundamentally necessary part of international law, and he quotes Bluntschli to that effect. In section 826 he says: "Vattel excellement démontré que l'usucapion et la prescription sont d'un usage beaucoup plus necessaire entre les *États* souverains qu' entre les particuliers;" and he further quotes Vattel to show that the rejection of usucaption and prescription from international law would produce constant quarrels, wars, and disagreements among the States and nations, which would constantly threaten and involve the peace of the civilized world. He quotes Vattel also to show that tacit or silent acquiescence by a State or nation, in the occuption of territory, claimed by it, by a foreign power, will fortify ownership and title by prescription and usucaption, which Vattel calls "une approbation tacite." In sec-

tion 828, Fodéré discusses, and quotes from Vattel, the length of time by which prescription can be acquired, and recommends that it ought to be fixed by treaties.

Translation.

"But, in reality it matters but little whether prescription comes from natural or from civil law. It suffices that it is useful and that it answers exigencies, not only of private interest, but yet and above all general or public interest. This consideration serves me to solve the question of knowing if prescription exists and can be invoked in natural law, a question which has been much debated and disputed, and upon which authors have thrown but little light." * * * "The mutual advantages of nations would seem in truth to exact its recognition; we can then adopt it as a principle of natural social law in relation to those nations recognized as living in a general society; nevertheless there is nothing gained since we cannot fix the space of time necessary for the acquisition, or for the extinction of rights by prescription; and it is evident that natural law cannot fix this space of time with the necessary precision." * * * "It is true that Heffter admits the tacit renunciation resulting from a voluntary abandonment which puts possession beyond all contest, and among the cases of abandonment which results from a very long possession not contested or interrupted. But, says he, it is always to the principle of recognition that we must incur in such a question; prescription is purely a question of fact." * * * "Since they themselves ought to have stopped by declarations made at the time and should not induce other nations into a prejudicial error; they should appear to declare by the obligation to break the silence in regard to the rights which they did not intend to abandon." * * * "The constant and approved use of nations says Wheaton, shows that whatever name that we will give to this right, possession not interrupted by a State or a Territory or

of any other thing during a certain lapse of time excludes the rights of others in this regard. Since natural and civil law of all of the civilized nations assures to a particular individual the exclusive property of a thing which has been in possession during a certain time without any one pretending to have any rights concerning it." * * * "Vattel excellently demonstrated that usucaption and prescription are of a much more necessary use between sovereign States than between individuals."

In section 829—Fodéré admits that certain commentators on international law do not admit prescription or *usucapsion* in international law, except under the doctrine of *uti possidetis, jus et favor possessionis*, to the limited degree, as following conquest or force of arms.

In section 832, Fodéré explains the right of ownership which has accrued from the long gathering of the fruits and products of a territory, or thing which is called in the civil law, *perception*. He says "Par *perception il faut entendre le fait d'avoir recueilli les fruits produits par une chose.*" Fodéré claims that the same principle and doctrine forms part of international, as it does of civil law. He says that Heffler denies the proposition, and that Heffler quotes from Groteus to fortify his dissent. Following the subject up the author then goes on at too great length to quote here the question as to "*Comment se perd le propriété du territoire?*" and instances occupation by another State, prescription, abandonment, and neglect to assert ownership and title.

Translation.

"By perception must be understood the fact of having gathered the fruits produced by a thing."

This doctrine of ownership by prescription in favor of nations and States has bean frequently maintained both in arbitrations and by judicial decisions of our own courts. In

his decision as arbitrator between England and Portugal as to the ownership of Delagoa bay and the islands therein, President McMahon of the French Republic decided in favor of Portugal on account of the discovery of the bay by the Portuguese in the 16th century, and that Portugal had asserted title in 1732 against Holland, and against Austria in 1781 and had exercised the right of continuous ownership; that there had been a tacit acknowledgment by England of Portugal's ownership and possession as late as 1817, and no claim by England to the ownership, except one in 1823, based on some treaties with native neighboring tribes by an English officer. This award was made at Versailles, 24th of July, 1875 (State Papers, vol. 66, 1874, 1875, pp. 554 *et seq.*).

In an arbitration between Great Britian and Venezuela, to settle the boundary line between British Guiana and Venezuela (February 2, 1897) it was agreed that "adverse holding or prescription during a period of fifty years shall make a good title. The arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription" (Moore's International Arbitration, vol. 5, pp. 5017 *et seq.*). We have said that our courts have in such cases judicially recognized the plea of prescription and sustained it between States of the American Union.

The case of Keyser *vs.* Coe, 9 Blatchford, 32, presents an issue between two individuals in regard to the question as to whether Goose island, in Long Island sound, belonged to New York or Connecticut. The court decided in favor of Connecticut, saying (p. 41) "The possession of Connecticut has always been consistent with this view of the documentary title. So far as these islands have been permanently occupied at all, that occupancy has been by citizens of this State, who have recognized its jurisdiction over their island possessions. In conveyances, the land of which they are composed has been described as lying within the State, and the deeds thereof, offered in evidence, have been recorded in

the appropriate land records within the same jurisdiction. * * * To this uniform possession of Connecticut, New York has made no adverse claim, so far as we are apprised, except in the single instance" referring to a correspondence between the officers of the two States in 1765. And the court sustained the claim of the State of Connecticut by reason of prescription and uninterrupted possession of the island. This language setting forth the facts in this case admirably fits the case at bar between Louisiana and Mississippi as almost the identical facts alluded to by the court in regard to Connecticut's possession can be applied to the possession of Louisiana.

And these principles of general international have been applied and sustained by this honorable court in cases of boundaries between States of the Union.

As early as the case of Rhode Island *vs.* Massachusetts, this honorable court recognized the right of a State to ownership by prescription, in a boundary suit saying, on p. 638, in 4th Howard:

"More than two centuries have passed since Massachusetts claimed and took possession of the territory up to the line established by Woodward and Saffrey. This possession has been steadily maintained, under an assertion of right. It would be difficult to disturb a claim thus sanctioned by time, however unfounded it might have been in its origin."

On pages 591 and 639 the court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the action of the commissioners of the colonies, said:

"Surely this, connected with the lapse of time must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade

with the lapse of time and fall with the lives of individuals. For the security of rights, whether of States or individuals, long possession under a claim of title is protected. *And here is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.*" (Italics are our own.)

In Missouri *vs.* Kentucky, 11 Wallace, 403, this honorable court laid great stress on the long possession by Kentucky of the disputed territory, as cumulative and confirmatory of other proof in establishing Kentucky's ownership, the court saying:

"There is, therefore, nothing in this record which shows that Kentucky has not maintained for a long course of years, exclusive possession and jurisdiction over this territory and the people who inhabit it. It remains to be seen whether she shall remain in possession and continue to exercise this jurisdiction or whether she shall give way to Missouri."

And, on page 410, the court says, after discussing the testimony of witnesses about the exercise of dominion and jurisdiction by Kentucky over the disputed territory:

"Can there be any need of further evidence to sustain the long-continued possession of Kentucky to the island?" &c.

And the court sustained Kentucky's claim, and dismissed the bill of the State of Missouri.

So in 136 U. S., 511, this honorable court based its decision in favor of Kentucky as against Indiana, on the seventy years' possession and exercise of jurisdiction over the land in question, uninterrupted by any claim of Indiana, by virtue of prescription, and quoted Vattel, Pradier-Fodéré, and Wheaton as maintaining the doctrine of prescription in settling boundaries between States. In that case this honorable court said:

"The long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either

side. * * * It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it is conclusive of the nation's title and rightful authority."

In Virginia *vs.* Tennessee, 148 U. S., 522 *et seq.*, the same doctrine is upheld and reaffirmed by this honorable court, supporting it with abundant English and American authorities, quoting from Rhode Island *vs.* Massachusetts, 4 Howard, 591, 639, and also from State of Indiana *vs.* Kentucky, 136 U. S., 479, 510, the following: "It is a principal of public law, universally recognized, that long acquiescence in the possesion of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority." The court also quotes Vattel to the same effect, as follows:

"The tranquillity of the people, the safety of States, the happiness of the human race do not allow that the possessions, empire, and other rights of nations should remain uncertain, subject to dispute, and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title (Book II, c. 11, § 149)." (French text in bottom note.)

The court also quotes the following from Wheaton in his International Law: "The writers on natural law have questioned how far that peculiar species of presumption, arising from the lapse of time, which is called *prescription*, is justly applicable as between nation and nation; but the constant and approved practice of nations shows that by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time excludes the claim of every other in the same manner, as by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question (part II, c. 4, § 164)." The court then proceeds to show that

the State of Virginia had manifested "its acquiescence for over eighty-five years, embracing nearly the lives of three generations," on the boundary line, by various acts, which she was now attempting to overthrow and change.

In Iowa *vs.* Illinois, 147 U. S., 1, and 151 U. S., 239, the whole doctrine of the boundary line between States of the Union, being on navigable rivers at the main channel or "thalweg" is fully discussed, maintained and fortified by quotations from commentators on international law, such as Halleck, Creasy, Wheaton, Twiss, Woolsey, Phillimore and others.

We thus have conclusively shown, as we confidently believe, that the general principles of international law on the subject of prescription, as between independent nations and States, have been applied by this honorable court to no less than six boundary cases between the States of the American Union.

In the case at bar the evidence abundantly shows that Louisiana has continuously occupied the territory in dispute from 1812 to date, during a period of ninety-three years, and has in every way exercised complete dominion over it, in which Mississippi acquiesced until, in her code of 1880, she for the first time made a pretense in that code to the dominion over the islands *by a general reference therein to islands within six leagues of her shore*, but never attempted any physical possession or control until after 1900, when she first began to assert actively her ownership of the disputed territory, when by improvident use and neglect the oyster fishermen of Mississippi had destroyed the oyster fields of that State and were seeking new fields to conquer. This circumstance will not overthrow the facts and law cited sustaining Louisiana's title by prescription to the area in dispute.

MISSISSIPPI'S DEFENSE.

In our final consideration of the many elements that go to make up a full presentation of the issues of this case, it is necessary to consider the theory upon which counsel for the State of Mississippi will base that State's claims to the ownership of the disputed territory, and with a knowledge of this theory once obtained, we can show its fallacies and inapplicability to the issues of this case.

We take it that the State of Mississippi claims the disputed area because it is assumed to be composed of islands, and as these islands are within six leagues or eighteen miles of her shore, that they were given to her by the act of Congress creating her a State on December 10, 1817.

Louisiana admits that there are some islands in the disputed area, namely, Grassy, Half Moon or Grand, Le Petit pass, an unnamed island and Isle à Pitre, all of which are between the deep-water channel on the north and the main coast line of the St. Bernard peninsula on the south; and contends that these islands were previously given to her, Louisiana, by the act of Congress creating her a State, April 6, 1812, nearly six years prior to Mississippi's creation as a State, and that her title thereto is better than that of the State of Mississippi, and Louisiana further contends that these islands are hers by reason of the fact that they are south of the deep-water sailing channel line which is the true boundary between the two States. The relative merits of these contentions we have already discussed at length, showing as a result of the argument that these above-named islands are, for the reasons heretofore given, truly the property of the State of Louisiana.

But we come now to another phase of this case, to which we have previously referred but incidentally, namely, to the topography of the peninsula of St. Bernard. Mississippi bases her claim to that portion of the disputed area within

six leagues of her shore on the theory that the peninsula of St. Bernard and the Louisiana marshes constitute an *archipelago of islands* and not a *peninsula* in the true sense of the words, and, as islands within eighteen miles of her shore, are hers.

Louisiana admits that there are today in the body of the *Louisiana marshes*, or *St. Bernard peninsula*, some portions and spots of sea marsh which might technically be denominated as islands because they are entirely surrounded by water, but alleges that these bodies of sea marsh are not true islands even today and are not to be regarded as such.

Mr. E. H. Wall, commissioner of the State land office of the State of Mississippi, in the year 1904, two years subsequent to the institution of this suit by the State of Louisiana, wrote a letter to the Commissioner of the General Land Office of the United States at Washington, D. C., inquiring in regard to islands within eighteen miles of the Mississippi main shore line, having in mind these supposed islands in the *Louisiana marshes*.

The answer of the Commissioner of the General Land Office of the United States to the letter of Mr. E. H. Wall, Mississippi's land commissioner, is given in full in the record (Record, pp. 1191 *et seq.*, Exhibit No. 2), and from it these Mississippi officers get very little satisfaction as to the extension of their eighteen-mile theory into the St. Bernard peninsula, for the Commissioner says:

"By a reference to the inclosed portion of the map of the State of Louisiana, it will be seen that a line drawn parallel to the north shore line of Lake Borgne and Mississippi sound, and at a distance of six leagues therefrom would include portions of townships 11, 12 and 13 south, ranges 17, 18 and 19 east, and townships 10, 11 and 12 south, range 20 east, St. Helena, meridian, in St. Bernard parish, Louisiana, in which are to be found many tracts of land surrounded by water and which would, therefore, be denominated as islands, *but which are, in fact, hummocks of land surrounded by the marsh*

and swamp in said township, etc." (italics our own), thus putting a quietus to their theoretical creation of islands in the St. Bernard peninsula.

But we have many facts, much stronger than this, showing that the peninsula of St. Bernard is a true peninsula and that the Louisiana marshes form part of the *coast* line of the State of Louisiana not only today, but that the peninsula of St. Bernard was a true peninsula and the Louisiana marshes formed part of it and part of the coast line of the State of Louisiana at the time the Congress of the United States created the State of Louisiana and that the Congress of the United States so regarded it.

Map No. 18, the geological map of the St. Bernard peninsula (Louisiana Atlas of Maps, p. 7) shows the peninsula of St. Bernard to be a true peninsula and it shows a true *Louisiana coast line* on the south shore of Mississippi sound, entirely across the disputed area, or between *Malheureux point* and *Isle à Pitre*. This distinct coast line of Louisiana exists today.

Its existence is fully established by abundant evidence in the record (Record, p. 245, testimony of Capt. J. D. Railey; p. 282, testimony of Mr. Harry Cage; p. 286, testimony of Mr. James M. Breaux). This is further demonstrated by the fact that Mr. Alfred Joseph Monier, under instructions, for the purpose of testifying in this case, *walked along this well defined coast line dry shod* from Petit pass or Malheureux point on the west to Isle à Pitre on the east, except that when he came to these bayous that intersect this coast line, he was transferred across the bayous by Geo. Thiel, who followed along for the purpose in a skiff (Record, p. 324, testimony of Mr. Alfred Joseph Monier; p. 330, testimony of Geo. Thiel; p. 297, testimony of Captain A. C. Ruiz).

If this area, as a peninsula, exists today it certainly existed one hundred years ago when Louisiana was created a State. There has been no building up of the country in the neighborhood of the disputed area since Louisiana was

created a State. The protective levee system, to a point below the parish of St. Bernard, was built as early as the year 1750 and there has been no building up of the country since by alluvion from the Mississippi river, as we will in a moment show; but as a matter of fact the process has been one of subsidence and disintegration.

We have already referred to the ancient maps of this peninsula and called your honors' attention to the fact that they show the coast line as a true coast line and the peninsula of St. Bernard as a true peninsula, maps issued at, or about, and before the time Congress was creating the State of Louisiana.

We have already referred you to the report made by President Thomas Jefferson to Congress in the year 1804 showing that the peninsula of St. Bernard was created by the Bayous Terre aux Boeufs and La Loutre and how that peninsula and the *marshes* then formed part of the parish of St. Bernard.

We now assert that in place of the peninsula of St. Bernard being an archipelago of islands at the time Congress created either the State of Louisiana or the State of Mississippi it was then even a better defined peninsula and the coast line was, if anything, a truer coast line than it is today and *that the process ever since then has been one of subsidence and disintegration*.

In our geological discussion of the St. Bernard peninsula we have shown how the peninsula was formed, when, in past ages, Bayou Terre aux Boeufs first became a lateral branch of the Mississippi river and by extending out into the waters of the gulf of Mexico, and itself dividing into branches, created, by the deposits of alluvion brought down by the annual overflows of the Mississippi river, the lands that form today the peninsula of St. Bernard and the Louisiana marshes. Having seen how this peninsula was thus formed, we must now consider the effect that natural influences have had upon it during the past one hundred years to see if any resulting changes have occurred in its topography, to see if the country is the same as it was when Louisiana was

created a State. This investigation will show that considerable changes have occurred during the last century from which the conclusion naturally follows, when considering the cause and effect, that the St. Bernard peninsula was, one hundred years ago, even a better defined peninsula than it is today and that the coast line of the Louisiana marshes was if anything more distinct.

Dr. Wm. C. Stubbs (State geologist of Louisiana) shows that this alluvial soil of Louisiana by its very nature, originally deposited by its own gravity, is of very loose formation, and that the tendency naturally is for it to become more and more compact as time passed. This process of compacting itself carried with it as a natural result a consequent sinking of the surface level of the soil, which before the erection of the levee system was offset and replaced by the fresh and recurring deposits made by the annual overflow by the river of its banks. As Louisiana became settled, a levee system was gradually extended by its people along the banks of the Mississippi to prevent the annual inundation of the inhabited lands, and this levee system had extended itself to English turn, or English bend, a point on the east, or left. bank of the Mississippi river, and that Bayou Terre aux Bœufs was closed off at its head as early as the year 1750 (Record, p. 129, testimony of Major B. M. Harrod). This extension of the system carried the levees below and south of the parish of St. Bernard as early as 1750, and by the exclusion of the river water prevented the annual deposit of sediment, prevented the annual compensating or offsetting of the annual settlement or subsidence, and the tendency in the southern portion of Louisiana has been and is, with the completion of the levee system to the mouth of the river, one of continual settlement, subsidence and lowering of the surface level of the land, which has been calculated at the rate of from four to five feet a century (Record, p. 339, testimony of Dr. Wm. C. Stubbs). The subsidence at the actual mouth of the Mississippi river, distant say 100 miles from the dis-

puted area, that is, at Port Eads, has been accurately calculated by the United States engineers in charge of the maintenance of the jetty system at South pass, and was found to be one and 54/100 feet between the years 1876 and 1902 (Record, p. 648, testimony of Mr. C. Donovan). This fact was demonstrated by a system of carefully run levels from Cairo, Ill., south to the gulf of Mexico.

These conditions as to alluvial formation, the completion of the levee system, and the consequent subsidence exist in the St. Bernard peninsula, just as in other portions of the State of Louisiana. The record abounds with illustrations of this phenomenon. The most characteristic illustration of this fact of subsidence is the finding of sunken trees, and at times whole forests, ten to one hundred feet below the present surface level of the soil, the trees and their stumps, in a perfect upright position, just as they grew (Record, p. 341, testimony of Dr. Wm. C. Stubbs; p. 359, testimony of Mr. R. R. Barrow; p. 363, testimony of Mr. James C. Hugh; p. 527, testimony of Mr. James Wilkinson; extract from the Transactions of the American Society of Civil Engineers, Record, p. 705).

A striking instance of this evidence of subsidence is also found in the following:

A point on the extreme east sea coast of the St. Bernard peninsula is called "Point Chicot" meaning "stumpy point."

The point as will be seen from map No. 7 (Louisiana Atlas of Maps, p. 2) juts out into the waters of Chandeleur sound which waters are as salty as those of the sea, and entirely too salty to permit of the life or growth of cypress trees. Nevertheless, in 1854, Major. B. M. Harrod, on a visit to that point, saw upright stumps there in the water, and recognized them to be the stumps of cypress trees which had grown there, thus indicating that there had previously been a time when the land had been sufficiently high above the level of the salty sea water to permit of the existence of cypress tree life

at that point (Record, pp. 121 *et seq.*, testimony of Major B. M. Harrod). Now then for the sequel. Mr. George H. Dunbar, who had no knowledge of Major Harrod's experience many years before and did not know that he had previously testified in this case, testified that he visited Point Chicot about fifty years later, about 1902, and, while fishing there, lost his fishing lines by their becoming entangled in these stumps, which were then not observable above the surface of the water (Record, pp. 311 *et seq.*), showing that the tree stumps had settled or sunk under the surface of the water in the intervening half century.

The fact of subsidence in the St. Bernard peninsula, or Louisiana marshes, as the locality is commonly called, is further shown by the gradual extinction of all tree life in that section. At various points, there were oak trees that used to grow, but which are all now either dead or dying (Record, bottom of pp. 272 *et seq.*, testimony of Wm. Dillard; pp. 299 *et seq.*, testimony of Alfred C. Ruiz), thus showing not only the geological tendency, but the actual settlement and subsidence of the St. Bernard peninsula.

The question may be asked, If these lands are sinking, why have they not all sunk out of sight?

In the interior of the Louisiana marshes, where the lands have stayed above water and at tide level, a phenomenon is observed similar to that discovered in other parts of Louisiana similarly situated—that is, that for several feet down the soil is composed entirely of decayed vegetable matter. This answers the above question and is explained by the fact that the annual growth of sea marsh grass by its annual death and decay, forms annual layers of vegetable composition which offset or compensate the continuous subsidence and keeps these lands at tide level or just above water (Record, p. 353, testimony of Dr. Wm. C. Stubbs; p. 526, testimony of Mr. James Wilkinson).

In connection with this demonstration of subsidence Louisiana also contends that topographical conditions ex-

isting in 1803 when Louisiana was purchased from France, or in 1812 when she was created a State, when established by evidence, must control in the decision of this case, and that the record clearly shows that for the past hundred years the St. Bernard peninsula has been undergoing a continuous process of disintegration and subsidence.

As merely another confirmatory illustration of subsidence, we refer to the gradual disappearance of Round island, southeast of the mouth of Pearl river, in the disputed territory, (Record, p. 268, testimony of Mr. William Dillard; p. 253, testimony of Mr. J. D. Railey) and to the gradual disappearance of St. Joseph's island, just north of the deep-water channel (Record, p. 254, testimony of J. D. Railey; p. 243, testimony of Capt. Thomas Summerall; p. 544, testimony of Capt. A. S. Cowand, etc.).

Another influence that has tended to affect the topography of the St. Bernard peninsula, in the matter of producing and hastening its disintegration has been that of the storms which have prevailed in that region for the past one hundred years.

Mr. Isaac M. Cline, forecaster of the United States Weather Bureau located at New Orleans (Record, pp. 505 *et seq.*) testifies as to the dates of the storms affecting the St. Bernard peninsula, so far as records thereof had been kept, and the record shows their occurrence to have been frequent, and that they were of very destructive effect.

In connection with the testimony of Mr. Cline, extracts were offered in evidence from the reports of the Superintendent of the United States Coast Survey for the years 1852 and 1853, (Record, pp. 512 *et seq.*), showing the effect of storms occurring in those years in the general region of the disputed territory.

The record also contains extracts from De Bow's Review, List of Hurricanes, 1700 to 1856, and clippings from 1837 to 1893, taken from the New Orleans Picayune, a daily

newspaper published in that city (Record, pp. 1036 *et seq.*, document No. 36).

Even Mr. Thomas Jefferson, then President of the United States, in a message to Congress, November 14, 1803, in reference to the recently acquired province of Louisiana, refers to the destructive effect produced by hurricanes in the parish of Plaquemines, which adjoins the parish of St. Bernard, and is of the same geological formation, and in the same general geographical location (Record, p. 1015, document No. 19). The record abounds with the testimony of individuals as to the general process of disintegration produced by the prevailing storms in the disputed territory (Record, pp. 242 *et seq.*, testimony of Capt. Thomas Summerall; pp. 250 *et seq.*, of Capt. J. D. Railey; pp. 259 *et seq.*, of Mr. Chas. Sanger; pp. 266 *et seq.*, of Mr. William Dillard; pp. 293 *et seq.*, of Capt. Alfred C. Ruiz; pp. 309 *et seq.*, of Mr. George H. Dunbar; pp. 363 *et seq.*, of Mr. James C. Hough; pp. 404 *et seq.*, of Mr. John McGraw; pp. 529 *et seq.* and pp. 671 *et seq.*, of Mr. James Wilkinson; pp. 544 *et seq.*, of Capt. A. S. Cowand; pp. 662 *et seq.*, of Mr. J. S. Beckwith; pp. 669 *et seq.*, of Mr. Ernest Cucullu; pp. 681 *et seq.*, of Mr. Charles Marshall; pp. 710 *et seq.*, of Mr. Albert Estopinal, Jr.; pp. 829 *et seq.*, of Mr. Henry T. Goodloe; pp. 837 *et seq.*, of Mr. Campbell K. De Lappe; pp. 838 *et seq.*, of Mr. Edward M. Wallace; pp. 862 *et seq.*, of Mr. James K. Henley; pp. 864 *et seq.*, of Mr. John Conner; pp. 868 *et seq.*, of Mr. Patrick M. McDonnell, and pp. 872 *et seq.*, of Mr. Frederick M. Weed).

The topographical and geological conditions immediately west of the marsh or delta of the Mississippi river are naturally the same, in a general way, as those of the St. Bernard peninsula. Similar results in the process of disintegration were produced by storms in that locality as was the case with the storms in St. Bernard. Additional evidence to this effect is found in the record (Record, pp. 323 *et seq.*, testimony of Mr. Edmond McCullom; pp. 388 *et seq.*, of Mr. Adam Duet;

pp. 393 *et seq.*, of Mr. Joseph Tomessi; pp. 400 *et seq.*, of Mr. Julien Labat; pp. 401 *et seq.*, of Mr. E. L. Lecompte).

On this proposition of the case, the State of Louisiana, therefore, maintains that the St. Bernard peninsula is a peninsula today; that it was even a better defined peninsula one hundred years ago when she was created a State, and formed at that time what was considered the main coast line of the State of Louisiana in that locality, measuring from which, in the mind of Congress, Louisiana should get all islands within three leagues of her coast, and that the record clearly shows that the peninsula of St. Bernard was not in the mind of Congress an archipelago of islands which Congress intended to give to Mississippi when creating her a State on December 10, 1817.

Having thus conclusively shown that the claim of the State of Mississippi to the area in dispute cannot be seriously considered, first, because the islands in that area had previously been given by Congress to the State of Louisiana; and second, because the peninsula of St. Bernard was a true peninsula in the mind of Congress and not an archipelago of islands, we are now led to consider the further claims, if any, that Mississippi urges, giving, or even seeming to give, a basis for her present contention. As we understand them these claims are :

1st. That the islands which Congress intended to give to the State of Louisiana are other islands in the open gulf of Mexico beyond the disputed territory and that therefore Louisiana had no prior title to the islands in the disputed territory when Mississippi was admitted into the Union, December 10, 1817.

2d. That the State of Mississippi has title to the disputed territory because she has exercised acts of sovereignty over it and heretofore regarded it as hers.

The first of these is the more important proposition and we shall now show that there is absolutely no basis justifying such a contention.

The words of the act creating Louisiana a State and which affect the proposition are:

"*thence down the said river (Mississippi) to the River Iberville; and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast.*"

The sustaining of the correctness of the Mississippi construction would do away entirely with the recognition of the deep-water channel sailing line as the true boundary between the States, a conclusion that could not be reached in the face of the facts in the record.

Then the words of the act do not admit of any such construction. The clause, "*including all islands within three leagues of the coast*" refers to the *whole* coast of the State and we have shown how the peninsula of St. Bernard formed an integral part of the *coast* of the State of Louisiana. It was not necessary for the line of demarcation between the States to reach the open waters of the gulf of Mexico before the *coast* of Louisiana came into existence. As a matter of fact the waters of Mississippi sound were considered as the sea or as forming part of the sea and gulf of Mexico at that time. We have already shown that Mississippi sound and Lake Borgne are salt-water bodies of water and true parts of the sea or gulf. Congress in its description so regarded these bodies of water, for in its boundary description it carried its line from the middle of Lakes Maurepas and Pontchartrain *immediately* to the gulf of Mexico, thus indicating that it considered that to be the next body of water to be reached in the extension of the southern boundary of Louisiana around to the westward until it reached the Texas line. We have also shown, under our discussion of international law, how these bodies of water, Mississippi sound and Lake Borgne, are true arms of the sea. It is only natural to presume that Congress so regarded them. That they were re-

garded as part of and forming the beginning of the sea at that point is further established by the fact that on the early maps of that section of the country these bodies of water, with the exception of Lake Bongue which is not mentioned in the acts of Congress, are given no separate individuality, have no names of their own and are therefore recognized only collectively as being and forming part of the sea or gulf of Mexico. As a matter of fact it was not until the year 1866 (map No. 29 Louisiana Atlas of Maps, p. 23) that the body of water known today as *Mississippi sound* was given that name. Even in the survey of the coast of the State of Mississippi in the year 1839 by Mr. John Wheeler, engineer, under authority of the State legislature of Mississippi (Record, p. 1148) no name is given on the sketch to the body of water known today as Mississippi sound.

It is therefore clearly to be presumed from this that Congress regarded the waters of Mississippi sound as being the gulf of Mexico in its reference to that body of water in the act of Congress creating the State of Louisiana; that the *coast* of the State of Louisiana began along the north shore of the St. Bernard peninsula, or on the south shore of the waters today known as Mississippi sound; and that it would be absurd to suppose that the islands referred to by Congress in the act admitting Louisiana into the Union as a State were solely those islands to the south of the State. If we take this theory of the State of Mississippi and reduce it to its natural elements it proves itself to be absurd. In order to carry out the present Mississippi idea to its full extent it is necessary that, working backwards, the line, extending from the mouth of Pearl river, should extend due south a distance of eighteen miles. It will be seen from the map Mississippi A (Record, p. 88) that it is there admitted that this extension that distance of this line *due south* would conflict with and run into what is admitted to be the *mainland* of Louisiana; and these theorists are therefore compelled to back up several miles around *Malheureux point* and go eastward along the

Louisiana coast, or St. Bernard peninsula, until they come to Nine-mile bayou down which they project their line into the center of the *Louisiana marshes*. The extension of this line eastward, then bisects and runs through various *hummocks* of marsh land, introducing new elements of uncertainty, because if the *marsh hummocks* are *islands*, then in many instances the claim of the State of Mississippi only takes parts or portions of these islands, when in their theory Mississippi would be entitled to *all* of the islands, and a difficult question naturally arises in determining to which State these divided *islands* (?) would really belong; for if we follow this theory further it comes as a natural result that when Louisiana was created a State her boundary must have run directly south from the mouth of the Pearl river. The projection of this line would have cut the peninsula of St. Bernard into two parts, and would have given to Spain the better or greater part, not only of that parish, but of the parish of Plaquemines to the south in order for this line extending south to reach the open waters of the gulf of Mexico; thus this theory by the process of *reductio ad absurdum* shows its own fatal fallacy.

This therefore brings us to a discussion of the next question to be considered:—

"*That the State of Mississippi has title to the disputed area because she has exercised acts of sovereignty over it and heretofore regarded it as hers.*"

We have already referred to and cited such an overwhelming mass of evidence in the record, showing not only Louisiana's affirmative exercise of ownership of the disputed territory, but also the official recognition by the State of Mississippi of Louisiana's ownership of the disputed area, that it would be like painting the lily and perfuming the violet to now disprove Mississippi's acts of sovereignty and ownership, yet our treatment of the case would not be complete

did we not fully explain and account for the few instances in which the State of Mississippi might appear to be claiming rights in the disputed area. These instances are few and a full knowledge of, and careful search through, the record shows the following to be the only occasions when the State of Mississippi might appear to be in any way referring to the disputed area:

1st. In her legislative enactments wherein she makes use of, and in her judicial decisions where she refers to, the words

"*thence westward including all islands within six leagues of the shore.*"

This is explained by the fact that there were in existence a number of islands, to-wit, Petit Bois, Horn, Ship, Cat, Round, and Deer islands, which were within six leagues of the Mississippi shore, but which were outside of the disputed area, and are the islands to which reference was intended to be made in such legislative enactments and judicial decisions.

2d. In her legislation granting to Congress a right to erect a light-house on Half Moon island.

This instance was on February 17, 1842, when the legislature of Mississippi passed an act entitled "An act giving consent of this State to the United States to purchase a site in St. Joseph's or Half Moon island for the purpose of erecting a light-house thereon" (Record, p. 1819). The fact that the State of Mississippi here granted to Congress her consent to erect a light-house on Half Moon island would perhaps, on the first blush, indicate an assumption of ownership on her part of Half Moon island, yet Mr. E. H. Wall, the State land commissioner, testified (Record top of page 1758) that the State of Mississippi never had on the books of her State land office any record of ownership of

lands in townships 10 south, range 17 east, 11 south, range 17 east, 10 south, range 18 east, 11 south, range 18 east, which are the four townships that form the lands comprising Half Moon island. How then can we account for this action by the State of Mississippi, when it is so at variance with her otherwise acquiescent recognition of Louisiana's ownership of all the disputed area of which this island forms but a small and unimportant part? An answer and full explanation is readily found in the fact that the legislature of the State of Mississippi did not know that *St. Joseph's island* and *Half Moon island* were two separate and distinct islands, the former being owned by Mississippi and the latter being owned by Louisiana, and that the confusion in regarding them as one and the same island was due to legislative ignorance of the subject, as appears from a resolution of the Mississippi legislature, approved February 22, 1842, or five days later, entitled "A resolution to Congress concerning the erection of a light-house on St. Joseph's island," and reading as follows:

"*Resolved by the legislature of the State of Mississippi*, That our Senators in Congress be instructed, and our Representatives requested to unite their best exertions to obtain a sufficient appropriation for the erection of a light-house on St. Joseph's, *sometimes called Half Moon island*, situated in Lake Borgne, and lying between the mouth of Pearl river and the bay of St. Louis" (Record, p. 2124, Mississippi document No. 102). (Italics ours.)

St. Joseph's island was never called Half Moon island. They are, were, and always have been separate and distinct islands. This reference, therefore, to "St. Joseph's, as to being *sometimes called Half Moon island*" shows that no special significance can be attached to the mention by Mississippi of Half Moon island so far as evidencing any claim or ownership as it in fact indicates that the reference to Half Moon island was alone due to ignorance and confusion. As a matter of fact on November 19, 1857, an act

of the Mississippi legislature was approved authorizing the United States to expropriate St. Joseph's island for light-house purposes, and no reference is made therein to Half Moon island (Record, p. 2128, Mississippi document No. 106). In due course a light-house was built by the United States on St. Joseph's island, but owing to the fact that this St. Joseph's island has practically washed away and disappeared (Record, p. 544, testimony of Capt. A. S. Cowand), there is no light-house there now, it having been removed to the mainland, and yet Mississippi contends that no changes have taken place in this country in the last hundred years.

3d. The next instance that might be construed as indicating an assumption of sovereignty by Mississippi over a part of the disputed area was where an inquest was held and a preliminary hearing had in a case where a drowned man was thought to have been murdered. Joseph, Louis and John Kennedy, brothers, all citizens of Biloxi, Mississippi, were on board a sailboat going from Mississippi to the Louisiana marshes, and when the vessel, in a storm, was passing one of the buoys which marked the deep-water channel, John Kennedy fell overboard and was drowned. In a search instituted by members of his family, his body was found washed up in the Louisiana marsh, and was naturally taken home to Biloxi, Mississippi, for burial. As some bruises were discovered on the body, the two brothers, Louis and Joseph Kennedy, were arrested by the Mississippi authorities, and at the preliminary hearing before the justice of the peace, were honorably discharged.

Mr. Louis Kennedy (Record, p. 1266) testified that he was told his brother was drowned or fell overboard off *Cat island*, and although he was on the boat at the time, he did not know where he was, because of lack of knowledge of the locality, but that it was marked in the family Bible that he was drowned at Cat island. The extract in the family Bible reads as follows :

"Drowned on Wednesday, October 26, 1886, at 2 o'clock in the morning at Cat island. John Callavati Kennedy" (Record, p. 1267).

Joseph Kennedy, who was pilot, says a gale was blowing from the north, he was pilot; and had just passed a black-and-white buoy, off Cat Island spit, when his brother slipped on a rope which rolled and he fell overboard. At best, this was very close to Mississippi territory, the only written record shows the incident to have occurred *at Cat island*, which is really in Mississippi, it was only natural that the body should be taken back by the family for burial at their and his *home* at Biloxi, Mississippi, and this assumption of jurisdiction if it be such to, under these circumstances, hold an inquest and preliminary hearing where the accident may have occurred at Cat island in Mississippi territory, is to our mind no fair test of the exercise of police power and sovereignty for the purpose of fixing State boundaries.

Mississippi has also introduced a multitude of documents in reference to her licensing of vessels to fish oysters. These records do not in any way show jurisdiction, or even an attempt to exercise jurisdiction, over the area now in dispute. Each vessel, operating in the oyster business in Mississippi, had to procure and pay for a permit or license to do so. The State of Mississippi had her own oyster waters; and it was, as to the fishing in these waters, that these licenses referred. These Mississippi oystermen fished in Mississippi waters; and, until the enactment and enforcement of the Louisiana oyster law prohibited it, they were welcome to fish oysters in Louisiana waters; and not only fished there but overran the whole Louisiana marsh, to the mouth of the Mississippi river, over a hundred miles beyond the disputed area of today.

4th. The last instance shown by the record wherein the State of Mississippi, or any of her political subdivisions,

might be presumed to cherish and entertain ideas of ownership in the disputed area is found in the case of the official map of Hancock county, State of Mississippi (Mississippi map No. 62, Louisiana Atlas, p. 65).

Hancock county forms the southwest corner of the State of Mississippi, and its western boundary being Pearl river, it adjoins the State of Louisiana. It is the most western of the Mississippi coast countries and therefore lies immediately north of the disputed area. The map in question was made by Mr. J. L. Henderson, a land agent in that county, in 1895; it was accepted, in December, 1895, as the official map of Hancock county, Mississippi, by the board of supervisors of said county, which body in consideration of his making the map relieved Mr. Henderson of liability on his certain note due the county and held by the sheriff for collection. We were able only to obtain a blue print of the map as the original is on file in the county court-house and is the only official county map there.

An examination of the map shows that the county of Hancock, State of Mississippi, makes no claim whatever to the ownership of lands in the St. Bernard peninsula, as claimed by Mississippi, today, in her defense of this suit. It does show a reference to St. Joseph island and Half Moon island, which might indicate that she claimed to own both of these islands. A reference to the map will show however that Mr. Henderson must have made it up by simply compiling the township plats on file in the office of the commissioner of the State land office at Jackson, Miss. This idea is confirmed by the following facts: The map simply designates Half Moon island and gives its area and direction from the mainland without subdividing it into sections, townships and ranges, and as explaining where Mr. Henderson got his data, from which to make his official map of Hancock county, Mississippi, and as accounting for the appearance of Grand island there, it will be noted that there is on file, in the office of the commissioner of the State land office at Jackson, Missis-

sippi, a plat of a township survey called, T. X, R. XV W., land district, east of the island of New Orleans and west of the Pearl river (document, Louisiana, 1, Record, p. 1190). A comparison of this township plat with the Henderson map will show that Mr. Henderson must have gotten his data as to these islands from this township plat. Now in truth the township plat does not indicate that the islands mentioned are in, or form any part of, the State of Mississippi. The plat is based on surveys made in the year 1824 of what is now called *Lower Point Clear* and which is really a part of the State of Mississippi. The lands forming this point are sectionized, but the islands are not. It is between these two islands that the deep-water sailing channel line runs and the survey really merely indicated the general location and area of the islands. There was a resurvey of the area in this township as will appear from the above document, Louisiana No. 1, approved September 12, 1846, and no mention is then made of these islands.

If Grand or Half Moon island was part of the township, it would have been subdivided, while the subdivision was being made. That it formed no part of the Mississippi township in question, is shown by the detailed survey and sectionizing of the island, made in 1845, when the island was found to be formed of parts of four Louisiana townships; namely:

Section 36, township 10 south, range 17 east.

Section 1, township 11 south, range 17 east.

Sections 29–31–32–33, township 10 south, range 18 east.

Sections 5 and 6, township 11 south, range 18 east.

Approved July 31, 1846, by the surveyor general of Louisiana (Record, 1047*a*, document 38).

This explanation we think accounts for all the apparent instances where the State of Mississippi would appear to have wandered from her policy of quasi-studied recognition of the priority and greater strength of Louisiana's claim to the disputed area.

CONCLUSION.

We have thus endeavored to meet and discuss what we consider to be the only salient points in this cause. The record is very, indeed unnecessarily, voluminous in our opinion. The evidence and testimony having been taken before commissioners appointed by this honorable court, a great deal of matter has been thrust into the case which we deem inadmissible, as irrelevant and not pertinent to the issues. The commissioners having no power to rule upon our objections and exceptions to evidence, your honors must decide upon those points. Our opponents have, for instance, introduced a great deal of evidence in the nature of opinions of citizens of Mississippi as to the boundaries of the States, all of which we regard as utterly inadmissible. There were many other similar instances, to which we deem it unnecessary to refer in detail. Attempts were also made by the counsel for Mississippi to establish certain propositions in which, in our opinion, they have signally failed. Not having as yet been favored with a copy of their brief, we cannot say whether they will still seriously persist in their efforts of contention on those points. Considerable space, in the record, is devoted by them to an endeavor to show that, should your honors decide this cause in Louisiana's favor, the commerce of Mississippi's sea or gulf ports would be seriously menaced and interfered with. We apprehend that even if this should be the case, it could not affect the decision of your honors in regard to the rights of Louisiana in the premises. But as the navigable waters would still be open to Mississippi commerce, we cannot see any possible damage to Mississippi to result therefrom, except to prevent Mississippi fishermen from poaching or pirating oysters from Louisiana territory. Nor can we see why, if it be true that Louisiana's seacoast is now much longer than that of Mississippi, there is any reason why your honors should therefore

take any of Louisiana's territory away from her and give it to Mississippi to increase her coast or shore line. An abortive effort was also made to try and show that the peninsula of St. Bernard, or the now archipelago of islands therein, was formed by silt and alluvion from the Mississippi river since the admission of Louisiana as a State. No proof was administered to establish this theory, but, on the contrary, it was shown by us that since the year 1750, when the levees were built on the right bank of the river in front of the parish of St. Bernard, no alluvion has passed to the eastward of that parish, but all the alluvion has been discharged through the mouths of the Mississippi river and has been borne by the littoral current to the westward, and not to the eastward, as claimed by our opponents (testimony of C. Donovan, Record, p. 652). We have also shown that the disintegration of the peninsula was due to violent storms, overflows, subsidence, &c., which have occurred since the admission of Louisiana into the Union. That these changes in the territory have had no effect in altering the ownership and dominion of the territory is plain under the principles of international law in regard to avulsion.

Fodéré, in section 808, pages 365 *et seq.*, discusses at length the principle and doctrine of alluvion in lakes and arms of the sea, as forming a part of international law. Speaking of alluvion in waters or lakes separating two different States, he quotes with approval Vattel on the subject, who says: "Si ces accroissements ne sont pas insensible, si le lac, franchessant ses bords, inondait tout a coup un grand pays, cette nouvelle portion du lac, ce pays couvert d'eau appartien drait encore a son ancien maitre. Surquoi en fonderait on l'acquisition par le maitre du lac? L'espace est trés reconnaissable quoiqu'il changé de nature, et trop considérable pour presumer que le maitre n'ait pas eu l'intention de se le conserver malgré les changements qui pourraient y survenir;" and Vattel, approved by Fodéré, adds "Que si quelques terres voisines du lac sont seulement inondées par

les grandes eaux, cet accident passager ne peut apporter aucun changement à leur dépendance" and again "Par les memes raisons, si les eaux du lac, penetrant par une ouverture dans le pays voisin, en forment une baie ou en quelque façon un nouveau lac joint au premier par un canal, ce nouvel amas d'eau et le canal appartientrent au maitre du pays dans lequel ils se sont formés. Car ces limites sont fort reconnaisables, et on ne presume point l'intention d'abandonner un espace si considerable, s'il vient à être envalie par les eaux d'un lac voisin." In section 810, pages 368, 369, Fodéré quotes with approval from "M. d'Argont a la Chambre des Paris de France, (1828)" Journal Administratif as to the ownership of territory on the sea either increased or diminished by the action of the waters of the sea: "L'alluvion maritime au contraire apparaitra souvent tout a coup; un coup de mer la produira, un autre la fera disparaitre; elle sera composée des matieres que la mer repose, souleve, et delaisse, des sables et galets qu'elle charrie. La presence des coquillages, qui ne peuvent vivre que dans l'eau salée et les herbes salines qui croitront à sa surface attesteront d'une maniere certaine qu'elle est un lais et relais, et que consequent le rivage qui la borde est exclusivement maritime."

Translation.

"If the encroachments are not imperceptible, if the lake, overflowing its banks inundates all at once a large section of country, this new portion of the lake, this portion of the land covered with water, still belongs to its former owner upon what is founded the acquisition by the owner of the lake? The space of land is very recognizable, although it has changed its nature, and it is too considerable in extent to presume that the owner has not had the intention to keep it, in spite of the changes which have come over it." * * * "That if some lands bordering on a lake are only inundated by high tides or waters, this transient occurrence does not

bring any change in their dependence (or dominion)" * * * "For the same reasons, if the waters of a lake, penetrating through an opening in the neighboring land, and forming in it a bay, or in a certain manner a new lake joined to the first by a canal (or channel), this new body of water and the canal or channel belong to the owner of the land in which they are formed. For these boundaries or limits are very recognizable and it is not to be presumed at all that the intention was to abandon so considerable a space (of territory) if they became inundated by the waters of a neighboring lake." * * * "Maritime alluvion, on the contrary, appears often suddenly; one force of the sea will produce it, another will cause it to disappear; it will be composed of substances which the sea deposits, raises or lowers, sands and debris which it carries. The presence of shells and shell fish which cannot live but in salt water and the salt grasses which grow upon its surface, show in a positive manner that it is the rise and fall of the tide, and that consequently the shore is exclusively maritime."

Thus establishing the correctness of the Louisiana contention that the fact that the forces of nature have helped to partially destroy the peninsular formation of the St. Bernard peninsula does not affect Louisiana's ownership of that body of land.

As a matter of fact, as we have previously stated, it is alone the clause, referring to the islands, in the act of Congress creating the State of Mississippi, that has given rise to the boundary dispute at issue in this case. It is not to be presumed that the Congress of the United States intended to make a conflict of boundaries when there is a possible construction of the acts of Congress which would reconcile the apparent inconsistencies.

Louisiana contends and has always contended that there is an interpretation of the acts of Congress, creating the States

of Louisiana and Mississippi respectively, that would do away with all of the conflict, an interpretation that we really believe faithfully and truthfully represents the intention of Congress at the time it created the State of Mississippi.

We have heretofore shown and the maps in the record establish the fact that there is a chain of *white sea sand islands*, running from the west shore of Mobile bay, in the State of Alabama, westward to, and inclusive of, Cat island, in the State of Mississippi. These are the islands which by their chain form the southern boundary of Mississippi sound and they are all relatively of the same distance from the shore of the States of Mississippi and Alabama. These islands, beginning at the eastern end are Dauphin, Petit Bois, Horn, Ship, and Cat islands. There are two other islands, namely, Round island, off Pascagoula, and Deer island, off Biloxi, both in the State of Mississippi and lying inside of this chain of islands. If Congress referred to this chain of islands, as being those within six leagues of the shore, when she adopted her act creating the State of Mississippi, it follows that there would be no conflict with the prior existing boundaries of the State of Louisiana, provided the deep-water sailing channel line was taken as the correct boundary between the States of Louisiana and Mississippi. That this is so, that Congress was really referring to these large and important islands, on the south of the State of Mississippi, when it admitted her into the Union, is shown by the fact that in the act of Congress creating a separate territorial government for the eastern part of the Mississippi Territory and calling said Territory Alabama, the act being approved March 3, 1817, (Record, p. 2121, Mississippi document No. 107), the same language is used as will be seen from the following extract concerning the western and southern boundary of the Territory of Alabama—"thence due south to the gulf of Mexico, thence eastwardly *including all islands within six leagues of the shore* to the River Perdido, and thence up same to beginning." We think from this

that it clearly and conclusively follows that it was to this chain of islands that Congress referred, when it admitted Mississippi into the Union, and that it had no intention whatsoever of giving Mississippi any right or pretense to a claim of ownership in the *sea marsh islands* south of the deep-water sailing channel line in the disputed territory and which had been previously given by Congress to the State of Louisiana.

In concluding, therefore, our discussion of this whole subject-matter and in thanking your honors for your kind indulgence, in bearing with us in the long space it has taken to present the many phases of our case, we submit that the title of the State of Louisiana to the whole of the disputed area has been established clearly by the words of the acts of Congress and by the intention of Congress in creating, respectively, the States of Louisiana and Mississippi; but if there be in the minds of your honors any lingering doubt on this subject, as we have already stated, then we say that by the adoption of the deep-water sailing channel line as the proper boundary between the two States, in this region, the correctness of which proposition we have established beyond question, Louisiana's ownership to the disputed territory, in its entirety, is again established; and even then, if there still be any doubt upon the subject, that the record contains an abundance of evidence showing that Louisiana has acquired a title to the disputed territory by prescription, and that her ownership of the same cannot now be successfully contested by the State of Mississippi. And we therefore confidently submit our case to your honors for final consideration and decision, praying that the deep-water channel sailing line extending from the mouth of the most eastern branch of Pearl river north of Half Moon, or Grand island, through Mississippi sound, between Cat island and Isle à Pitre, north of Chandeleur islands into the open waters of the gulf of Mexico be decreed to be the proper boundary between the two States of Louisiana and Mississippi in that

region and that it be in due course properly buoyed and publicly designated as such; that the State of Louisiana be quieted in her ownership, sovereignty and possession of all the region south of said boundary line, and that the State of Louisiana recover her costs in this case unjustly sustained.

Respectfully,

WALTER GUION,
Attorney General of the State of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Of Counsel.

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OCT 14 1905
JAMES H. MCKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI, DEFENDANT.

IN EQUITY.

SUPPLEMENTAL BRIEF ON BEHALF OF THE STATE OF LOUISIANA IN SUPPORT OF HER BILL OF COMPLAINT.

WALTER GUION,
Attorney General of the State of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 18637

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STATE OF LOUISIANA, COMPLAINANT,

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STATE OF MISSISSIPPI, DEFENDANT.

IN EQUITY.

Supplemental Brief on Behalf of the State of Louisiana in Support of Her Bill of Complaint.

At the time of the preparation of our original brief in this case, we did not have before us the two briefs which have since been filed by the counsel of Mississippi, one by the attorney general and assistant attorney general of Mississippi, and the other by the associate counsel, Messrs. Monroe McClurg and Hannis Taylor. We, therefore, as counsel on behalf of Louisiana, were ignorant of what defenses would be set up by, and for, the State of Mississippi, except in so far as they had been developed by the answer and cross-bill of that State, and also by what had been indicated during the taking of the testimony, and offering of evidence.

We were therefore surprised, on the perusal of their briefs, at the fact that the State of Mississippi had now shifted its

defenses to far different grounds from those which it had originally assumed; indeed to grounds which were not only inconsistent with the original positions taken by Mississippi, but in direct contradiction of, and in opposition to, their whole previous theory of the case.

I.

This change of base by the State of Mississippi, heretofore referred to, is illustrated by her treatment of the evidence introduced in this case. In the twentieth paragraph of her *answer* (Record, page 81) the State of Mississippi contends that "except as to a small portion of *Isle à Pitre* in the whole expanse of this territory there is not a single human habitation, nor is there any animal life thereon, nor can any such be thereon. That it is a low-lying archipelago of irregular islands sometimes entirely covered by the high tide and at all times soft and boggy and to walk upon them is at almost all times impracticable and no actual occupancy of any kind has ever been had of the said territory except the boats of the fishermen, etc."

In our brief we called the attention of the court to the fact that this territory, composing the peninsula of Saint Bernard, and the Louisiana marshes, is of alluvial origin, and has never been higher than the surface of the highest water which by the deposit of its suspended alluvion had made the peninsula, and therefore is, necessarily, at about tide level; and an abundance of evidence has been introduced in the record showing that the character of the country conforms to its general recognized name of *marshes*. There are some few habitations of Louisianans engaged in the oyster industry who have built houses in the marsh, but that the area is not susceptible of cultivation and is at tide level, except the coast line, extending from Malheureux point on the west to Isle à Pitre on the east, forming the coast line of the State of Louisiana. The testimony of George Thiel and

Adolph Monier was introduced by the State of Louisiana for the purpose of showing that there has always existed, and that there exists today, a distinct and well defined coast line between these two points, forming the south boundary of Mississippi sound, and that this well defined and distinct coast line, higher than the balance of the Louisiana marshes, constitutes a part of the coast line of the State of Louisiana, as contemplated by the Congress of the United States when erecting Louisiana into a State, and yet we find counsel for Mississippi now quoting this very evidence to establish a character to the whole Louisiana marsh entirely different from, and at variance with, the character of the country as claimed by them in their answer to the bill of complaint and contrary to the true facts; this change of base being apparently assumed for the purpose of endeavoring to impress the court with the island character of the *marsh hummocks* composing the Louisiana marshes, forming a part of the parish of Saint Bernard and the peninsula of that name (Record, pages 324-330, testimony of Alfred Joseph Monier, and, pages 330-332, of George Thiel).

II.

Associate counsel for the State of Mississippi, in their brief, have extracted from the testimony of Dr. William C. Stubbs, State geologist of the State of Louisiana, on the subject of the geological origin of the peninsula of Saint Bernard and the Louisiana marshes, and have attempted by *garbling* that testimony, to now make it appear that Dr. Stubbs said that the territory composing the disputed area in the parish of Saint Bernard was made up of islands which had been built by the winds and waves of the sea, instead of by alluvium deposited by the Mississippi river, through Bayous Terre aux Bœufs and La Loutre, and that the insular formation of certain portions of the Louisiana marshes, (or islands, so-called by Mississippi), has never formed part

of the peninsula of Saint Bernard but were distinct creations formed by the winds and waves of the sea, and not by alluvium. We will proceed to show that the whole of Dr. Stubbs' testimony on this point is directly to the contrary.

Dr. Stubbs' testimony appears in the record at pages 332 to 355. He testified that the whole of the territory forming the parish of Saint Bernard was built up by the deposit of alluvium brought down by the Mississippi river, through the bayous which we have just mentioned. On page 334 he says, in reference to these two bayous:

"All the marsh lands that we now have along the banks of the Bayou Terre aux Bœuf that are being cultivated came from the deposit of this stream or bayou that ran through that country, and in fact the whole of Saint Bernard parish has been built up by that agency, the bayous coming from the Mississippi river."

By further reference to Dr. Stubbs' testimony, it will be seen that he has identified sample No. 1 as a sample of soil taken from Isle à Pitre and characteristic of the entire alluvial formation of that area; he has also identified sample No. 2 as characteristic of the chain of sand islands, forming the southern limits of Mississippi sound, lying south of the State of Mississippi, and east of the parish of Saint Bernard and the territory in dispute. It will thus be seen that Dr. Stubbs has thus far plainly established that the parish of Saint Bernard consists of alluvial deposits and not of sand washed up by the winds and waves of the sea. Having thus testified in regard to the formation of the peninsula of Saint Bernard, he then goes on to testify in regard to the sea-sand islands, east of Saint Bernard, not in dispute in this case, and south of the Mississippi coast; and he refers at length (Record, bottom of page 338) to islands south of Louisiana, on around to Texas and Mexico, as being of sea-sand formation, created by the waves of the sea, and similar to the string of islands lying south of the coast of Mississippi and east of the parish of Saint Bernard.

Vhen Dr. Stubbs, therefore, used the expression (Record, , 345): "These on the coast of Louisiana have not been off; they have been formed by the waves and winds of Gulf," he referred to the sand islands, south of Louisiana, lar in character to those south of the State of Mississippi, to islands that form no part of the parish of Saint Ber- d, and no part of the disputed area. Yet associate coun- or Mississippi have endeavored, in their brief (pages 33, 35, and 49), to make it appear that Dr. Stubbs referred ie disputed area in the parish of Saint Bernard, as being nds which had "not been cut off," and as having been rmed by the waves and winds of the Gulf."

s showing the correctness of our contention in this re- t and as clearly showing the garbling of this evidence, vill take up and consider the testimony of Dr. Stubbs n the point where he was taken in hand on cross-ex- nation by Mr. Taylor, one of the associate counsel of the e of Mississippi (Record, page 344):

Cross-examination by Mr. TAYLOR:

Q. You are familiar, are you not, with the geography of archipelago of islands lying off the east coast of Saint nard parish and the south coast of Mississippi?

A. Yes, sir.

Q. Is it not a fact that in many portions of the world, n many coasts, there are archipelagoes of islands; is not one of the common features in geography and not un- l feature, the archipelago of islands along the coast? for nce such an archipelago that lies off the coast of Alaska. you familiar with that?

A. Not very much there, but I know what you mean.

Q. It is a very simple phenomenon of history, that there archipelago of islands lying off the coast?

A. I will answer by stating I have already said that e are just such a string of islands lying from the mouth ie Mississippi river around to Mexico."

will be here noted that Dr. Stubbs at this point refers is testimony (bottom of page 338) where he speaks of

the sea-sand islands west of the Mississippi river, along the Louisiana coast, and along the Texas coast down to Mexico. Mr. Taylor then follows with the next question.

"Q. And is it not a fact that there is an archipelago of islands along the coast of Cuba known as the——"

It is to be noted at this point that Dr. Stubbs had, at the top of page 338, discussed the formation of the peninsula of Florida and the island of Cuba, and had designated them as of alluvial formation, built up by the Gulf stream. It will be noted also that the reference to Cuba would provoke a discussion of islands of *alluvial* formation as contradistinguished from islands of *sea-sand* formation. Therefore, Dr. Stubbs, in answer to this last question of Mr. Taylor, concluding that Mr. Taylor had theretofore been speaking of islands of sea-sand formation and was then changing to another subject, said, when interrogated in regard to the island of Cuba:

"A. You have gone into another thing."

Mr. Taylor thereupon stated to the witness:

"Q. You can just omit that"—

indicating that he did not intend to discuss islands of alluvial formation, and that he was referring to the islands of sea-sand formation, forming the southern boundary of Mississippi sound and east of the disputed territory, upon which Dr. Stubbs understood Mr. Taylor had been examining him, as shown by his original question.

Following up the same line of thought that he had in mind, that Mr. Taylor, by reference to Cuba, intended to change from a discussion of sea-sand islands to alluvial islands, Dr. Stubbs then answered, when told to omit the discussion:

"A. These are all alluvum origin"—

erring to Cuba and Florida. Thereupon Mr. Taylor said:

Q. We won't go into that"—

icating that he did not want to discuss islands of alluvial nation, and followed this remark, with the remaining part he question:

But that is a very common phenomenon in the geog- hy of the world, an archipelago or string of islands lying the coast?"

o which Dr. Stubbs replied.

A. Yes, sir."

hereupon Mr. Taylor asked the question:

Q. Is it not a very familiar matter in the study of geol-, the causes by which these archipelagoes are formed; process by which islands have been cut off from the nland?"

r. Stubbs thereupon replied to this question, considering concluding, as instructed by Mr. Taylor, that he should discuss islands of *alluvial* formation but should confine answer entirely to islands of *sea-sand* formation, as fol-s:

A. Sometimes, and at others not. These on the coast of isiana have not been cut off; they have been formed by waves and winds of the Gulf."

r. Stubbs, there intending in his reference to the coast ouisiana, the islands lying south of Louisiana, and west he Mississippi river, which he had mentioned at the top age 345, in answer to a previous question, which islands, e had previously stated, were of the same sea-sand and e formation as those like Cat island, Horn island, Ship nd, Petit Bois, and Dauphin islands, making up the n of islands, forming the southern boundary of Missis-

sippi sound and lying immediately eastward of the parish of Saint Bernard.

It will thus be seen that there is a studied attempt, on the part of associate counsel for Mississippi, to apply the testimony of Dr. Stubbs, in regard to the sand islands to the eastward of the peninsula of Saint Bernard, to the hummocks of land forming part of the peninsula of Saint Bernard, when it is perfectly evident that his testimony was directly to the contrary, in testifying that the parish of Saint Bernard was composed entirely of alluvium and not of sand created by the waves and winds of the sea.

III.

Associate counsel for Mississippi, in reference to the testimony of Major B. M. Harrod (Brief, pages 35, 36), laid great stress upon his statement that the peninsula of Saint Bernard was, at no time, a solid peninsula, but that spaces of water, or lakes, had been left in process of geological formation by alluvium, and that these water spaces had been subsequently enlarged by subsidence. It has never been the contention of the State of Louisiana that the peninsula of Saint Bernard was of an absolutely solid land formation, free and devoid of any water spaces, because that would be contrary to the very geological theory of its creation, which required water spaces through which the sediment would be carried, that would be used in the building up of the peninsula. It is therefore to be naturally supposed, as stated by Major Harrod, that there would be water spaces and lakes throughout the area, but that fact would not necessarily affect its general original peninsular formation as contended for by the State of Louisiana, just as the presence of the everglades in the Florida peninsula would not make the Florida peninsula any less a peninsula. The contention of the State of Louisiana is: that the coast line extending from Malheureux point to Isle à Pitre,

is and always has been a distinct coast line; that it is a natural extension of the peninsula of Saint Bernard, and has always existed and today still exists as a distinct coast line, though the peninsular formation, south of that coast line, has been more or less broken up, by the effect of subsidence, and the meteorological causes discussed in the Louisiana brief and set forth fully in the record. But that despite all of this process of continuing disintegration, the peninsula was more distinct as such one hundred years ago and that Congress regarded the peninsula of Saint Bernard, at the time, as a peninsula, and the coast line, between the points heretofore mentioned, as being part of the coast of the State of Louisiana, and the line from which the three-league distance was to be calculated, in determining what islands belonged to that State.

In the brief filed by the attorney general and assistant attorney general of the State of Mississippi, the fact of subsidence and disintegration in the Saint Bernard peninsula, which has been so clearly demonstrated by the evidence in the record, and by careful arithmetical calculations and investigations conducted by the engineering department of the United States Government, has been ridiculed and the statement has been made on page 41 of their brief that:

"If it has subsided four feet a century it must of necessity have stood up originally some forty feet above the sea level."

This deduction of the attorney general of Mississippi is an absurdity on its face, because of the fact that the alluvium, with which this peninsula was built up, was necessarily carried there by the waters of the Bayous Terre aux Bœufs and La Loutre, as long as there were no levees in existence, and these streams were connected with the Mississippi river, and the lands formed could never be higher than the surface level of the waters which made these lands by the deposit of their suspended alluvium. We have shown how the subsidence naturally occurred through the loose

nature of the matter deposited by its own weight, and that this subsidence was annually compensated by the sediment brought with each overflow of high water of the Mississippi river, and that these lands were therefore kept at about tide level so long as there were no levees; and that when the levee system was built in the year 1750 and the compensation by deposit ceased, then the only compensating element was the decay of vegetation which, in turn, offset the subsidence and has kept those lands at about tide level, where they were able to maintain themselves above the surface of the water, and at no time has there been, except on the line extending from Malheureux point to Isle à Pitre, any great elevation above the surface level of the water.

IV.

The burden of the complaint in both briefs, filed by the State of Mississippi, is along the line of suggesting to the court that it would be a great injustice to the State of Mississippi if the area in dispute were given to the State of Louisiana, because it would seriously affect the commerce of the State of Mississippi, and reduce her sea front. An examination of the map will show that the sea front of the State of Mississippi is not reduced one foot by the adoption of the line contended for by the State of Louisiana, although Mississippi complains that her sea front would be reduced one-half or two-thirds and thereby her whole commerce along that Gulf coast interfered with. As a matter of fact, the awarding of this territory to Louisiana would not affect the commerce of the State of Mississippi in the slightest degree, because these waters of Mississippi sound are navigable waters and Mississippi vessels would continue to navigate them, but would be prohibited only from taking oysters from the territory claimed by Louisiana, so that the question reduces itself merely to a matter of determining to which State shall be given an area that is valuable alone because of its

ster-producing properties and as having no effect upon e commerce or the sea front of the State of Mississippi.

V.

DEEDS OF THE LAKE BORGNE BASIN LEVEE BOARD.

It is passing strange that the associate counsel for Mississpi should hark back to the cold trail of a matter which is distinctly explained and exploded in the testimony in e record. On page 72 of their brief, speaking of certain eds granted by the Lake Borgne Basin Levee District comssioners, to private individuals, of land in the disputed ea, they call particular attention to the clause in these eds as follows:

"And further that should the said title be subsequently clared void the said board shall not reimburse to the purser any sum whatever" (Record, page 1088, document . 59).

And the associate counsel add:

"A more emphatic declaration could hardly have been ade of the flimsiness of the pretended claim of complainant der the act in question."

And on page 75 counsel again say:

"This aspect of the case is not worthy of serious consideran save so far as it goes to show that the authorities of uisiana, by seeking to acquire color of title to the islands question, by an appeal to the swamp and overflowed land s were convinced that that State possessed no title to them, der the act of April 6, 1812, admitting her into the nion."

The attempt is here made to show that the levee board, agent of the State, was doubtful of its own title, and the ior title of the State, to those very lands. The transparent lacy of this contention becomes perfectly evident when

we refer to the record on this point. In connection with the testimony of Mr. W. K. M. Dukate, one of these deeds from the levee board was offered in evidence, and on page 386 of the record (bottom) associate counsel for Mississippi asked:

"Q. I noticed from your deed that you bought two sections of land, sections 26 and section 21, and also four islands for which the State of Louisiana gave you a quitclaim; did it expressly provide that she did not warrant the title to the land, and for all of which you paid $63.75. That is correct.

"A. I believe in the main it is."

It was intimated that the levee board was unwilling to warrant the title to the land because of a defective title, or because it was thought that the State of Mississippi might have some claim or title to these lands. It therefore became necessary to account for and explain the want of warranty in these deeds by the levee board, when as a matter of fact, the State of Louisiana had, between the years 1853 and 1894, issued thirty separate patents to land in the disputed area to private individuals, without the exclusion of warranty in the several patents. On page 781, Mr. John Dymond, Jr., who was placed upon the stand and sworn as a witness, testified as follows:

"A. I am attorney of the Oyster Commission of Louisiana and also of the board of commissioners for the Lake Borgne Levee Basin district. I am attorney for several other levee districts in the parish of Plaquemines, and if you desire me to give them in detail I will be glad to do so.

"Q. It has been noticed that in these deeds from the Lake Borgne Basin Levee district—that is the proper name, is it not?

"A. Board of commissioners for the Lake Borgne Basin Levee district.

"Q. That there is an exclusion of warranty in these deeds. Will you please state how that exclusion came to be placed and for what reason, in these various deeds?

"A. When the board of commissioners for the Lake Borgne Basin Levee district was created, under section 11 of

t 14 of 1892, authorizing the creation of that levee district take charge of the protection of the parish of Saint Bernard, and a portion of the parish of Plaquemines, from overw by the high waters of the Mississippi river, the legislare authorized the register of the State land office to transfer that levee board all unsold State lands that were within e territorial limits of that district. For the purpose of ising funds with which to construct levees, in carrying out e objects and purposes of the act, I was consulted *as* (by) e board as its attorney, as to whether or not there should any warranty clause put in these deeds and I advised the ard not to put any warranty clause in the deeds because, as department of the State government, the board was not in a sition to warrant its deeds to these lands, as the proceeds of e of these lands were used in constructing levees and were erefore converted into other form which would not be available or on hand, for meeting any warranty obligations of a ntract of sale, and that any purchaser would have relief by plying to the legislature, in case there was any difficulty to warranty, and it would be the safest plan and would less likely to embarrass the board if that policy was proded with and the board acted on my advice."

And again on page 783 the same witness said:

"Q. In the preparations of these acts of sale from the Lake rgne Levee board, or, rather the board of commissioners the Lake Borgne Basin Levee district, was the idea upperst in your mind, or did you consider it at all, at the time, excluding warranty, that the State of Louisiana had a initive (*defective*) title to this property?

A. No, sir. No, sir. As the attorney of the board I conered that the State of Louisiana had a perfect title to the perty, and the idea of there being any uncertainty in the e never at any time affected me in my conclusions or in advice.

Q. Then, it was an entirely different reason that you d than any defect in the title of the State or of the levee rd holding from the State, that prompted you in giving advice you did?

A. Yes, sir."

On cross-examination in regard to this very same matter, the same witness testified on page 783:

"Q. Does the act of the legislature to which you refer limit the title to a release; does it prohibit a warranty being given to these lands?

"A. No, sir. It vests full authority in the levee board to determine the price and conditions under which the land shall be sold.

"Q. It does not undertake to say whether it shall warrant the title or not?

"A. No, sir.

"Q. And that act was passed when?

"A. In 1892; it was act 14 of the legislature of the State of Louisiana for that year.

"Q. Of course that was before there was any suspicion of this controversy?

"A. Yes, sir."

As stated by Mr. Dymond, in his testimony upon this subject, it is evident that he felt that, in the event it should subsequently develop that the State of Louisiana, before its transfer of these lands to that levee board, had previously patented any of the lands to individuals, or if the United States Government had, prior to the swamp-land grants of 1849–1850, patented any of these lands to private individuals, then the Lake Borgne Basin Levee board would not be in a position to warrant the deeds, or to reimburse the money received, because the said funds, after being covered into the State treasury, would have been used for the purpose of building the levees of the district, under the terms of the swamp-land grants, and such funds would not then be available for any purpose of warranty or reimbursement.

VI.

Outside of these attempts to twist and correct the evidence, so as to endeavor to maintain a weak case, the counsel for Mississippi have, in our opinion, advanced several proposi-

ions of mingled law and fact which we believe to be utterly untenable.

In our original brief on page 45 we quoted authorities upon the maxim "*Qui prior est in tempore potior in jure*," authorities to show that the maxim would apply to Louisiana's title to the peninsula of Saint Bernard and the islands, in dispute here, because she acquired them under the act admitting her into the Union on April 6, 1812, and the claim of Mississippi did not originate until December 10, 1817, nearly six years afterwards. We now add to the authorities here cited the following: In the Opinions of the Attorneys General, volume IX, page 254, on a question submitted as to certain swamp and overflowed lands surveyed, selected, and granted to the State of Arkansas by the act of Congress, September 28, 1850, we find the following:

"On the 9th of February, 1853, Congress made another grant to the States of Arkansas and Missouri to aid in the construction of a railroad, and under this grant a part of the land previously granted to the State of Arkansas under the denomination of swamp lands, was included, and is now claimed by the railroad. The question upon which you ask my advice requires a comparison of two laws and the acts done under them so as to ascertain which of these is the better title. Does the State take it under the first grant or was that grant so imperfect that the subsequent disposition of it by Congress passes the right to the later grantee? Where there is a conflict between two titles derived from the same source, either of which would be good if the other were out of the way, the elder must always prevail; *prior tempore est potior in jure*.

"This difficulty, therefore (*is*), solved, if the mere grant, as you call it, gave the State a right to the land from the day of its date. That it did so there can be no doubt. * * * The subsequent grants by Congress to the State for the use of the railroad could not have been intended to take away from the State the rights previously vested in her for other purposes. * * * The State, therefore, has the oldest and the most definite title and its lands were accurately located and their boundaries particularly defined agreeably to the act of

Congress before the same thing was done by the other claimants. The oldest title, the most definite, and the first location will surely give her priority and preference over another grantee subsequent in title, less definite in the terms of the grant and later in location."

Attorney General J. S. Black to Hon. Jacob Thompson, Secretary of the Interior, November 10, 1858.

An ingenious attempt has been made by the counsel for the State of Mississippi to do away with the priority of the grant of this territory to Louisiana before that to Mississippi, by building up a theory that Congress had in view a division of the coast along the gulf of Mexico so as to equalize the water frontage of Alabama, Mississippi, and Louisiana. In order to carry out this theory, reference is made to the southern boundary line of Mississippi, as fixed in the act of December 10, 1817, and the act of March 2, 1819, fixing the southern boundary line of the State of Alabama, in both of which acts islands within six leagues of the shore were granted. The effort is then made to construe these two later acts with the act admitting Louisiana, and to evolve an intention of Congress to limit and control the boundary of Louisiana by the subsequent acts. This is attempted to be done by applying the principle that acts *in paria materi* are to be construed and interpreted together, as expressing the true intent of the law-making power. We do not dispute the proposition that, in the proper interpretation and construction of a law, the intention of the law-maker should be arrived at when there is any obscurity or ambiguity in the letter of the law. This is a maxim of the civil as well as a principle of the common law: "*Scire leges non hoc est verba earum tenere, sed vim ac potestatem*," or, as rendered by Coke-Littleton, 78, "The intendment of law; the true meaning, the correct understanding or intention of the law; a presumption or inference made by the court." In this cause we firmly insist that the principle has no application to the act admitting Louisiana into the Union, because the acts

admitting Mississippi and Louisiana into the Union are not on the same subject-matter, and are therefore not statutes *in pari materia*, because they relate to two entirely different States and two entirely different objects.

"Statutes are *in pari materia* which relate to the same person or thing or to the same class of persons or things, and the phrase is applicable to public statutes or general laws made *at different times and in reference to the same subject. The word 'par' is not to be confounded with the term 'similis;' it is used in opposition to it, as in the expression 'magis pares sunt quam similes,' implying not likeness merely but identity.*"
English and American Encyclopedia of Law, second edition, vol. 26, pp. 621–22. (Italics are our own.)

"*Where Meaning Clear Resort to Other Statutes Generally Improper.*

"*It has been said that the doctrine that statutes in pari materia are to be taken together and construed as one act is resorted to only in cases of doubt, and it is never applicable where a statute is plain and unambiguous;* but clearly this statement is too sweeping, for a resort to other statutes may be necessary to determine the legislative intent in case of a repugnancy between the statutes, or may be used to strengthen conclusions founded on the language of the statutes" (*ibid.*, 623).

Now there is no other statute resorted to in the attempt to explain the repugnancy between the two acts of Congress in regard to the boundaries of Louisiana and Mississippi. The doctrine held in the text that the word "*par* must not be confounded with the term *similis*. It is used in opposition to it as in the expression '*magis pares sunt quam similes*,' intimating not likeness merely, but identity. It is a phrase applicable to general laws or public statutes made at different times in reference to the same subject," is taken from 9 Conn., p. 469, in a case where it was sought to maintain the right of subscribers to stock to withdraw their subscriptions and moneys, after six months' notice, from a particular bank (the Eagle) when there was no such

proviso or clause in its charter, because in the charters of other banks there was such a proviso and clause, and it was argued that the charters of all the banks of the State were *in pari materia*. So in 45 Ala., 535, it was said, quoting from Smith's Comm., page 751, section 636:

"It has been justly said that an argument drawn from a mere similitude of words which are used in relation to a subject entirely different would be a sophism too palpable to need serious reply (7 How., 122, 494)."

In 9th Barb. (N. Y.), 169, the Connecticut case was quoted and the doctrine endorsed, as also 1st Kent, 463, and Lord Mansfield in 1st Douglass, 30, both of which are cited by our opponents in their brief on the subject of "*in pari materia*," but the case only applies the doctrine to "a code of statutes relating to one subject, was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions (1 Kent's Comm., 463–464; Smith's Comm., 639)." The same application is made in 59 Barb., 202, in regard to wills and testaments. The court said:

"The design is to carry out the intentions of the laws, and it is a rule that a code of statutes relating to one subject was intended by the legislature to be consistent and harmonious in all its parts and provisions."

So in 7 How. Prac., N. Y., 245, the court said, referring to the Connecticut case:

"Possibly the learned chief justice was a little inaccurate in saying that the word '*par*' denoted identity, but the legal maxim uses it in that sense, and it must be applied accordingly. Now, are the subjects of the two enactments which I am considering identical?"

and decided that they were not. So in 59 Vt., 46, the same doctrine was maintained.

By referring back to the opinion of Attorney General Black, from which we have already quoted, it will be seen

hat in that case where there were two grants from the Jnited States, both of which covered a portion of the terri-ory or swamp lands in dispute, instead of holding that the ater statute would modify or control the earlier grant, At-orney General Black sustained the doctrine that the earlier grant would not be interfered with by the later grant, and such s the case in the cause at bar. The truth to our mind is that his theory of *pari materia* is a mere pretext by which an at-empt is made to reconcile two seemingly conflicting acts of Congress, when the true conclusion to be drawn would seem o be that Congress overlooked the prior grant to Louisiana vhen she made the southern boundary of Mississippi in con-lict with the prior grant. And this ignorance and oversight, f it be such, is not to be wondered at when we consider that a large portion of the Louisiana territory, acquired in 1803, vas almost *terra incognita* to the balance of the people in the Jnited States, having been so recently acquired and being o remote from the National Capital, as well as from the ther States of the Union, for we must bear in mind that, t the time Louisiana and Mississippi were admitted into he Union, steam navigation, on either inland rivers or on ea, was practically unknown, and these districts of our ountry could only be reached by weeks or even months of ravel. Besides this, when Louisiana was admitted into the Jnion by the act of April 6, 1812, the territory, now com-osing the coast counties of Mississippi, that is, below the 31st degree of north latitude, was not a part of the Mississippi erritory, but was in dispute between the United States and Spain, and therefore, when Congress admitted Louisiana into he Union, it could have had no prospective idea that the oundaries fixed for Louisiana could in any way interfere with any future legislation on the admission of new States. The theory, therefore, of any preconcerted design in regard o the water front of Mississippi, when Louisiana was ad-nitted, is entirely unfounded, without any basis and is ntterly fallacious.

VII.

In our former brief the deep-water channel theory was discussed by us only as an alternative, or confirmatory of what we had already said in regard to the boundary of Louisiana, as laid down in the act of Congress. We contended that the principle of the *thalweg* would apply to the arms of the sea, gulfs, sounds, bays, and other similar waters lying between two nations or States and quoted from the various authorities on the subject. In the brief of the associate counsel for Mississippi the point is attempted to be made that this *thalweg* or deep-channel theory is only applicable to interior rivers and is not applicable to sea waters whether of the open sea or arms of the sea. In the quotations which we made from the various authorities on international law, we showed that the reason of the adoption of the *thalweg*, or deep-water theory, to interior rivers was that it was deemed equitable and just that each of the riparian proprietors should have equal facility and advantage in reaching its shore for purposes of commerce.

Halleck, volume 1, chapter 6, page 146, says:

"Where a navigable river forms the boundary of coterminous States the middle of the channel, the *filum aquæ* or *thalweg* is generally taken as the line of their separation, *the presumption of law being that the right of navigation is common to them both.*"

So Sir Shirston Baker, page 68, No. 23, says:

"Where a navigable river forms the boundary of coterminous States the middle of the channel, the *filum aquæ* or *thalweg* is generally taken as the line of their separation, *the presumption of law being that the right of navigation is common to them both.*"

Edward Creecy says, on page 221, No. 230:

"Where a navigable river forms the boundary of coterminous States the middle of the navigable channel, the

lweg, is generally taken as the line of their separation, *the sumption of navigation is given to them both.*"

Indeed, all of the authorities, most of which we have quoted our former brief, give as a reason why the *thalweg* or deep annel, is given as the boundary in rivers, that justice would quire that each riparian proprietor should have the best eans of access, and navigation, to her bank or shore of the er.

We can therefore see no reason, in logic or common sense, y the same rule should not apply to the arms of the sea, ether they be straits, sounds, gulfs, bays, or other portions the sea, and your honors will find in our original brief t Halleck, in No. 25, page 145 of his work on International w, says:

"In such a case, whether the dividing water belongs enely to one State or the boundary is the middle or *thalweg*, ch party gains or loses according as the increase or deease is upon its side. The same rule applies to the gradual noval or formation of islands in the rivers or lakes which vide the sides OR IN THE SEA within the territorial limits the *ligne de respect* of a State bordering upon the ocean."

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Puffendorf is quoted by Sir Travers Twiss in his "Law of ations" in paragraph 2, section 174, page 251: "Puffendorf the same effect says 'that GULFS AND CHANNELS OR ARMS

OF THE SEA, are according to the regular course, supposed to belong to the people with whose lands they are encompassed," and Sir Travers Twiss adds :

" But in case the opposite sides of a *bay or strait are inhabited by different nations*, each nation has the right to go to the central line, drawn at low-water mark "—

thus applying the old rule to bays or straits, that the boundary line should be through the middle of the bay or straits, which are parts of the sea, and in the case at bar a a part of the gulf of Mexico.

So Rivier in his " Programme de Droit de Gens," etc., says in section 14, page 46 :

" The frontiers, p. 462 frontier mountains ; actual line, rivers ; the frontier can be on one of the banks (as below in section 13) if it is the bed of the river, it is according to recent treaties, generally the *thalweg*, that is to say the deepest line according to which the thread of the water directs itself. Frontiers in the lakes, IN THE SEA " thus making the *thalweg* theory applicable to arms of the sea. (Capitals are our own.)

So De Martens in his " Droit de Gens " says, No. 39, page 134 :

" That each of the two nations is mistress of the river and the islands which are situated in the middle of the river. * * * In navigable rivers it is the current of the river which is commonly had in view in agreeing to take the middle of the boundary. * * * WHAT WE HAVE JUST SAID IN REGARD TO RIVERS AND LAKES IS EQUALLY APPLICABLE TO THE STRAITS OR GULFS OF THE SEA, especially those which do not exceed the ordinary width of rivers or double the distance that a cannon can carry."

So Pradier Fodéré, in his " Traité de Droit International," etc., says in second volume, page 202 :

" THE LAKES FORMED IN THE IMMEDIATE NEIGHBORHOOD OF THE HIGH SEA.—If the maritime water which bathes the coast is considered to belong to the riparian States *there is still greater reason that the waters which touch the sea should be*

the same, that is to say, if the lakes form in the immediate neighborhood of the sea. These lakes ought to be considered as belonging to the State or to the States in whose territory they lie, under the same conditions that the enclosed seas are all reputed as such, *and as they are generally in communication with or connected with the sea they ought* TO BE CONSIDERED UNDER THE SAME RULES AS INTERNATIONAL RIVERS." (Italics and capitals are our own.)

It will be noted that Fodéré, speaking of lakes, uses the word in the French sense, and applies it to arms of the sea, for he says that they are in communication and connected with the sea, just as Lake Borgne is in this case.

Thus we have shown that these six eminent writers on international law, viz., Halleck, Baker, Twiss, Rivier, De Martens, and Pradier Fodéré, all apply the thalweg theory to rivers, and equally to arms, bays and gulfs of the sea, and in our original brief we have shown on pages 91 *et seq.* that the King of the Netherlands, as arbitrator on our northeastern boundary, applied it to the bays of Fundy and Chaleurs, that Emperor William applied it to the San Juan de Fuca straits, and that the Alaskan boundary arbitration applied it to the Portland canal. Counsel for Mississippi admitted in argument that the Portland canal was an arm of the sea from two and a half to five miles in width, and in Devoe Manufacturing Co., 108 U. S., 401, this honorable court applied the rule to the bay of New York which in some places is ten miles wide. Why then should not the same rule be applied to this narrow strip of water on Lake Borgne and Mississippi sound, where it is only eight or nine miles wide, and why should the inhabitants of Louisiana, if Louisiana was a foreign state or nation, be deprived of that deep-water channel, and be prevented from shipping their lumber, pine products, fruit and other products out to foreign ports through that channel, into the sea or gulf of Mexico.

Mr. Taylor claimed in his oral argument, that this principle of international law, in regard to the thalweg, would not

apply in this case, as it did not apply to other bodies of waters than rivers or lakes. This point we have already argued in this brief, and confidently believe that we have shown that it would apply. He said further that even if the principle would apply to arms of the sea, or the sea, in general cases, it could not apply here, because where there was a special convention or provision, that international law rules would not apply at all in any respect; and that as the act of Congress had laid down a specific boundary, which he called a *land or coast boundary*, in this case, the general principles of international law would not apply. His error consists in saying that there is any land boundary laid down in the act of Congress in the disputed territory. On the contrary it is a *water* boundary, in the words "thence to the gulf of Mexico" and the question here at issue is where is the boundary line in this sheet of water, and therefore it is necessary to resort to the principles of international law to fix where in this Gulf, or its arms, the line should run.

Against all of these authorities which we have collated, counsel for Mississippi neither cite nor quote any authority to the contrary except that, on page 18 of the brief of associate counsel, they say:

"While admitting the application of the doctrine Lord Chief Justice Alverstone was careful to limit it. In replying to Mr. Taylor he said: 'The doctrine of the thalweg applies, but I am bound to say I do not think that even David Dudley Field himself—and Dudley Field was a very great authority, meant to say what you put upon him, because he refers to Bluntschli, *who is there dealing with rivers.*'"

This passing remark of Lord Chief Justice Alverstone, sitting upon the board of arbitration, without argument and without prior and particular research on the question as to the application of the *thalweg*, or deep channel, theory to arms of the sea is the only authority that our opponents have advanced in opposition to the authorities which we have already quoted. It was not necessary, perhaps, for the pur-

ose of the argument before that arbitration commission, to rgue the proposition in regard to arms of the sea or the pen sea, but it is probable that, had the chief justice been onfronted with the authorities which we have now adduced, nd the question properly presented and argued, that he ould have been of the opinion that the principle did apply s well to arms of the sea, sounds, bays, gulfs, and inlets, as does to interior rivers.

And in order to oppose the thalweg or deep channel heory, Mississippi now changes base, and calls the Mississippi sound and Lake Borgne the open sea.

It says in the following paragraphs of its cross-bill (Record, page 85, paragraph VII):

"That the State of Louisiana claims title and sovereignty ver some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers f the United States Government and local officers of the tate of Louisiana, recited in the original bill of complaint erein; your orator charges that said claim to said islands nd territory is not well founded because of the matters erein set forth and because said islands and territory have ot been susceptible to actual use and occupation and because the said claim is in violation of sec. 3, art. IV of the onstitution of the United States prohibiting the transfer f any part of the territory of one State to another adjaent State without the consent of the legislatures of the two tates and of the Congress. However, if this honorable court hould, for any cause or reason, adjudge said islands and erritory approved by the aforesaid officials to the State of ouisiana to belong to said State because of such transfers hen your orator prays that the claim and title of Louisiana hereto be restricted to the real lands or islands so lost to the tate of Mississippi, and be in no case permitted to affect ny lands under the waters, or any of the public oyster eefs thereunder. Your orator alleges and charges that she as exercised sovereignty and jurisdiction over said waters ithin eighteen miles of her shore aforesaid, and that her itizens have enjoyed the same for all lawful purposes since er admission into the Union; that, by her public statutes, odified by authority of her legislature in 1857, she declared

in terms what had hitherto been in fact the southern or water boundaries of her coast counties in art. 2, sec. 2, page 50, Code of 1857; as follows * * * 'and the counties bordering on the gulf of Mexico—to-wit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State, within the space embraced, by extending their boundary lines which strike *the gulf of Mexico*, or the inlets thereto, on a continuous direct course *to the southern boundary of the State, including all islands that may lay within the limits thus defined.*'

(Italics ours.)

"By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the '*Mississippi sound*' *was recognized as a body of water, six leagues wide, wholly within the State of Mississippi, from Lake Borgne to the Alabama line, separate and distinct from 'the gulf of Mexico.'*"

Record, page 87, cross-bill, art. IX.

"Your orater alleges and charges that all of the Mississippi territory between Pearl river and the Alabama line was organized on December 14, 1812, into two counties, known as Hancock and Jackson, and that on February 5, 1841, the county of Harrison was organized between the bay of St. Louis and the bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State of Mississippi the southern boundaries of said three coast counties are described as follows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says: '* * * thence along the middle of said bay of St. Louis, southwardly to its entrance, thence due south to the southern boundary of the State of Mississippi, *in the gulf of Mexico;* thence westwardly, with said boundary, including all islands within six leagues of the *shores of the gulf of Mexico and Lake Borgne*, to the most eastern junction of Pearl river, and *Lake Borgne*, and to the east mouth of Pearl river; thence up said river, by the middle thereof, to the point of beginning.' (Italics ours.)

"Section 45 of the Code above mentioned describes the southern boundary of Harrison county to the middle of the

bay of Biloxi, and proceeds as follows: '* * * thence along the middle of the said bay of Biloxi to its entrance, at the east end of Deer island; thence due south to the southern boundary of the State of Mississippi; *on the gulf of Mexico;* thence westwardly, along said boundary, to a point from which a line due north strikes the middle of the bay of St. Louis; thence due north to the entrance of said bay including all the islands within six leagues *of the shore of the gulf of Mexico.*' (Italics ours.)

"Section 50 of the Code aforesaid, as to the east and southern boundary line of Jackson county, reads: '* * * thence east, on the line between townships one and two, south, to the State boundary between Alabama and Mississippi; thence southerly, on said boundary *to the gulf of Mexico;* thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning.'" (Italics ours.)

"Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said Code, the boundaries of said counties are the same as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines, constituting the southern boundaries of the counties aforesaid, in the waters of the gulf of Mexico, are and have been since the formation of Hancock and Jackson counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed, and established, southern boundary of the Mississippi Territory and of the State of Mississippi, up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi Territory and that of the State of Mississippi has exercised all and complete *jurisdiction and sovereignty over the waters in the 'Mississippi sound' as a part of the counties aforesaid.* Your orator shows that the said Mississippi authorities have recognized the 'Mississippi sound' as a part of the Territory of Mississippi, and that her township and section lines are as well established in the waters of the 'Mississippi sound' as indicated by the county boundary aforesaid, as upon the lands within said Territory. That the fishermen of all kinds have been taking fish and oysters in said 'Mississippi sound' during all of this long period, and have been governed, as well as all others using those waters, by the laws and juris-

dictions of the Mississippi Territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

"Your orator further shows that this said line was also recognized by the supreme court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the acts of Congress admitting Mississippi in the recent case of Leinhard *et al. v.* Harrison County, decided by our supreme court, January 12, 1903 (not yet reported), in which controversy the issue was as to the center of the said county, and measurements from the eighteen-mile limit in the water were held to have been correctly made."

It will be seen from these extracts from the cross-bill of the respondent, State of Mississippi, that it was claimed that "the Mississippi sound was recognized as a body of water six leagues wide wholly within the State of Mississippi from Lake Borgne to the Alabama line, separate and distinct from the gulf of Mexico." That portion of the answer was framed for the purpose of showing that the boundary line of Louisiana in the clause "to the gulf of Mexico; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast," did not mean that the line should run eastward from the mouth of Pearl river through the gulf of Mexico, but, as respondent claimed, that the gulf of Mexico there mentioned meant the gulf of Mexico south of the parish of Saint Bernard, the open gulf, and therefore that the boundary line of Louisiana should run due south towards the open Gulf, south of the peninsula. This position was assumed in order to bolster up the claim of Mississippi to the islands east of a line drawn south from the mouth of the East Pearl river, as well as that portion of the parish of Saint Bernard which it bisected. Indeed, this contention was carried out by the Mississippi map offered in

evidence, called "Mississippi A;" but now, in order to defeat the adoption of the deep-channel or *thalweg* theory, as applied to arms of the sea, opposite counsel now claim that the sea waters, up to the mouth of the East Pearl river, are the gulf of Mexico and the open sea, and, as such, they claim that the deep-water channel or *thalweg* theory will not apply to those waters, as they are a part of the open sea. On pages 17 and 18 of their brief, associate counsel for Mississippi say:

"The moment the sea is reached or a body of water which is a part of the sea, the rule is at an end. So it is beyond all doubt that the rule invoked by complainant as to the flow of the mid-channel or thalweg of the River Iberville (now known as Manchac) to the sea through Lakes Maurepas, Pontchartrain and the Rigolets, expires by its own limitation when such mid-channel reaches Lake Borgne, which, in contemplation of the rule, is the open sea, a part of the waters of the gulf of Mexico. Certainly it was so regarded in the act of April 6, 1812, admitting Louisiana, whose terms are: 'Thence along the middle of said river and Lakes Maurepas and Pontchartrain to the gulf of Mexico. The attempt to extend the rule to the estuaries of the river into the open sea, that is into the open waters of the gulf of Mexico, cannot be supported either by reason or authority."

So also on page 19:

"Such a recognition cannot, of course, give countenance to the idea that the doctrine can be extended, *beyond the mouth of an estuary or an arm of the sea*, into the open sea itself, where there are no banks between which channels can flow. The attempt made here by complainant, to extend the doctrine to a channel in the open sea is without precedent or reason to support."

So, in the brief of the attorney general and the assistant attorney general, on page 21, they say:

"The mouth of Pontchartrain was the eastern extremity on that line of the island of New Orleans. That lake was regarded as emptying into the gulf of Mexico at that point."

And so again, on page 22:

"In all these descriptions Pontchartrain opens into the Gulf."

And so again, on page 28:

"Nothing is mentioned between Pontchartrain and the Gulf, although there are two routes some distance apart, and nine or ten miles long, Chef Menteur, and the Rigolets, from Pontchartrain to the Gulf. The map taken for a guide, if any, showed an open, easy connection between Pontchartrain and the next waters, which required no description."

And again, on page 29:

"Again no map can be elected which does not make Pontchartrain open easily into the Gulf. The description stops at the mouth of Pontchartrain and calls those waters the gulf of Mexico."

And again, on page 31:

"In the second place, Ellicott allows a large, free opening from Lake Pontchartrain to the open sea. It does not show the Rigolets, but places the waters of the Gulf next after Pontchartrain going east."

Again, on page 32:

"And if under any view of the case, our conclusion above stated should not be accepted by the court, there remains only an alternative, to wit: the conclusion that the framers of the act used Ellicott's map for a guide. That is the only map which ignores Lake Borgne and the Rigolets, gives Pontchartrain a wide opening into the waters immediately east, and calls these waters the gulf of Mexico; and is the only one which combines all these said peculiar features with a doubtful connection of the Mississippi with Maurepas."

Now it becomes evident that, having abandoned their original pretext, contained in their answer, that the gulf of Mexico, alluded to in the boundary of Louisiana, is not that

part of the gulf of Mexico which is at the mouth of the East Pearl river, and of which Mississippi sound is a part, for the sole purpose of defeating the application of the deep-water channel or *thalweg* theory, and having now admitted that the gulf of Mexico alluded to in the boundary of Louisiana, as being next to the mouth of East Pearl river, is the gulf of Mexico, the open sea through which the boundary runs, they thus admit that the boundary should run through the gulf of Mexico eastward through Lake Borgne and Mississippi sound or what they now call the open sea.

This strip of water, part of Lake Borgne and Mississippi sound, is not an open sea, as contended by associate counsel for Mississippi, but a very shallow arm of the sea, so shallow as to be almost, as the associate counsel of Mississippi described it, "*as only knee deep at tip toe and only eight miles wide*," that is, outside of the deep-water channel. While this is somewhat exaggerated, yet the depth of water throughout this whole body of water is about five feet, on the average, and the channel from ten to twelve feet in depth and less than a quarter of a mile in width.

This, *ex necessitate*, compels the abandonment of their former theory, and their red-line map, extending the Louisiana and Mississippi boundary due south for eighteen miles, from the mouth of the East Pearl river, falls to the ground and is out of the case. Thus this iridescent, school-boy soap-bubble is punctured and collapses by their own admissions and arguments, and figures no longer in the case.

VIII.

Counsel for the State of Mississippi have evidently been much impressed with the argument made by the State of Louisiana that her title to the lands, which the latter claims to belong to her, as a part of the territory of Saint Bernard, has been recognized by the Land Department of the General Government, for they have made an attempt to over-

throw the strength of the position which Louisiana claims she occupies by reason of the recognition thus referred to, by contending, in their brief, that the *lands* composing the parish of Saint Bernard, and which the State of Louisiana acquired from the General Government under the swamp-land act of March 2, 1849, were not lands intended to be disposed of under the terms of that act of the Congress of the United States. The argument is made that the Secretary of the Interior exceeded his authority, and lacked jurisdiction over the subject-matter, when he recognized Louisiana's title to these lands in the parish of Saint Bernard, under the swamp-land act of 1849, by issuing to Louisiana patents to the same. We confess that we are at a loss to understand the argument, thus made, that the Secretary of the Interior and the other officers of the Land Department at the Federal capital, had no jurisdiction in respect to the conveyance to the State of Louisiana of the lands to which she was entitled under the swamp-land act of 1849, as it was made the duty of the Department of the Interior to have all lands of a "swampy and overflowed" character surveyed, subdivided into townships, ranges and sections, and when selected by the State to patent the same to the latter. We repeat, therefore, that we are at a loss to undestand wherein the Land Department of the General Government lacked jurisdiction to carry out the terms of the act of Congress of March 2, 1849. The reason for an attempt being made to show a want of jurisdiction in the Department of the Interior, in respect to these lands, is found in the fact that if jurisdiction be conceded, counsel for the State of Mississippi find themselves confronted by a long line of authorities which hold that the action of the Federal Land Department concerning the character of the lands which it undertakes to dispose of, is conclusive. When the State of Louisiana acquired from the General Government the lands of a "swampy and overflowed" character under the swamp-

land act of 1849, and which composed the parish of Saint Bernard, she derived an indefeasible title from the General Government which, by the various acts of transfer represented by patents issued, the Land Department recognized the State of Louisiana to be entitled to under that act. The Department of the Interior had jurisdiction in the matter, and when it declared, by the issuance of patents, that the State of Louisiana was entitled to what is now the parish of Saint Bernard under the terms of the swamp-land act of March 2, 1849, that department went on record as declaring that that area was lands of a "swampy and overflowed character," and its decision in that matter was conclusive. In Heath *vs.* Wallace, 138 U. S., page 573, this court held that:

"The question whether or not lands returned as subject to periodical overflow 'are swamp and overflowed lands' is a question of fact properly determinable by the Land Department, whose decisions, on matters of fact, within its jurisdiction, are, in the absence of fraud or imposition, conclusive and binding on the courts of the country, and not subject to review here."

And at page 585 this court said:

"It is settled by an unbroken line of decisions by this court in land jurisprudence that the decisions of that department upon matters of fact within its jurisdiction, are, in the absence of fraud or imposition, conclusive and binding upon the courts of the country." (Citing Johnson *vs.* Towsley, 13 Wall., 72; Smelting Company *vs.* Kent, 104 U. S., 636; Steel *vs.* Smelting Company, 106 U. S., 447; United States *vs.* Minor, 114 U. S., 233.)

The court made further announcement that:

"We are of the opinion, therefore, that the decision of the Land Department on the question of the actual physical character of certain lands is not subject to review by the courts." (See also Barden *vs.* Northern Pacific R. R., 154 U. S., pp. 329–330; Shaw *vs.* Kellogg, 170 U. S., 340–343; United States *vs.* Northern Pacific R. R. Co., 177 U. S., 435.)

It has also been held that—

"A decision by the register of the local land office that a particular tract is desert land, so as to be subject to purchase under the desert land act of March 3, 1877, is not reviewable by the courts, in the absence of fraud" (85 Fed. Rep., p. 333).

In that case, at page 336, it is said, after referring to the evidence submitted to the Land Department in respect to the character of certain land:

"It was upon this evidence that the Land Office Department determined that this tract of land was subject to entry under the desert land act. This was in the nature of an adjudication by the proper department of the Government; and without a direct impeachment for fraud of this determination by the department the ascertainment is final and conclusive upon the courts."

Again, in United States *vs.* Budd, 144 U. S., at page 167, this court said:

"But after all, the question is not so much one of law for the courts after the issue of patent, as of fact, in the first instance, for the determination of the land officers. The courts do not revise their determination upon a mere question of fact. In the absence of fraud or some other element to invoke the jurisdiction and powers of a court of equity, the determination of the land officers as to the fact whether the given contract is fit for cultivation, is conclusive."

In French *vs.* Fyan, *et al.*, 93 U. S., 169, it was held that:

"The act of September 28, 1850 (9 Stats., 519) granting swamp lands, makes it the duty of the Secretary of the Interior to identify them, make lists thereof, and cause patents to be issued therefore. Held that a patent so issued cannot be impeached in an action at law, by showing that the land which it conveys was not in fact swamp and overflowed land."

The case of Scott *vs.* Lockey Ind. Co., *et al.*, 60 Fed. Rep., p. 36, absolutely disposes of the argument of op-

posite counsel that no title passed to the land given to the State at the time the Department of the Interior caused patents to be issued to the State of Louisiana, for it was there said :

" In the case of French *v.* Fyan, 93 U. S., 169, the Supreme Court held that the Land Department had the right to determine whether or not land was swamp land. This case should be distinguished from a case where land is absolutely reserved from entry and sale, such as land included in the military reservations. Then there is no jurisdiction in the Land Department to make a sale or conveyance of the same. But when an application is made to enter a certain piece of land, which is not specially reserved from sale by a definite description, and the application is made to enter it as agricultural land, then the Land Department must, of a necessity, determine whether or not it is agricultural land, etc."

While on this same subject, associate counsel for the State of Mississippi make the singular argument, found at page 75 of their brief, when referring to the claim of the State of Louisiana that her title to the lands in Saint Bernard had been recognized by the Land Department at Washington, that " this aspect of the case is not worthy of serious consideration, save so far as it goes to show that the authorities of Louisiana by seeking to acquire color of title to the islands in question by an appeal to the swamp and overflowed land acts were convinced that that State possessed no title to them under the act of April 6, 1812, admitting her into the Union."

This is the most singular argument that we find, among the many strange and peculiar ones, urged in the brief prepared by associate counsel for defendant. The attempt is made, in using the language just quoted, to have it appear that the State of Louisiana, by applying to the General Land Department at Washington for the lands composing the parish of Saint Bernard, under the terms of the swamp land act of 1849, had practically admitted that these lands had not previously been included within the boundary line

of Louisiana, and that, by making application to the Land Department for these lands, she had recognized that she had no right to claim them as being within her boundary under the act of April 6, 1812. Louisiana has at no time claimed that she had *title* to these land until after they had been patented to her under the terms of the swamp land act of 1849, her whole contention being that the same were included within the boundary limits fixed by the act of Congress, admitting her into the Union in 1812. All of these lands, which were of a swampy and overflowed character, had been reserved to the General Government by the enabling act of the Congress of the United States, approved February 20, 1811, entitled:

"An act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of such State into the Union on an equal footing with the original States, and for other purposes."

By an examination of section 3 of that act, this court will find that it was expressly declared by the Congress of the United States that the people inhabiting all that territory or country ceded under the name of Louisiana by the treaty made at Paris on the 30th day of April, 1803, should, as a condition precedent to their being admitted into the Union as a State, "agree and declare that they forever disclaim all right or title to the *waste and unappropriated* lands lying within the said territory, and that the same shall be and remain at the sole and entire disposal of the United States."

IX.

In his oral argument before this honorable court, Dr. Taylor, the able international jurisconsult, laid down the proposition of international law that the deep-water sailing channel line, through *Mississippi sound*, could not be adopted as the true boundary between the two States in those waters, because such waters were the open sea or gulf of Mexico, or

the high seas; and that if the navies of France and England were to engage in battle there, that no complaint could be made by the Secretary of State of the United States Government because the rights of a neutral government would not have been violated. He makes this statement and yet, in the same breath, says these waters belong to the State of Mississippi, because they are wholly within the domains of that State, a conclusion that would be absolutely at variance with the first proposition. Now the truth is that these waters are wholly within the United States, and belong part to Louisiana and part to Mississippi; that they are inland waters, an inclosed arm of the sea; and the navies of foreign countries could not engage in battle there because there is no opening from this body of water, this Mississippi sound, into the gulf of Mexico, that is six miles wide; and therefore being an estuary, or inland arm of the sea, wholly within the United States, all rules of international law do apply in the fixing of a water boundary such as this, where there is any doubt or confusion in the boundaries given in the acts of Congress creating the two States. The openings above referred to are those between Cat island and Isle à Pitre; between Cat and Ship islands; between Ship and Horn islands; between Horn and Petit Bois islands; between Petit Bois and Dauphin islands and between Dauphin island and the mainland on the west coast of Mobile bay in Alabama. Not one of these openings into the gulf of Mexico or sea is six miles wide, thus making the waters of Mississippi sound, inland waters, an arm of the sea, entirely within the United States.

X.

The attention of the court is called to the fact that the State of Louisiana has United States Government title to Grand or Half Moon island, and Isle à Pitre, islands at different points and immediately to the south of this deep-

water sailing channel boundary, while the State of Mississippi has United States Government title to Cat island and Saint Joseph island, islands at different points immediately to the mouth of this deep-water sailing channel boundary, thus indicating that the two States recognize it in fact as the true boundary.

XI.

The assistant counsel for Mississippi Mr. Flowers, the assistant attorney general of Mississippi attempts in his oral argument as well as in his brief to show, that the Louisiana purchase did not convey any land or territory east of the Mississippi, other than the island of Orleans. The fallacy of this argument is transparent.

There are four distinct reasons why his theory of the Louisiana purchase not including any territory east of the island of Orleans cannot prevail:

1st. If it be true, that the Mississippi line extends to the Lake of the Mounds, as the 6 league limit, that part of Saint Bernard parish lying south of that point, would belong to no State at all.

2d. If it be true, then Louisiana would have no boundary on the gulf of Mexico to the northeast as the act of Congress provides, but its boundary here would be a land boundary adjoining Mississippi's line at the Lake of the Mounds.

3d. It would utterly negative Mr. Jefferson's memoranda, on which Congress is presumed to have acted, that Saint Bernard extended 18 leagues or 54 miles to the eastward from the Mississippi river.

4th. That his theory would negative the American claim that the Louisiana purchase extended along the coast as far as Mobile, and the Perdido river, which claim is supported in 2d Peters, 253, in an able opinion by Marshall, C. J., which

repudiates the present theory of the attorney general of Mississippi.

XII.

The counsel for Mississippi have vainly attempted to reconcile and explain away the clash, conflict, and repugnancy between the acts admitting Louisiana and Mississippi into the Union, in so far as the adjacent islands are concerned. We have shown already that their theories are baseless. But there is one and only one way of reconciling the difference, and that is if we assume that Congress when it passed the Mississippi act was fully conversant with the topography and geography of this portion of the country, it did not intend to include in the grant of the islands within six leagues of the Mississippi shore in 1817, the islands already granted to Louisiana in 1812, but the islands it intended to grant to Mississippi were only those east of the Saint Bernard peninsula, such as Cat, Ship, Horn and Petit Bois islands. This is the only theory which can make the action of Congress consistent in the two acts, on the presumption that it was fully advised of what it was doing.

XIII.—Prescription and Acquiescence.

On pages 23, 24, and 25 of the brief of the attorney general and assistant attorney general of Mississippi there appear citations from the testimony of a formidable array of witnesses who swear that they had always heard and understood from their forebears that the territory in dispute here belonged to Mississippi. Of these twenty-four (24) witnesses fifteen are oyster fishermen who acknowledge that they are engaged in the business of fishing oysters from the disputed territory, and are therefore interested in retaining their livelihood in the Louisiana marshes. These are Clements, the two Fountains, Moran, Tiblier, Lanius, Williams, Anglada, Matthieu, Ryan, the two Beaugezes, Ladner,

Eleuterius, and Lizana. Besides their evident controlling interest in testifying as they did, the frailty of fishermen's testimony has almost become a proverb. Indeed the denial of the Saviour by St. Peter, has been by some attributed to his falling back into his old habit as a fisherman. Of the other witnesses N. Desporte is a dealer in oysters taken from the disputed territory, and Ernest Desporte is his brother. Frear is also a similar dealer; Lizana is an oyster inspector, thus making nineteen of the twenty-four witnesses directly interested in coloring their testimony to suit their interests. And a close inspection of their evidence will show that nearly all of it is given in a stereotyped manner. Of the testimony of the other five witnesses, it is plain that the loss of the right to fish oysters from this territory would materially affect the interests which they possess in the town of Biloxi, which relies in large part on its canning industry and oyster trade for its prosperity. *Per contra*, Governor Heard of Louisiana testified on page 91, Record, that Mr. McDonald, the mayor or ex-mayor of Pass Christian, Mississippi, pointed out to him, Governor Heard, the deep-water channel as the boundary line between Louisiana and Mississippi. Again Mr. E. E. O'Brien, a witness for respondent, mayor of the town of Bay St. Louis, Hancock county, Miss., the county immediately north of the disputed territory, says on page 1661 of the record that the territory has always been called the Louisiana marsh, "but I know since my boyhood I never have known of the place or ever heard of it as anything else except the Louisiana marsh. Q. Was it not the common expression among all of the fishermen, and the people generally that that territory is the Louisiana marsh? A. I have always heard it so mentioned."

And on page 1663:

"Q. Did you understand by that that it belongs to the State of Louisiana, because it is called Louisiana marsh? A. Well my impression would be that way if it is called Louisi-

ana marsh, there must be some reason for giving it that name. Probably they thought it was a portion of Louisiana and extended it on that way to keep it up."

So again Mr. Samuel F. Heaslip, who testifies that he lived in Pass Christian, Mississippi, from the time he was three years old, that is from 1851 to 1866, and again from about 1874 to 1896, that he was at one time quartermaster general of Mississippi, justice of the peace and mayor of the town of Pass Christian:

"Well I have always known it and heard it spoken of as the Louisiana marshes. * * * I never heard them spoken of or referred to except simply as the Louisiana marshes."

He was asked:

"Q. You have heard the fishermen along that coast speak of the territory. A. I would not confine it to the fishermen alone that I heard refer to it."

He says that he visited it from the time he was a boy of 8 or 9 years, and has visited it "I suppose a couple of hundred times or more" (Record, pages 841, 842).

Captain Cowand (page 553), a Mississippian by birth, 65 years of age and partly resident in Mississippi, says:

"In this area here, what is called the Louisiana marshes."

This testimony is confirmed by ten witnesses for Louisiana mentioned on page 111 of our original brief, all of whom have been frequent visitors during the summer on the Mississippi gulf coast—John M. Parker, Alex. Brewster, Emile J. O'Brien, Thomas J. Barr, Associate Justice F. A. Monroe of the supreme court of Louisiana, Capt. Steve Maloche, Judge Lawrence O'Donnell, Oswald Ogden, Dr. Joseph T. Scott, Louis H. Fairchild, Mr. E. H. Farrar and Louis Cucullu, president of People's bank, all gentlemen of the highest respectability and standing, and who have no interest direct or indirect in this controversy.

XIV.

The True Character of the Area in Dispute.

The fact that both sides admit that the area in dispute has been called the Louisiana *marshes* since time immemorial shows that it had this indeterminate character and that it was never regarded as an archipelago of islands. It was only the eastern extremity of this marshy peninsula that had an individual name, that is Isle à Pitre. The small divided sections of the *marshes*, other than Isle à Pitre had no individuality. Quite to the contrary were the conditions existing in regard to the chain of islands forming the southern limits of Mississippi sound, such as Dauphin, Petit Bois, Horn, Ship, and Cat islands, which were distinctly named and appear so designated on the earliest maps of this region. This is but natural because in the very earliest history of this section of the country one of the first settlements was made on Dauphin island, also known from an incident in the early history there as *Massacre island.* Travel to the westward, towards New Orleans, was then made by the inside route, inside of this string of the above-named islands, and New Orleans was reached by the back way through Lake Borgne by Bayou Bienvenu and through Lake Pontchartrain by Bayou St. John. To the people that traveled that route these white sea-sand islands with their pine trees were distinct and well known while the marshes, west of Cat island were given no individuality except to designate them by this generic name.

The impression that assistant counsel for Mississippi try to create in the mind of the court, on page 45 of their brief, that Petit pass, Raccoon island, Little Raccoon island, Crooked island, Mud Cross island, Pirate Point island, Nigger island, Dead Man's island, Shell island, Brush island, Mink island, Wild Goose island, Elephant Point island, Sundown island and Door Point island *were as well known in the past as Cat*

island is absolutely without warrant in the record and the idea is nothing but the creature of their fertile imagination, an imagination that has been even strained in its creative faculty in a desperate effort to bolster up a desperate case. The truth is that prior to the survey made in 1846 by the United States, all the maps show the area to be a part of the *peninsula* of St. Bernard. These bodies of land had no separate identity prior to that date. The official map of Saint Bernard parish is made up from these United States records, and according to that map, in this broad expanse of marshes, but few parts are given individual names, to-wit: Preachers isle, Fly Town island, Turtle or Pen island, and Martin island.

Where then did associate counsel for Mississippi get the names of these islands, which names appear on their map Mississippi Exhibit "A"?

The answer is readily forthcoming—the information did not come from tradition brought down by the testimony of witnesses nor dug up from the past in ancient maps. The information came from the map of the area made in the year 1898, just four years before the institution of this suit, which map was made by Lieutenant Swift and Dr. Moore of the United States Fish Commission, who were in the disputed area on an oyster investigation in February, 1898, and in making their map gave the names of these islands as they were then known in the year 1898. This is shown clearly and conclusively by a comparison of the map Mississippi "A" (Record, page 88) with the Fish Commission map (Record, p. 6, diagram No. 4), and in transferring the names they have even made the mistake of calling *Mud Grass island* Mud *Cross* island. This island appears a little to the left and below the center of the disputed area in the marsh proper as shown on these maps. The names of the bodies of water given on map Mississippi "A" follow the names given on the Fish Commission map made in the year 1898 and are names entirely

different from those given on the United States surveys For instance, a body of water is called " False Month Bay " and " Nine Mile Bay " on the two former maps and the same body of water is called Bay Boudreau on the United States map (Record, page 1047, f 43, plat of T. 12 S., R. 18 E., " Lakes of Bay Boudreau ") and on the Saint Bernard official map (Brief, page 106) " Bay Boudreau."

Before the Fish Commission survey of 1898, such islands as Racoon island, Little Racoon island, Crooked island, Mud Grass island, Nigger island, Dead Man's island, Shell island, Brush island, Mink island, Wild Goose island, Elephant Point island, Sundown island and Door Point island, of those mentioned by Mississippi's counsel and which are in truth mere *marsh hummocks* had not attained the dignity of enjoying individual names.

The very first *island* mentioned by counsel for Mississippi is *Petit Pass island.* Let us see what tradition shows in regard to this island which lies just off Malhereux point on map Mississippi "A," at the middle of the extreme left of this map. It will be noted that it is separated from the main body of the marsh by the strait of water called " Le Petit Pass," and must have come into existence as an island when the strait Le Petit pass was made. Mr. A. S. Cowand, a Mississippian by birth, testified (Record, page 547) to a conversation he had had, in the year 1858, with a man who then was, and whose father before him had been, the light-house keeper at *Cat island.* They were discussing the changes that had occurred in the marshes.

Mr. Cowand was asked :

" Q. What was the tradition in regard to this Petit pass ? "

And answered as follows, referring to his conversation with the Cat Island light-house keeper :

"A. Well, as I was telling you, we were speaking about how the islands were being washed away and disappearing and we were speaking about that country, Half Moon island

especially because I had been there to Half Moon island just before that; he said, Well *I recollect when there was no cut through Petit pass at all, it was the main land all through there.*"

In other words, here is a witness who testifies to a conversation with this light-house keeper within whose lifetime this Petit Pass island came into existence by being separated from the main body of the marsh land. How absurd therefore does the idea prove itself that the Congress of the United States had these marsh islands in mind when it created the State of Mississippi.

XV.

We understand that associate counsel for Mississippi made the statement in oral argument that it was a matter of frequent occurrence for steamboats to go through the marshes. We can hardly credit that they were fully informed of the evidence in the record, if we are correct in understanding them to make this statement.

The only man that ever took a steamboat through a part of the Louisiana marsh, so far as the record shows, was Mr. John Walker, a Mississippi witness, who testified as follows on direct examination:

"Q. Do you know anything about this country that we call the Louisiana marshes?

"A. I know the coast only. I don't know anything about the inside. Not through the marshes, but I am familiar with the coast line.

Q. Are you familiar with the line from Malheureux point to Isle à Pitre?

"A. Yes sir, all the way around from the mouth of the Mississippi river, and from the passes of the river all the way around to Lake Maurepas, *excepting as I say that I have never been in the marsh, except that I have been through Three Mile bayou,* and *once* in the entrance of Nine Mile bayou from the eastward.

"Q. What craft did you have in going through Three Mile bayou?

"A. I had a small steamboat.

"Q. How much did she draw?

"A. Well she only drew about four feet, but I found seven feet of water in there.

"Q. You found seven feet of water where?

"A. *In the entrance.*" (Italics ours.)

Record, page 1271.

And again this witness says (pages 1296 and 1297 of record):

"Q. I understood you to say awhile ago that you had perhaps made two hundred trips between the mouth of Pearl river and Chandeleur sound?

"A. Yes sir. In the 27 years I was there.

"Q. And out of these 200 trips it was only on that one occasion that you went through there?"

Counsel by the word "*there*" was referring to the Louisiana marshes.

The witness then answered:

"A. Only one occasion.

"Q. Through the Louisiana marshes by this route that you have just described?

"A. Yes sir.

"Q. You never went before?

"A. No sir.

"Q. And you have never been through there since?

"A. No sir.

"Q. This route that you have described certainly was not an ordinary route was it. The customary route for people to take?

"A. I was a licensed pilot at the time I was taken through there. It was a route I had never seen or known, and knew nothing about."

The route here referred to was into the Louisiana marshes through Three-mile bayou. The record teems with evidence that Nine-mile bayou claimed by Mississippi to be

Louisiana's eastern boundary was even less well known by Mississippians. To say therefore that steamboats plied through the marshes is an absurdity.

XVI.

We think that after a careful examination of the record in this case, your honors must inevitably come to the conclusion, that Mississippi's claim to the territory in dispute, is of very recent origin. The record teems with evidence that in bygone years the whole Mississippi coast was fringed with valuable oyster reefs and natural beds from the Pearl river to the Alabama line; that although the State of Mississippi passed in 1843 and 1857, and at other dates, some legislation for the protection of its oysters, it was desultory and inefficient and that even these laws were not enforced; that there were no laws to prevent fishing these beds during the spawning season, that is no closed season; no laws to compel culling the young oysters off of the adult oysters; no law to prevent scooping and dredging; that in spite of these inroads which nearly exhausted them, yet the fecundity of the oyster prevented the entire destruction and annihilation of these Mississippi oyster beds. This was until the year 1880, when the first oyster cannery was established on her coast, and it was only after that date, when numerous other large canneries were established, that the enormous demands for oysters for these canneries led to the utter annihilation and destruction of her own oyster beds. It was then in the eighties that the Mississippi fishermen, having exhausted their own oyster beds, invaded the Louisiana territory here in dispute to get their supply of oysters for the Mississippi canneries. The enormous demand which was created by the needs of these canneries, and oyster dealers is well shown by the testimony of one of these canners, a Mississippi witness (Heidenheim, pages 1707 and 1708) when he states that the oyster industries of the Mississippi coast amount to a business of one hundred millions of dollars ($100,000,000). That this Mississippi claim to this disputed territory did not

arise until after this great demand of oysters for the Mississippi canneries is shown by the testimony of some of Mississippi's own witnesses. One of them, L. Fovard (p. 1481, Record), having mentioned places in the disputed territory was asked: "Q. How long has it been your understanding that these places you have mentioned are in the State of Mississippi? A. *About twelve years.*" The italics are our own and show that this witness never had heard of Mississippi's claim until about 1892 although he had for several years before been fishing in the disputed territory. On page 1499 of the record Champlin, a Mississippi witness, testifies that he never heard the matter discussed until 1888. Another Mississippi witness (Bosarge, Record, page 1520), who had been an oyster fisherman for thirty years, says:

"Q. How did you come to know about Mississippi claiming six leagues or 18 miles south of the Mississippi shore? A. When this law came up in 1893, I think it was. Q. You never knew anything about it until 1893? A. No, sir, I never knew anything about the 18 miles until then."

So another Mississippi witness, Cavatochotch (Record, page 1541), testifies that Louisiana and Saint Bernard parish claimed the territory for twenty years back. So McCaleb, another Mississippi witness (on page 1552), testifies that he heard the territory called generally the Louisiana marsh long before this controversy arose. So another Mississippi witness, Patenotte (Record, page 1577), says that it was only in 1903 that he heard of Mississippi's claim to this disputed territory. We might cite and quote from almost any number of Mississippi witnesses' testimony to the same effect, but do not care to burden this brief further with citations and quotations. As to the waste and annihilation of the oyster reefs and beds of Mississippi, we specially invite the attention of the court to Captain Cowand's testimony. Captain Cowand is a skilled oyster culturist, who has devoted his life to the business of the oyster industry and has written a great deal on the subject. He was born on this coast, and lived there all his life, until

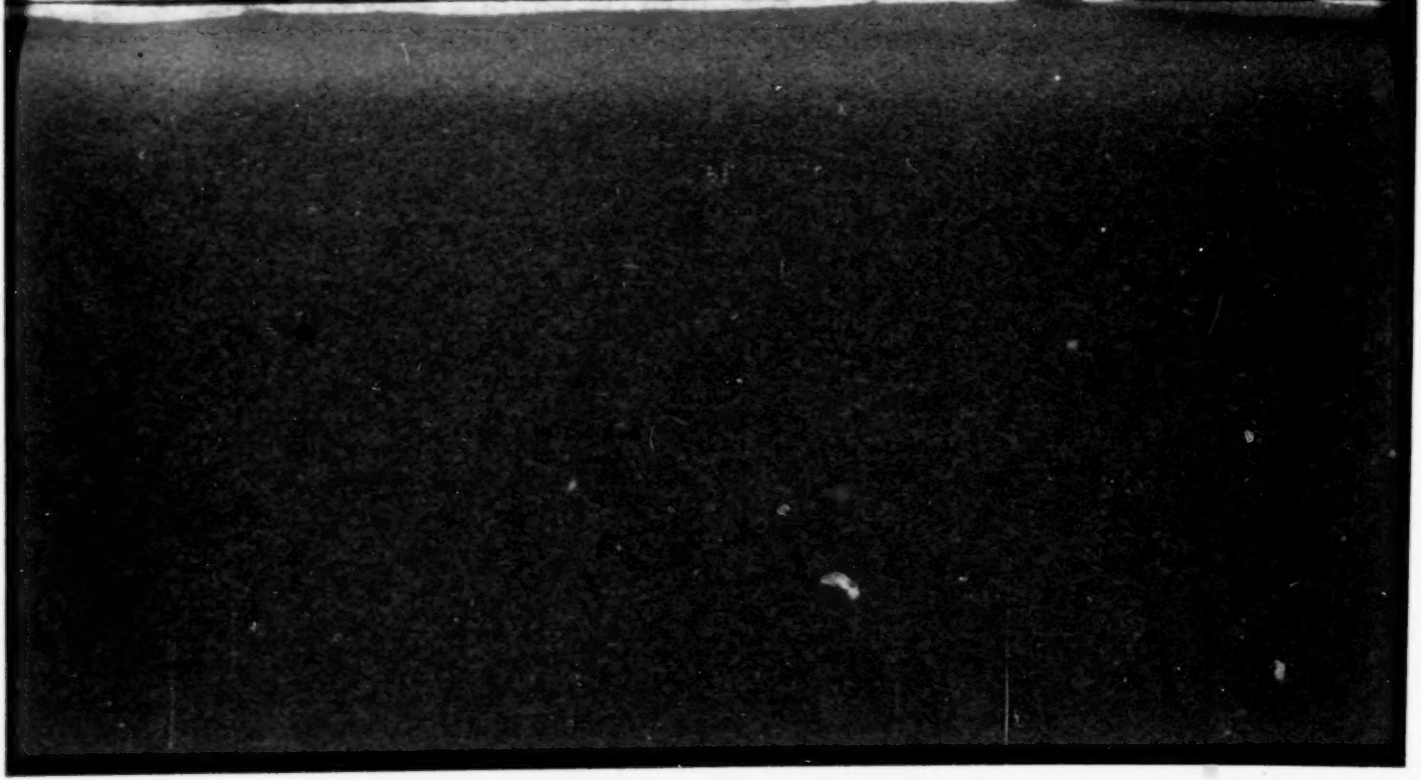
quite recently when he moved to Louisiana. His knowledge of the disputed area is probably more profound than that of any witness who testified on either side. On page 559 he (witness) gives an account of how the Mississippi oyster beds were destroyed by dredging and wastefulness between 1885 and 1890, and he says on page 560, speaking of the Mississippi fishermen: "When the oysters in Mississippi sound got so scarce they commenced going over there" (to the disputed territory), and he acknowledges that he was at that time one of the Mississippi "pirates." "That was about 1886 and 1887." (See particularly on this page a description of how the Mississippi oyster reefs were destroyed.) On page 561 of the record he says that he is financially interested on Mississippi's side, because if these Mississippi fishermen were allowed to ruin the Louisiana natural oyster fisheries in this disputed territory, as they had already ruined the Mississippi fisheries, it would benefit him as it would make oysters scarcer, and he could get better prices for his own product from his cultivated beds.

We, therefore, respectfully submit that the present claim of Mississippi is an afterthought, trumped up, to take from Louisiana valuable oyster territory, after her own citizens had ruined and annihilated her own fisheries by wanton wastefulness, and if these Mississippi natural oyster beds and reefs had been properly protected by Mississippi, she would have had now all the oysters she needed within two or three miles of her own coast, and would not have been compelled to go from Biloxi to this disputed area about thirty miles, and Mississippi would never have made her present preposterous claim to Louisiana's territory.

All of which is respectfully submitted.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
FRANCIS C. ZACHARIE,
Solicitors for Complainant.



Supreme Court of the United States.

OCTOBER TERM, 1905.

IN EQUITY.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI, DEFENDANT.

OPPOSITION OF THE STATE OF LOUISIANA TO AMEND THE FINAL DECREE AS TO COSTS.

Now comes the State of Louisiana, through Walter Guion, Attorney-General of said State, and F. C. Zacharie and John Dymond, Jr., Associate Counsel, original complainant in this cause and defendant in this motion, and with leave of this Honorable Court, now files the following opposition to the amendment of the decree of this Honorable Court, dated April 23, A. D. 1906, which motion seeks to amend the judgment so "that the costs of this suit be borne equally by the complainant and defendant."

Complainant and opponent in this motion sets forth the following reasons for said opposition. The question involved herein is one of mingled fact and law.

I.

The citation by movers in the motion from Vol. 2 Daniels' Ch. P. & P., page 1165, has no application to the question at issue here, but refers to costs in boundary questions between private individuals and only lays down the rule in such private litigation that "where, however, it does not appear to have been owing to any default, either in the plaintiff or defendant, that the lands have been mixed or confounded, the Court will direct the costs to be borne by plaintiff and defendant equally; though the interest of one party is more inconsiderable than the interest of the other," authorities cited in note, Norris vs. Lanier, 3 Atk. 82. It is apparent that it has no application to the case at bar. On a preceding page (1376) the same author while stating "the giving of costs in equity is entirely discretionary," further states, "all that is meant by this *dictum*, that the giving of costs in equity is entirely discretionary, is, that the Court is not, like the ordinary courts, held inflexibly to the rule of giving the costs of the suit to the successful party; but it will, in awarding costs, take into consideration the circumstances of the particular case before it, or the situation or conduct of the parties, and exercise its discretion with reference to those points." He further says that costs are not regarded as a penalty or punishment, "but as a necessary consequence of a party having created litigation in which he has failed."

It is alleged in said motion that the bill in this cause "was filed to carry out an agreement to prosecute a friendly suit in this Court for the settlement of the boundary in question." Opponents distinctly submit that that suit is not a friendly suit as alleged by movers in this motion. Although on page 15 of the record the *quasi*-commission and committee on the part of Mississippi suggested that "it is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course," yet the State

of Mississippi through its duly authorized officers claimed that any such agreement was without authority, and repudiated it on the part of the State of Mississippi.

The suit was no sooner filed, than the State of Mississippi, Defendant, filed a demurrer to the jurisdiction of this Honorable Court, and resisted the trial of the cause, and in said demurrer they set forth, as appears on page 67 of the record,

"Ninth. Because it appeared from the face of said bill of complaint that the acts therein complained of are not the acts of the State of Mississippi in its sovereign or corporate capacity, nor acts of any of her officers, committed by her authority, but the acts of certain individual persons engaged in the oyster and fish trade, against whom relief is sought and who are not made parties herein.

"Tenth. Because it appears upon the face of said bill that the State of Mississippi, or any officer of said State authorized by law to act for and on her behalf, has not in any manner whatsoever denied or controverted the boundary line of the State of Louisiana in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana."

And in the course of the examination of Governor Vardaman of the State of Mississippi, record page 1798, he stated that neither the Governor of the State nor the commission pretending to act on behalf of the State of Mississippi had any authority to enter into any agreement in regard to the subject matter. And on page 1800, he distinctly denies that the former Governor, A. H. Longino, had any authority to appoint the commission which suggested this suit. And on page 1806, he again denied that any such action was binding upon the State of Mississippi. We cannot find on page 14 of the opinion of this Honorable Court as cited by the movers in this motion, nor anywhere else in the opinion of the Court, any declaration that this was a friendly or amicable suit, but on the contrary, as we have already shown, it was anything but a friendly

or amicable suit and the bringing of it was stubbornly resisted by the State of Mississippi, Defendant, in its demurrer.

II.

It is contended by movers in this motion that "it is a firmly settled rule of this Court that in boundary questions between states, the costs are to be equally divided." This proposition opponents especially deny except when applied to the expenses of the commission to be hereafter appointed for the establishment of the marks and bounds, so as to indicate the boundary. To this effect only will the principle of the division of the costs apply. Nor do the authorities cited by movers in this motion bear out the contention set up by them except in a few cases where the peculiar circumstances developed in the case, led to a decree for a division of the costs. But these circumstances were such as to differentiate the cases widely from the case at bar.

The general rule is stated in Couch vs. Millard, 41 Hun. (N. Y.) 212. "It was the rule of the Civil Law that *victis victori in expensis condemnatus est*, and this is the general rule adopted in the Court of Chancery as well as in courts of Law, at least to the extent of throwing it upon the failing party to show the existence of circumstances to displace the *prima facie* claim to costs given by success of the party who prevails."

This is the rule adopted by the courts of Louisiana under the Civil Law: "In an action of boundary, the costs should be equally divided between the parties unless there is proof of demand on one side and refusal on the other to settle the boundary amicably." Tircuit vs. Pelanne, 14 La. Ann. 215. As was the fact in the case at bar in which Louisiana made every attempt to settle the dispute amicably and Mississippi refused so to do.

"Where defendant in an action to fix a boundary, denies the

necessity of the action, costs follow the judgment for plaintiff." Gaude vs. Williams, 47 La. Ann. 1325; 17 So. Rep. 844.

In 7 How. 661, cited by movers in rule, the costs were divided between the States of Iowa and Missouri equally, but the facts were peculiar. The controversy seems to have grown out of an ambiguity in the acts of Congress as to whether the rapids described in the act were the rapids in the river Des Moines or the Mississippi River, although the Act of Congress spoke of the rapids in the river Des Moines, and the Court decided that there were no rapids in the river Des Moines and went behind the Act of Congress and established the boundary line at the old Indian boundary. The controversy thus proceeded out of a misdescription in the Act of Congress and it was therefore only just and equitable that the costs should be divided, neither State being in fault as to its construction of a doubtful clause in the Act of Congress.

In Missouri vs. Iowa, 160 U. S. 688, a division of costs was decreed, that is, the costs of the commissioners "incident to the marking and establishment of this line shall be paid by the States of Missouri and Iowa equally." This principle, we admit as applicable to the costs of a commission hereafter to be appointed in the case at bar for the establishment of the line by metes and bounds.

In Nebraska vs. Iowa, 143 U. S. 370, the Court decreed that "the costs of this suit will be divided between the two States, because the matter involved is one of those governmental questions in which each party has a real and vital, and yet not a litigious interest." This was a case of avulsion, and seems to have been a suit by amicable consent to settle a doubtful question of boundary. The case at bar is not a governmental question, that is, it is not a question whether Louisiana shall exercise jurisdiction over the territory, but is of a litigious character as your Honors say on page 15 of the opinion, "and that controversy involved to each State pecuniary values

of magnitude, as is shown by the evidence on both sides." Thus this cause does not alone consist of governmental exercise over the territory in dispute, but embraces a large pecuniary value, and is therefore a litigitious case.

In Missouri vs. Iowa, 165 U. S. 144, the decree was one confirming a report of commissioners and the costs of the commissioners in establishing the marks, metes, and bounds of the boundary line, were equally divided between the two States.

Tennessee vs. Virginia, 190 U. S. 64, was one confirming the report of commissioners in fixing the boundary line between the two States, but nothing is said about which State or both States should pay the costs of the commission, although it is to be presumed that, as in similar cases, the costs were to be divided between the two States.

Encyclopaedia of Pl. & Pr., Vol. 5, page 186: "*Prima facie*, the prevailing party in cases in equity, as at law, is entitled to receive costs, and it is desirable to depart as little as possible from the rules of law on this subject; but the unsuccessful party may show circumstances to defeat this right," and authorities cited in note 5. It seems to us that the Statutes of the United States cover fully this question.

U. S. Revised Statutes, 2d Ed. 1878, Section 983, page 184: "The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials whereby law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such tax bills shall be filed with the papers in the cause." Act 26 of February 1853, Chap. 80, Section 3, Vol. 10, page 168. The Liverpool Packet, 2nd S. P. R. 37; Lyell vs. Miller, 6 McC. 432.

U. S. Statutes at Large, Chap. 105, page 344: "There shall be taxed against the losing party in each and every cause pend-

ing in the Supreme Court of the United States and the Court of Claims of the United States, the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said Courts respectively, and paid into the Treasury of the United States, but this shall only apply to records printed after the first of October next." This act was passed in 1877.

III.

Movers in this motion base their application partly for relief and for a division of the costs on another ground "because the Court has decreed to complainant only a fractional portion of the relief prayed. The final decree denies to complainant an area of water territory claimed many times larger than the land area unsuccessfully claimed by the Defendant." With all due respect to opposing counsel, we cannot appreciate how the fact that the Court does not continue the line of boundary of Louisiana through Cat Island Sound as far south as the channel between the Chandeleur Islands and the mainland, can affect at all the question of costs, inasmuch as the State of Mississippi can have no interest whatsoever in that portion of the decree because the southern boundary of Mississippi is nearly forty miles distant from the Chandeleur Sound, and the controversy which was at issue here only pertained to and included the question of the islands lying between the main coast of Louisiana, that is, the Parish of St. Bernard, and the southern shore and boundary of the State of Mississippi; and to all intents and purposes, the judgment of this Honorable Court has settled and decided all the contentions advanced by the State of Louisiana.

We therefore submit that the motion herein made by the State of Mississippi to divide the costs should be denied, and

that the decree of this Honorable Court should stand as rendered on April 23, 1906.

That decree awarded to Louisiana all of the costs in this litigation and is now final, and the application for a rehearing having been denied, it is, in our opinion, too late to attack as this motion does, a portion of the decree. If such an attack could be made upon the decree for costs, it should have been made in the application for a rehearing or by an application to this Honorable Court to amend the judgment of this Honorable Court in regard to costs.

All of which is respectfully submitted,

WALTER GUION,

Attorney-General of the State of Louisiana.

F. C. ZACHARIE,

JOHN DYMOND, JR., *Associate Counsel.*

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SUPREME COURT U.S.
FILED
JAN 12 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

vs.

STATE OF MISSISSIPPI, DEFENDANT.

Application for Leave to Demur.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

Application for Leave to Demur.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of Mississippi, one of the United States of America, by A. H. Longino, Governor, and Monroe McClurg, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly represented that in the bill of complaint filed in this court upon the *ex parte* application of the Governor and Attorney General of said State of Louisiana without notice, it is alleged that, because of the matters and things therein set forth, there is a dispute between

the said State of Louisiana and the State of Mississippi as to the boundary line between said States in the waters to the south of the said State of Mississippi, and the southeast of said State of Louisiana; the prayer of said bill is as follows:

> "And after due proceedings may it please your Honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth of Pearl River with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon Island through Mississippi Sound, north of Isle a'Pitre through Cat Island Pass Channel, southwest of Cat Island through Chandeleur Island Sound, northeast of the Chandeleur Islands to the Gulf of Mexico, as is delineated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Commission, and now made part of this bill marked Exhibit "E," that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require."

All of which will appear by reference to the said bill of complaint on file with this Honorable Court.

Your petitioner, the State of Mississippi, by her Governor and Attorney General aforesaid, humbly submits to your Honors that, because of the insufficiency and fatal defects of the said bill of complaint indicated by the aforesaid demurrer, even if all of the material and well pleaded allegations of the said bill should be confessed, the said

bill would be ,nevertheless, dismissed on the hearing and that in such case the rule of procedure in this honorable court is to sustain a demurrer and dismiss the bill of complaint.

Kansas v. Colorado, 185 U. S., 126 (145).

Louisiana v. Texas, 176 U. S., 1 (13 et. seq.).

It is humbly submitted that by the most casual examination of the said bill of complaint it will be observed that the boundary line between said States is definitely and permanently fixed by law, at three leagues from the Louisiana coast, and at six leagues from the Mississippi shore, and farther, that there is nothing in said bill contained showing a controversy between said States justiciable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer and that a day may be fixed by your Honors for the hearing of the same. And as in duty bound your petitioner will ever pray.

MONROE McCLURG,
Attorney General of Mississippi.

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FILED
JAN 12 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

DEMURRER.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

DEMURRER.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The demurrer of the State of Mississippi, defendant, above named, by A. H. Longino, Governor, and Monroe McClurg, Attorney General, of said State of Mississippi, to the bill of complaint of the State of Lousiana by William W. Heard, Governor, and Walter Guion, Attorney General, of said State of Louisiana.

The defendant, the State of Mississippi, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, demurs thereto and for cause of demurrer shows:

First. Because it doth not sufficiently appear in and by the said bill of complaint that the same was filed or is being prosecuted by the authority of the State of Louisiana, or by the authority of any law whatsoever. The said Governor and Attorney General hath no authority in law to proceed in this matter of their own motion.

Second. This court has no jurisdiction of this cause, because it appears from the face of the bill that the matters complained of do not constitute, within the meaning of the Constitution of the United States, a controversy between the States of Louisiana and Mississippi as to their boundary line, in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana.

Third. Because it appears from the face of the bill that the boundary line between said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana are clearly, definitely and permanintly fixed by the several Acts of Congress referred to and pleaded by the complainant in her said bill admitting the Said States into the Union; that of Louisiana at three leagues from the coast, that of Mississippi at six leagues from her shore; that it is impossible for said lines to conflict upon either land or water.

Fourth. It appears from the face of said bill that the complainant, the State of Louisiana, has not attemped to mark and define by buoys, or otherwise, her boundary line in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Fifth. Because it appears upon the face of said bill that the action of the Governors of said States in appointing so called commissioners to determine the water boundary line between the said States, and the alleged action and recommendation of the so called commissioners, or of any of them, was without authority of law as to fixing the boundary line between said States and in no wise binding upon either of said States in their sovereign or corporate

capacity, and it clearly appears that it was not so intended. Jurisdiction cannot be conferred by consent.

Sixth. Because said bill shows upon its face that this suit is in reality for, and on behalf of, certain individuals who reside in the State of Louisiana engaged in taking oysters and fish along the coast of said States, and that although the suit is attempted to be prosecuted for and in the name of the State of Louisiana, said State is in fact loaning its name to said individuals, and is only a nominal party to said suit' that the real parties in interest are the said private individuals and persons residing in said State and interested in the oyster and fish trade.

Seventh. Because it appears from the face of said bill that the Governor and Attorney General of the State of Louisiana are seeking to maintain in the sovereign right of said State, this suit for the redress of the supposed wrongs of certain private citizens of said State, namely, those engaged in the oyster and fish trade, while under the Constitution of the United States and the laws enacted thereunder said State possesses no such sovereignty as empowers her to bring an original suit in this court for such purpose.

Eighth. Because it appears upon the face of said bill that no property rights of the State of Louisiana are in any manner affected by the matters alleged in the said bill; nor is there any such property right involved in this suit as would give to this court original jurisdiction of this cause.

Ninth. Because it appears from the face of said bill of complaint that the acts therein complained of are not the acts of the State of Mississippi in its sovereign or corporate capacity, nor acts of any of her officers, committed by her authority, but the acts of certain individual persons engaged in the oyster and fish trade, against whom relief is sought and who are not made parties herein.

Tenth. Because it appears upon the face of said bill that the State of Mississippi, nor any officer of said State

authorized by law to act for and on her behalf, has not in any manner whatsoever denied or controverted the boundary line of the State of Louisiana in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana.

Eleventh. Because it clearly appears from the face of the said bill of complaint that its purpose is to extend, vary and change, by judicial procedure, the boundary lines between said States in the waters to the south of the State of Mississippi, differently from where they were clearly and permanently fixed by the several Acts of Congress referred to and pleaded in the said bill admitting said States into the Union.

Twelfth. Because it appears upon the face of said bill of complaint that the alleged confusion as to the boundary line between the said States in the waters to the south of the State of Mississippi, and to the southeast of the State of Louisiana, and the alleged threat of an armed conflict between the civil officers of the Parish of St. Bernard, in the State of Louisiana, and of the County of Harrison, in the State of Mississippi, is but a conclusion of the pleader, the facts producing such confusion and threat not being set out in the bill as required by law.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

MONROE McCLURG,
Attorney General of Mississippi.

THE STATE OF MISSISSIPPI, }
HINDS COUNTY. }

Personally appeared before me the undersigned Clerk of the Supreme Court of the State of Mississippi, A. H. Longino, the Governor of said State, and Monroe McClurg, the Attorney General of said State, representing the said State of Mississippi, defendant, in the above entitled cause, and say that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Sworn to and subscribed before me this the 8th day of January, 1903.

A. H. LONGINO, GOVERNOR.
MONROE McCLURG,
ATTORNEY GENERAL.

{ SEAL }

E. W. BROWN,
Clerk of the Supreme Court af Mississippi.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

MONROE McCLURG,
Attorney General of Mississippi.

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FILED
OCT 13 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

Original, No. 11

STATE OF LOUISIANA, COMPLAINANT.

versus

STATE OF MISSISSIPPI, DEFENDANT.

MOTION.

Tucker Printing House, Jackson, Miss.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

ORIGINAL NO. 12.

STATE OF LOUISIANA, COMPLAINANT

versus

STATE OF MISSISSIPPI, DEFENDANT.

MOTION.

To the Honorable Chief Justice, and the Honorable Associate Justices:

The State of Mississippi, Defendant, by Andrew H. Longino, Governor, and William Williams, Attorney General, humbly shows as follows, to-wit:

That the State of Louisiana filed her complaint against the State of Mississippi, in this Honorable Court, on the 27th day of October, 1902, praying a decree defining and marking the lines dividing said states in the waters of the Gulf of Mexico; that subpoena was issued, made returnable the 12th day of January, 1903, at which date the State of Mississippi appeared by Monroe McClurg, her then Attorney General, and demurred to the said complaint; that afterwards, to-wit: on the ——day of March, 1903, said demurrer was disallowed and overruled by this Honorable Court, and the State of Mississippi required to answer to the October Term, 1903.

The State of Mississippi herewith humbly presents her answer to said bill of complaint and, according to the usual practice in such cases, accompanies her said answer by a cross-bill making the State of Louisiana defendant thereto. She humbly prays that her said answer and cross-bill may be filed, and that subpoena may be allowed to issue out of this Honorable Court, directed to the Honorable William W. Heard, Governor of the State of Louisiana, and the Honorable Walter Guion, Attorney General of said State, commanding them to appear and answer said cross-bill, upon a day to be named by this Honorable Court.

WILLIAM WILLIAMS,

Attorney General of Mississippi.

MONROE MCCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

FILE COPY.

Oct. 13

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OCT 13 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 11, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

ANSWER AND CROSS-BILL.

WILLIAM WILLIAMS,
Attorney General State of Mississippi.

MONROE McCLURG,
DODDS & GRIFFITH,
Of Counsel.

Tucker Printing House, Jackson, Miss.



Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 12, Original.

STATE OF LOUISIANA
v.
STATE OF MISSISSPIPI.

Answer and Cross-Bill.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of Mississippi, one of the United States of America, by Andrew H. Longino, Governor, and William Williams, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of Mississippi by the Honorable William W. Heard, Governor, upon the information of Hon. Walter Guion, Attorney General, for and on behalf of the State of Louisiana, also one of the United States of America.

This defendant now and at all times hereafter saving to herself all, and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says:

I.

To the first paragraph of said bill defendant says that she admits that the State of Louisiana was admitted into the Union by virtue of Chapter 50 of the United States Statues at Large as stated in the Bill of Complaint.

II.

Answering the second paragraph defendant denies that according to the description given in the Act of Congress aforesaid that the said Act meant that it was necessary to reach the Gulf of Mexico through the Rigolets into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, and to follow said channel, north of Half Moon Island, through the Mississippi Sound to the north of Isle a Pitre through the Cat Island Channel Southwest of Cat Island into the Gulf of Mexico, or that it was intended by said Act that the line above referred to should constitute the eastern boundary line of the State of Louisiana; and defendant denies the correctness of Diagram No. 1, filed as a part of the bill of complaint, but on the contrary thereof defendant alleges that the true intent and purport of said Act of Congress admitting the State of Louisiana into the Union as to the above mentioned line, was and is as stated in the Cross-bill herewith filed.

III.

Answering the third paragraph of said bill of complaint defendant admits that certain territory was added to the State of Louisiana as therein stated.

IV.

Answering the fourth paragraph of the bill of complaint, this defendant denies that the legislation therein referred to had the effect claimed in said paragraph of said bill respecting the boundary line of the State of Louisiana; and she specifically denies that the deep water channel

through the upper corner of Lake Borgne north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound until it reaches the Cat Island Channel north of Isle a Pitre, and southwest of Cat Island, whence, passing through Chandeleur Sound, northeast of Chandeleur Island, it enters the Gulf of Mexico, and runs south around the delta of the Mississippi River, constitutes the true boundary line. And defendant denies the correctness of Diagram No. 2, filed as a part of the bill, but on the contrary thereof charges and alleges that the effect of the legislation aforesaid was to fix the line between said states southward out of the mouth of Pearl River as set forth in the cross-bill herewith filed.

V.

Answering the fifth paragraph of said bill, defendant denies the correctness of the claim of complainant as stated in said bill, but admits that eastward of the line between said states and that point stated in the cross-bill aforesaid, is the State of Mississippi, and that said State of Mississippi was admitted into the Union of the United States by an Act of Congress approved March 1st, 1817, as stated in the bill creating the western part of the then Mississippi Territory into a state and that said state was and is bounded as stated in said Act of Congress.

VI.

Answering the sixth paragraph of the bill, this defendant denies that the said Act of Congress admitting the State of Mississippi into the Union intended that the southern boundary line of said state should be as stated in said bill of complaint, but defendant charges and alleges the true southern boundary line of said State of Mississippi was and is as stated in the cross-bill herewith filed.

VII.

Answering the seventh paragraph of said bill, defendant admits that the west end of Petit Bois Island, all of

Horn Island, all of Ship Island, all of Cat Island and the small islands north of these were intended to be a part of the State of Mississippi, but defendant denies that they are the only islands that belong to the said state and she denies the correctness of Diagram No. 3, filed as a part of the bill.

VIII.

Answering the eighth paragraph of said bill, defendant denies that it was or is contemplated by the Acts of Congress of 1812, aforesaid, creating the State of Louisiana, that all of the other islands except those named in the last paragraph to be south and west of the boundary line between said states described in the bill, were intended to be embraced in the State of Louisiana; and defendant charges and alleges that said line between said states is as stated in the cross-bill.

IX.

The ninth, tenth, eleventh and twelfth paragraphs of the bill are confessed. The thirteenth paragraph of the bill is admitted to be substantially correct so far as this defendant has information or believes the facts to be with reference to the location of the natural oyster reefs shown by the Fish Hawk's map, marked Diagram No. 4 to the bill of complaint, but defendant denies that said reefs are in the waters of St. Bernard Parish, in the State of Louisiana, but on the contrary thereof, are within the waters of the State of Mississippi as set forth and stated in the cross-bill.

X.

Answering the fourteenth paragraph of the bill of complainant, defendant denies the correctness of diagram No. 5, filed as a part of the bill of complaint, and she denies the correctness of the statement in said bill that the true line between the two states in the waters thereof is shown by

said diagram, but on the contrary thereof she again alleges and charges that the true line fixed by the Acts of Congress admitting the said two states into the Union is as stated in the cross-bill.

XI.

Answering the fifteenth paragraph, defendant admits that the line between said states, in the waters aforesaid, has never been marked in any manner by either state; she admits that the deep water channel out of the mouth of Pearl River through the upper corner of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes, but she denies that said marking of said deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said states.

XII.

Answering the sixteenth paragraph, defendant denies upon her belief that confusion has resulted in the State of Louisiana, or that a great public demand has arisen in that State, for a marked boundary line between that State and the State of Mississippi in the waters aforesaid, but she respectfully insists that if such condition actually existed in said state, it was first the duty of said state to mark, or undertake to mark, the true line dividing it from the State of Mississippi. And defendant, upon her belief, denies that any fisherman or other citizens of the State of Mississippi have violated the laws of Louisiana by fishing in her waters.

XIII.

Answering the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third paragraphs of the bill, this defendant admits that proceedings were had similar to those copied into said bill, but

defendant denies the allegations of the bill to the effect that there was any crisis or threatening armed conflict between the officers of Louisiana and those of Mississippi, or that there was any controversy between the two states as contemplated by Article 3, Section 2 of the Constitution of the United States, and this defendant now expressly denies, that the matters and things set forth in the said sections of the bill, last above referred to, constitutes a controversy between the two states within the meaning of the Constitution, and defendant denies that there has ever been such controversy between the two states as to give this court jurisdiction of an original bill to settle the same. And defendant expressly denies the charges found in the second clause, on page 9 of said bill, to the effect that the "Marsh Lands" therein referred to are not islands, but alleges that they are small islands distinctly marked in said waters, and she denies that the people of Mississippi have ever shown a disposition to unlawfully invade the territory of Louisiana, and alleges that they have in fact not done so. Defendant says further that it was never intended by the Governors of said states, respectively, or by the so called Commissioners, appointed by them, as mentioned in the bill of complaint, that said Commissioners should undertake to settle or fix the boundary line between said states in said waters, but only to make a peaceable adjustment of an unimportant dispute by an insignificant number of fish and oyster takers of the two states in the said waters. And defendant denies that the State of Louisiana had exhausted, before the filing of her said bill of complaint, all means whereby the said boundary might be established amicably except for the suggestion made by the so-called Commissioners appointed by the Governor of Mississippi, and she denies that the recommendation of the said Mississippi Commissioners, that a friendly suit in the Supreme Court of the United States be instituted to settle the alleged controversy was sufficient to create a controversy between the two states within the meaning of the constitution of the United States, or to give this court original jurisdiction.

XIV.

Responding to the twenty-fourth paragraph of the bill, the State of Mississippi specificaly denies that the line claimed by the State of Louisiana, to-wit: A line beginning at the most southern junction of the channel of the east branch of the Pearl River with Lake Borgne thence eastward following the deep water channel to the north of Half Moon Island, through the Mississippi Sound Channel, Cat Island Pass, northeast of Isle a Pitre into the Gulf of Mexico, there divides the waters between the two states, or agrees with, or is in accord with the Acts of Congress aforesaid, creating, respectively, the State of Louisiana and the State of Mississippi, as shown by Diagram No. 5 filed with the bill, or in any other manner; and defendant expressly denies the charge contained in the bill, to the effect that any other boundary than the deep water channel as therein described would cause the line in the waters of the two states to conflict and overlap, but on the contrary thereof, defendant charges and alleges, as aforesaid, that the true boundary between the two states in the waters aforesaid, is as stated in the cross-bill herewith filed.

XV.

Answering the twenty-fifth paragraph of the bill, defendant denies the correctness of the construction placed by complainant in her said bill upon the word "westwardly" in describing the southern boundary of the Mississippi line as set forth in said paragraph of said bill of complaint, and she denies that the complainant has, in said paragraph or in said bill, correctly interpreted the intention of Congress as expressed in the Act creating the State of Mississippi with reference to said southern boundary line of said state, and she denies that Congress ever intended, by said Act, that the southern boundary line of the State of Mississippi should be a line drawn from the six league water limit between the States of Alabama and Mississippi in a direct course to the most eastern mouth of Pearl

River, but on the contrary thereof, defendant shows, alleges and charges that it was the purpose and intention of Congress, as clearly shown and expressed in the Act admitting Mississippi into the Union, that her southern boundary line should extend from the six league water limit between said state and Alabama with the meanderings of the shore line to a point six leagues to the southward of the most eastern, or most southern, mouth of Pearl River, and then if such line should, at any point touch the lawful boundary of Louisiana as fixed by the several Acts of Congress, admitting that State into the Union, there would be no lap or conflict, but the Mississippi line would stop at, and follow said Louisiana line. Your defendant alleges and charges the truth to be that a line drawn as contended by the complainant in her said bill from the six league water limit between Alabama and Mississippi, in a direct course to the most eastern mouth of Pearl River, would, in fact, cut off a part of the mainland of Mississippi in Hancock county opposite the Saint Joseph Light House, and defendant reiterates her declaration that the true southern line of said State is as stated in the cross-bill.

XVI.

Defendant admits that the Mississippi line running parallel with the southern shore of Mississippi at a distance of six leagues from the shore line, and following the meandering of the shore at all points between the mouth of Pearl River and the Alabama line would include Grassy, Half Moon, Round, Le Petit Pass Islands and Isle a Pitre, all of which named islands and all other islands within said six league water reach belong, not to the State of Louisiana, but to the State of Mississippi; that the State of Mississippi does not claim and never has claimed any part of the mainland of the State of Louisiana, as shown by Diagram No. 6, filed with the bill, the accuracy and correctness of which diagram she denies, or that she has in any other manner ever made such claim; and she denies

that a line drawn in the waters aforesaid, at three leagues from the high tide marked on the true mainland of the "Coast" of the State of Louisiana, would include the islands last above named; and she alleges and charges that if a line so drawn three leagues from the Louisiana mainland would embrace said islands still they do not belong to the State of Louisiana since such is not the true boundary line between the states of Louisiana and Mississippi, but the said true line is that described in the cross-bill filed herewith.

XVII.

Answering further, and to the twenty-sixth paragraph of complainant's bill, defendant denies that the marsh territory claimed by the State of Mississippi is part of the mainland of the State of Louisiana; she admits that said marsh islands, except the islands named in said paragraph, have been known and called, since time immemorial as the "Louisiana Marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory and while the southern portion of Mississippi also was a part of French territory, all known as Louisiana; and she denies that said fact has any significant bearing upon the location of the line between said states or as to the ownership of said states to, or sovereignty over the territory known as the "Louisiana Marshes," no more so than that the parishes of Louisiana north of the River Iberville, known as the "Florida Parishes" would, because of that appellation, entitle the State of Florida to the possession of, and sovereignty over those parishes. And, defendant says if it be true as stated in the twenty-sixth paragraph of the bill that any of the marsh territory rightfully belonging to the State of Mississippi under the Act of Congress admitting her into the Union, have been approved by the General Land Office to the State of Louisiana, such acts by the ministerial offices of the Government had no binding

force or effect as against the State of Mississippi, because such action on the part of said mere ministerial officers by a department of the government, and on the part of the State of Louisiana in accepting said land, would not transfer the title of the State of Mississippi to said lands or her sovereign right to own and exercise jurisdiction over them because it would be a violation of Sec. 3, of Art. IV of the Constitution of the United States, prohibiting the taking of the territory belonging to one State, without the consent of the Legislatures of the states concerned, as well as of the Congress, and defendant alleges and charges that she has exercised jurisdiction and sovereignty over said territory mentioned in said twenty-sixth paragraph of the bill, since she was admitted into the Union.

XVIII.

Responding to the twenty-seventh paragraph of the bill of complaint, defendant denies that any part of the territory claimed by the State of Mississippi is in fact part of the mainland of the State of Louisiana, or that any of said islands referred to in said paragraph claimed by Mississippi are within the nine mile limit of distance from the coast of the State of Louisiana, as contemplated by the Acts of Congress admitting that State into the Union, and she denies that said islands belong to the State of Louisiana by virtue of the second provision of the Act of Congress admitting Louisiana into the Union as stated in said paragraph.

XIX.

Answering the twenty-eighth paragraph of the bill, defendant denies the correctness of complainant's statement that where contiguous states or countries are separated by water, that the channel of the waters dividing said states, constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case; and she denies that there is anything in that portion of her Constitution of 1890, copied into the bill of complaint,

binding her to recognize the channel line insisted upon by the complainant in the instant case.

XX

Answering further, and to the twenty-ninth paragraph of the bill, defendant admits that none of the marsh territory claimed by the State of Mississippi in this matter have ever been assessed on the tax rolls of said state or that any taxes have ever been paid to her on said territory, but she denies that such failure confers any right to the State of Louisiana to said territory; and, she says, that while it may be true that the lands described in said paragraph in said bill have been attempted to be confirmed to the State of Louisiana by the Land Department of the United States Government as belonging to and forming a part of the State of Louisiana, she denies, nevertheless, that these facts have the effect of divesting the title and sovereignty of the State of Mississippi to and over said territory, or to invest the State of Louisiana therewith, and she denies that the people of said two states, especially the people of the State of Mississippi, have recognized the territory mentioned and described in said paragraphs as belonging to the State of Louisiana. Defendant says that while it may be true that the lands composing Half Moon Island and Isle a Pitre and the other territory mentioned in said paragraph have been dealt with as stated in said paragraph, the defendant, nevertheless, insists that her title to and sovereignty over said islands are protected by Sec. 3 of Art. IV. of the Constitution of the United States.

Defendant denies that all parts of the said territory have been assessed by the State of Louisiana, but says that on the contrary only small and separate parts and straggling portions of same have been so assessed by that state. Defendant says that, except as to a small portion of Isle a Pitre, in the whole expanse of this territory there is not a single human habitation, nor is there any animal life thereon, nor can any such be thereon. That it is a

low-lying archipelago of irregular islands, sometimes entirely covered by the high tide and at all times soft and boggy, and to walk upon them is at almost all times impracticable, and no actual occupancy of any kind has ever been had of the said territory except by the boats of fishermen, and this has heretofore been almost exclusively by citizens of Mississippi, and such occupants have always insisted, without serious question heretofore, that all this territory belonged to the State of Mississippi, and defendant expressly states and charges that the alleged dealings with the said territory by the Land Office of the United States, and by the State of Louisiana, were not only without the consent or acquiescence of the State of Mississippi, but wholly without her knowledge.

XXI.

Answering the thirtieth paragraph of said bill, defendant denies the statement therein that all constituted authorities competent to create, adopt or consider the boundary line between the said states in the waters thereof have declared the said line to be as stated in said paragraph, namely: The deep Water Channel running from the most southern junction of the eastern mouth of Pearl River through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle a Pitre, southwest of Cat Island, through Cat Island Pass, through Chandeleur Sound, northwest of Chandeleur Islands to the Gulf of Mexico, to be the true water boundary between said states, but she alleges and charges again that the true boundary is as alleged in the cross-bill filed herewith.

XXII.

This defendant now states, alleges and charges that in addition to the foregoing specific denials, she denies generally all of the allegations of the bill of complaint adverse to the matters and claims set up in this answer, and

she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to her best knowledge and belief, humbly prays this Honorable Court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

CROSS-BILL.

For cross-complaint and for affirmative relief your orator, the State of Mississippi shows to the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

I.

That the southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by Sec. 2, Chapter 23, of the Acts of the Congress of the United States creating said state and approved March 1, 1817, found in Vol. 3, p. 348, of the Statutes at Large as follows:

"*And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of

north latitude, thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning."

II.

Your orator alleges and charges that the purpose and intention of Congress as manifested by said section of the said Act above quoted was to give the State of Mississippi all lands under the waters south of her well defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl River with Lake Borgne, including all islands within said limit, and to give to said State of Mississippi sovereignty thereof, and that by virtue of the said Act all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi.

III.

Your orator alleges and charges that while the boundary line from the mouth of Pearl River to the Gulf of Mexico is not attempted to be defined and none was established by the Acts mentioned in the Bill of Complaint creating and enlarging the State of Louisiana, yet said boundary line is accurately designated, and defined for the first time and established as and for the permanent southern boundary line of the State of Mississippi by Sec. 2, Chapter 23, of the Acts of Congress approved March 1, 1817, above referred to and quoted, and your orator charges and alleges that said line by the said Act established is the real true southern boundary line of said state in said waters, and that said boundary line begins at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, and runs *westwardly with the meanderings of the said shore* six leagues always therefrom until the said line reaches and touches the real mainland of Louisiana, which real mainland and the first touch thereof, your orator charges, in

the line of high tide thereon about two miles due west of the "Indian Mound" and "Lake of the Mound," (See Chart 192), and thence in an almost due northward direction along and on said high tide mark of the Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou (Chart 190) and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern or eastern junction of Pearl River with Lake Borgne (Chart 191), and thence from said point due north to the said Pearl River, including all islands and the land under the waters within the said limits, without regard to the name, character or size of said islands, and your orator here now again alleges and charges that the said line so drawn will include no part of the mainland of Louisiana nor any islands or waters that she is lawfully entitled to. Your orator begs leave to refer to Coast Charts Nos. 19, (June 1900), 190, (June 1900), 192, (Sept. 1899), and 191, (June 1900), prepared and promulgated to the public by the United States Coast and Geodetic Survey, Washington, D. C., Henry S. Prichett, Superintendent, for all descriptions herein referred to, the size and character of which Charts make it impracticable to file them as exhibits to this answer and cross-bill, but your orator will file in due time proper copies thereof, now being made, as diagrams Nos. 1, 2, 3 and 4 and made parts hereof.

IV.

That the Acts of 1812 of the Congress, creating the State of Louisiana and otherwise probably correctly defining her boundary line fails, as is conceded by the said state in her original bill filed in this cause, to describe the water line from the most eastern mouth of Pearl River to the Gulf of Mexico; that in order to supply that part of the line between the two points aforesaid, and to make her water boundary line complete, the said complainant, in her said original bill, proposes without authority in law to

follow the deep water channel from the mouth of Pearl river to the Gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur Sound merge into the waters of the Gulf of Mexico.

V.

That the said Act creating the State of Mississippi was only the organization of a state government in the western part of the Mississippi Territory as such Territory had theretofore existed; that the southern part of the Territory of Mississippi was added thereto by an Act of Congress approved May 14, 1812, passed by the same Congress that created the State of Louisiana and within one month of the date of said Acts creating and admitting the State of Louisiana into the Union. The said Act of Congress making the aforesaid addition to the Mississippi Territory is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that portion of territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi territory, shall be entitled to one representative in the general assemby thereof." U. S. St. at L., Vol. 2, p. 734.

VI.

Your orator humbly shows that the Congress of the UnitedStates,in the enactment of both the statutes relating to the southern part of Mississippi Territory, that is, the Act last above cited, creating that addition to the Missis-

sippi Territory and that creating and admitting into the Union, the State of Mississippi, both of said Acts being subsequent to the passage of the Act creating and admitting into the Union the State of Louisiana, recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said state and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana Acts are not in conflict with the aforesaid Mississippi Acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said Acts creating and admitting her, as were within the Gulf of Mexico and also within three leagues of her Gulf coast, that is to say, within the Gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl river to the Gulf of Mexico dividing the territory of Mississippi from the State of Louisiana was never defined until the passage of the Act creating the State of Mississippi, when, *for the first time*, the southern boundary of the Mississippi Territory, the western part of which was, by said Act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi Acts, includes no islands which are within three leagues of the Louisiana mainland and also in the Gulf of Mexico as the limits of the Gulf of Mexico are defined by the said state in her original bill herein.

VI.

Your orator shows that the State of Louisana claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana, recited in the original Bill of Complaint herein; your orator charges that said claim to said islands and territory is not well

founded because of the matters herein set forth and because said islands and territory have not been susceptible to actual use and occupation and because said claim is in violation of Sec. 3 Art. IV of the Constitution of the United States prohibiting the transfer of any part of the territory of one state to another adjacent state without the consent of the legislature of the two states, and of the Congress. However, if this Honorable Court shou'd, for any cause or reason, adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said state because of such transfers, then your orator prays that the claim and title of Louisiana thereto be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder. Your orator alleges and charges that she has exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union; that by her public statutes codified by authority of her legislature in 1857, she declared in terms what had hitherto been in fact the southern or water boundaries of her coast counties in Art. 2, Sec 2, Page 50, Code of 1857; as follows: "* * * and the counties bordering on the Gulf of Mexico—towit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike *the Gulf of Mexico*, or the inlets thereto, on a continuous direct course *to the southern boundary of the State, including all islands that may lie within the limits thus defined*".

(Italics ours.)

By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the "Mississippi Sound" was recognized as a body of water, six leagues wide, wholly within the State of Mis-

sissippi, from Lake Borgne to the Alabama line, separate and distinct from "the Gulf of Mexico."

VIII.

That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf Coast or shore and carving states out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several Acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said states were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each state jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any state jurisdiction over waters adjacent to and immediately south and in front of any state or territory. But your orator alleges that the deep water channel line contended for by complainant, as indicated by the maps and diagrams filed with the original bill, would take nearly all of the Hancock county water front, much of the Harrison county water front, and possibly some of the Jackson county water front over all of which Mississippi has exercised jurisdiction and sovereignty since she was admitted into the Union.

IX.

Your orator alleges and charges that all of the Mississippi territory between Pearl River and the Alabama line was organized on December 14, 1812, into two counties known as Hancock and Jackson, and that on February 5, 1841 the county of Harrison was organized between the Bay of St. Louis and the Bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State of Mississippi the southern boundaries of said three coast counties are described as fol-

lows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says: " * * * thence along the middle of said Bay of St. Louis, southwardly to its entrance, thence due South to the southern boundary of the State of Mississippi, *in the Gulf of Mexico;* thence westwardly, with said boundary, including all islands within six leagues of the *shores of the Gulf of Mexico and Lake Borgne,* to the most eastern junction of Pearl River, and *Lake Borgne,* and to the east mouth of Pearl River; thence up said river, by the middle thereof, to the point of beginning." (Italics ours.)

Section 45 of the code above mentioned describes the southern boundary of Harrison county to the middle of the Bay of Biloxi, and proceeds as follows: " * * * thence along the middle of the said Bay of Biloxi to its entrance, at the east end of Deer Island; thence due south to the southern boundary of the State of Mississippi; *on the Gulf of Mexico;* thence westwardly, along said boundary to a point from which a line due north strikes the middle of the Bay of St. Louis; thence due north to the entrance of said Bay, including all the islands within six leagues *of the shore of the Gulf of Mexico.*" (Italics ours.)

Section 50 of the code aforesaid, as to the east and southern boundary line of Jackson county reads: " * * * thence east, on the line between townships one and two, south, to the state boundary between Alabama and Mississippi; thence southerly, on said boundary, *to the Gulf of Mexico;* thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning." (Italics ours.)

Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said code, the boundaries of said counties are the same as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines constituting the southern boundaries of the counties aforesaid, in the waters of the Gulf of Mexico,

are and have been since the formation of Hancock and Jackson Counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed and established southern boundary of the Mississippi Territory and of the State of Mississippi up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi Territory and that of the State of Mississippi has exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi Sound" as a part of the three counties aforesaid. Your orator shows that the said Mississippi authorities have recognized the "Mississippi Sound" as a part of the territory of Mississippi, and that her township and section lines are as well established in the waters of the "Mississippi Sound" as indicated by the county boundary aforesaid, as upon the lands within said territory. That the fishermen of all kinds have been taking fish and oysters in said "Mississippi Sound" during all of this long period, and have been governed, as well as all others using those waters, by the laws and jurisdictions of the Mississippi Territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

Your orator further shows that this said line was also recognized by the Supreme Court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the Act of Congress admitting Mississippi in the recent case of *Leinhard et al. v. Harrison County*, decided by our Supreme Court, January 12, 1903, (not yet reported), in which controversy the issue was as to the center of the said county and measurements from the eighteen mile limit in the water were held to have been correctly made.

IX.

Wherefore, your orator, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the Court and Your Honors to grant to her your writ of subpoena, directed to the said State of Louisiana, and to William W. Heard, Governor of the said State of Louisiana, and to Walter Guion, Attorney General of the State of Louisiana, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And upon final hearing may it please your Honors to adjudge and decree that the boundary line dividing the States of Mississippi and Louisiana is the line which, beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line reaches and touches the real mainland of Louisiana about two miles due west of the Indian Mound" and "Lake of the Mound," and thence in an almost due northward direction along and on the high tide mark of the said Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou, and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern, or eastern junction of Pearl River with Lake Borgne, and thence from said point due north to the said Pearl River; that the said line be located and permanently bouyed at the joint expense of the two states; that the full title and sovereignty over all the islands and the land under the waters north and east of the said line so established be decreed and adjudged to be in the State of Mississippi, and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein, and your orator humbly prays for such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which the facts of the case may require, and for costs of suit.

MONROE MCCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

WILLIAM WILLIAMS,
Attorney Genetal of Mississippi.

THE STATE OF MISSISSIPPI,
HINDS COUNTY.

Personally came and appeared before me the undersigned authority in and for said county and state, Andrew H. Longino, who on oath states that he is the Governor of the State of Mississippi; that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

ANDREW H. LONGINO.

Sworn to and subscribed before me this 7th day of October, A. D. 1903.

GEO. C. MEYERS,
CLERK OF SUPREME COURT

Office Supreme Court U. S.
FILED
OCT 13 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

ANSWER AND CROSS-BILL.

WILLIAM WILLIAMS,
Attorney General State of Mississippi.

MONROE McCLURG,
DODDS & GRIFFITH,
Of Counsel.

Tucker Printing House, Jackson, Miss.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 12, Original.

STATE OF LOUISIANA v. STATE OF MISSISSIPPI.	Answer and Cross-Bill.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of Mississippi, one of the United States of America, by Andrew H. Longino, Governor, and William Williams, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of Mississippi by the Honorable William W. Heard, Governor, upon the information of Hon. Walter Guion, Attorney General, for and on behalf of the State of Louisiana, also one of the United States of America.

This defendant now and at all times hereafter saving to herself all, and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for her to make answer to, answering says:

I.

To the first paragraph of said bill defendant says that she admits that the State of Louisiana was admitted into the Union by virtue of Chapter 50 of the United States Statues at Large as stated in the Bill of Complaint.

II.

Answering the second paragraph defendant denies that according to the description given in the Act of Congress aforesaid that the said Act meant that it was necessary to reach the Gulf of Mexico through the Rigolets into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, and to follow said channel, north of Half Moon Island, through the Mississippi Sound to the north of Isle a Pitre through the Cat Island Channel Southwest of Cat Island into the Gulf of Mexico, or that it was intended by said Act that the line above referred to should constitute the eastern boundary line of the State of Louisiana; and defendant denies the correctness of Diagram No. 1, filed as a part of the bill of complaint, but on the contrary thereof defendant alleges that the true intent and purport of said Act of Congress admitting the State of Louisiana into the Union as to the above mentioned line, was and is as stated in the Cross-bill herewith filed.

III.

Answering the third paragraph of said bill of complaint defendant admits that certain territory was added to the State of Louisiana as therein stated.

IV.

Answering the fourth paragraph of the bill of complaint, this defendant denies that the legislation therein referred to had the effect claimed in said paragraph of said bill respecting the boundary line of the State of Louisiana; and she specifically denies that the deep water channel

through the upper corner of Lake Borgne north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound until it reaches the Cat Island Channel north of Isle a Pitre, and southwest of Cat Island, whence, passing through Chandeleur Sound, northeast of Chandeleur Island, it enters the Gulf of Mexico, and runs south around the delta of the Mississippi River, constitutes the true boundary line. And defendant denies the correctness of Diagram No. 2, filed as a part of the bill, but on the contrary thereof charges and alleges that the effect of the legislation aforesaid was to fix the line between said states southward out of the mouth of Pearl River as set forth in the cross-bill herewith filed.

V.

Answering the fifth paragraph of said bill, defendant denies the correctness of the claim of complainant as stated in said bill, but admits that eastward of the line between said states and that point stated in the cross-bill aforesaid, is the State of Mississippi, and that said State of Mississippi was admitted into the Union of the United States by an Act of Congress approved March 1st, 1817, as stated in the bill creating the western part of the then Mississippi Territory into a state and that said state was and is bounded as stated in said Act of Congress.

VI.

Answering the sixth paragraph of the bill, this defendant denies that the said Act of Congress admitting the State of Mississippi into the Union intended that the southern boundary line of said state should be as stated in said bill of complaint, but defendant charges and alleges the true southern boundary line of said State of Mississippi was and is as stated in the cross-bill herewith filed.

VII.

Answering the seventh paragraph of said bill, defendant admits that the west end of Petit Bois Island, all of

Horn Island, all of Ship Island, all of Cat Island and the small islands north of these were intended to be a part of the State of Mississippi, but defendant denies that they are the only islands that belong to the said state and she denies the correctness of Diagram No. 3, filed as a part of the bill.

VIII.

Answering the eighth paragraph of said bill, defendant denies that it was or is contemplated by the Acts of Congress of 1812, aforesaid, creating the State of Louisiana, that all of the other islands except those named in the last paragraph to be south and west of the boundary line between said states described in the bill, were intended to be embraced in the State of Louisiana; and defendant charges and alleges that said line between said states is as stated in the cross-bill.

IX.

The ninth, tenth, eleventh and twelfth paragraphs of the bill are confessed. The thirteenth paragraph of the bill is admitted to be substantially correct so far as this defendant has information or believes the facts to be with reference to the location of the natural oyster reefs shown by the Fish Hawk's map, marked Diagram No. 4 to the bill of complaint, but defendant denies that said reefs are in the waters of St. Bernard Parish, in the State of Louisiana, but on the contrary thereof, are within the waters of the State of Mississippi as set forth and stated in the cross-bill.

X.

Answering the fourteenth paragraph of the bill of complainant, defendant denies the correctness of diagram No. 5, filed as a part of the bill of complaint, and she denies the correctness of the statement in said bill that the true line between the two states in the waters thereof is shown by

said diagram, but on the contrary thereof she again alleges and charges that the true line fixed by the Acts of Congress admitting the said two states into the Union is as stated in the cross-bill.

XI.

Answering the fifteenth paragraph, defendant admits that the line between said states, in the waters aforesaid, has never been marked in any manner by either state; she admits that the deep water channel out of the mouth of Pearl River through the upper corner of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes, but she denies that said marking of said deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said states.

XII.

Answering the sixteenth paragraph, defendant denies upon her belief that confusion has resulted in the State of Louisiana, or that a great public demand has arisen in that State, for a marked boundary line between that State and the State of Mississippi in the waters aforesaid, but she respectfully insists that if such condition actually existed in said state, it was first the duty of said state to mark, or undertake to mark, the true line dividing it from the State of Mississippi. And defendant, upon her belief, denies that any fisherman or other citizens of the State of Mississippi have violated the laws of Louisiana by fishing in her waters.

XIII.

Answering the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third paragraphs of the bill, this defendant admits that proceedings were had similar to those copied into said bill, but

defendant denies the allegations of the bill to the effect that there was any crisis or threatening armed conflict between the officers of Louisiana and those of Mississippi, or that there was any controversy between the two states as contemplated by Article 3, Section 2 of the Constitution of the United States, and this defendant now expressly denies, that the matters and things set forth in the said sections of the bill, last above referred to, constitutes a controversy between the two states within the meaning of the Constitution, and defendant denies that there has ever been such controversy between the two states as to give this court jurisdiction of an original bill to settle the same. And defendant expressly denies the charges found in the second clause, on page 9 of said bill, to the effect that the "Marsh Lands" therein referred to are not islands, but alleges that they are smallislands distinctly marked in said waters, and she denies that the people of Mississippi have ever shown a disposition to unlawfully invade the territory of Louisiana, and alleges that they have in fact not done so. Defendant says further that it was never intended by the Governors of said states, respectively, or by the so called Commissioners, appointed by them, as mentioned in the bill of complaint, that said Commissioners should undertake to settle or fix the boundary line between said states in said waters, but only to make a peaceable adjustment of an unimportant dispute by an insignificant number of fish and oyster takers of the two states in the said waters. And defendant denies that the State of Louisiana had exhausted, before the filing of her said bill of complaint, all means whereby the said boundary might be established amicably except for the suggestion made by the so-called Commissioners appointed by the Governor of Mississippi, and she denies that the recommendation of the said Mississippi Commissioners, that a friendly suit in the Supreme Court of the United States be instituted to settle the alleged controversy was sufficient to create a controversy between the two states within the meaning of the constitution of the United States, or to give this court original jurisdiction.

XIV.

Responding to the twenty-fourth paragraph of the bill, the State of Mississippi specificaly denies that the line claimed by the State of Louisiana, to-wit: A line beginning at the most southern junction of the channel of the east branch of the Pearl River with Lake Borgne thence eastward following the deep water channel to the north of Half Moon Island, through the Mississippi Sound Channel, Cat Island Pass, northeast of Isle a Pitre into the Gulf of Mexico, there divides the waters between the two states, or agrees with, or is in accord with the Acts of Congress aforesaid, creating, respectively, the State of Louisiana and the State of Mississippi, as shown by Diagram No. 5 filed with the bill, or in any other manner; and defendant expressly denies the charge contained in the bill, to the effect that any other boundary than the deep water channel as therein described would cause the line in the waters of the two states to conflict and overlap, but on the contrary thereof, defendant charges and alleges, as aforesaid, that the true boundary between the two states in the waters aforesaid, is as stated in the cross-bill herewith filed.

XV.

Answering the twenty-fifth paragraph of the bill, defendant denies the correctness of the construction placed by complainant in her said bill upon the word "westwardly" in describing the southern boundary of the Mississippi line as set forth in said paragraph of said bill of complaint, and she denies that the complainant has, in said paragraph or in said bill, correctly interpreted the intention of Congress as expressed in the Act creating the State of Mississippi with reference to said southern boundary line of said state, and she denies that Congress ever intended, by said Act, that the southern boundary line of the State of Mississippi should be a line drawn from the six league water limit between the States of Alabama and Mississippi in a direct course to the most eastern mouth of Pearl

River, but on the contrary thereof, defendant shows, alleges and charges that it was the purpose and intention of Congress, as clearly shown and expressed in the Act admitting Mississippi into the Union, that her southern boundary line should extend from the six league water limit between said state and Alabama with the meanderings of the shore line to a point six leagues to the southward of the most eastern, or most southern, mouth of Pearl River, and then if such line should, at any point touch the lawful boundary of Louisiana as fixed by the several Acts of Congress, admitting that State into the Union, there would be no lap or conflict, but the Mississippi line would stop at, and follow said Louisiana line. Your defendant alleges and charges the truth to be that a line drawn as contended by the complainant in her said bill from the six league water limit between Alabama and Mississippi, in a direct course to the most eastern mouth of Pearl River, would, in fact, cut off a part of the mainland of Mississippi in Hancock county opposite the Saint Joseph Light House, and defendant reiterates her declaration that the true southern line of said State is as stated in the cross-bill.

XVI.

Defendant admits that the Mississippi line running parallel with the southern shore of Mississippi at a distance of six leagues from the shore line, and following the meandering of the shore at all points between the mouth of Pearl River and the Alabama line would include Grassy, Half Moon, Round, Le Petit Pass Islands and Isle a Pitre, all of which named islands and all other islands within said six league water reach belong, not to the State of Louisiana, but to the State of Mississippi; that the State of Mississippi does not claim and never has claimed any part of the mainland of the State of Louisiana, as shown by Diagram No. 6, filed with the bill, the accuracy and correctness of which diagram she denies, or that she has in any other manner ever made such claim; and she denies

that a line drawn in the waters aforesaid, at three leagues from the high tide marked on the true mainland of the "Coast" of the State of Louisiana, would include the islands last above named; and she alleges and charges that if a line so drawn three leagues from the Louisiana mainland would embrace said islands still they do not belong to the State of Louisiana since such is not the true boundary line between the states of Louisiana and Mississippi, but the said true line is that described in the cross-bill filed herewith.

XVII.

Answering further, and to the twenty-sixth paragraph of complainant's bill, defendant denies that the marsh territory claimed by the State of Mississippi is part of the mainland of the State of Louisiana; she admits that said marsh islands, except the islands named in said paragraph, have been known and called, since time immemorial as the "Louisiana Marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory and while the southern portion of Mississippi also was a part of French territory, all known as Louisiana; and she denies that said fact has any significant bearing upon the location of the line between said states or as to the ownership of said states to, or sovereignty over the territory known as the "Louisiana Marshes," no more so than that the parishes of Louisiana north of the River Iberville, known as the "Florida Parishes" would, because of that appellation, entitle the State of Florida to the possession of, and sovereignty over those parishes. And, defendant says if it be true as stated in the twenty-sixth paragraph of the bill that any of the marsh territory rightfully belonging to the State of Mississippi under the Act of Congress admitting her into the Union, have been approved by the General Land Office to the State of Louisiana, such acts by the ministerial offices of the Government had no binding

force or effect as against the State of Mississippi, because such action on the part of said mere ministerial officers by a department of the government, and on the part of the State of Louisiana in accepting said land, would not transfer the title of the State of Mississippi to said lands or her sovereign right to own and exercise jurisdiction over them because it would be a violation of Sec. 3, of Art. IV of the Constitution of the United States, prohibiting the taking of the territory belonging to one State, without the consent of the Legislatures of the states concerned, as well as of the Congress, and defendant alleges and charges that she has exercised jurisdiction and sovereignty over said territory mentioned in said twenty-sixth paragraph of the bill, since she was admitted into the Union.

XVIII.

Responding to the twenty-seventh paragraph of the bill of complaint, defendant denies that any part of the territory claimed by the State of Mississippi is in fact part of the mainland of the State of Louisiana, or that any of said islands referred to in said paragraph claimed by Mississippi are within the nine mile limit of distance from the coast of the State of Louisiana, as contemplated by the Acts of Congress admitting that State into the Union, and she denies that said islands belong to the State of Louisiana by virtue of the second provision of the Act of Congress admitting Louisiana into the Union as stated in said paragraph.

XIX.

Answering the twenty-eighth paragraph of the bill, defendant denies the correctness of complainant's statement that where contiguous states or countries are separated by water, that the channel of the waters dividing said states, constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case; and she denies that there is anything in that portion of her Constitution of 1890, copied into the bill of complaint,

binding her to recognize the channel line insisted upon by the complainant in the instant case.

XX.

Answering further, and to the twenty-ninth paragraph of the bill, defendant admits that none of the marsh territory claimed by the State of Mississippi in this matter have ever been assessed on the tax rolls of said state or that any taxes have ever been paid to her on said territory, but she denies that such failure confers any right to the State of Louisiana to said territory; and, she says, that while it may be true that the lands described in said paragraph in said bill have been attempted to be confirmed to the State of Louisiana by the Land Department of the United States Government as belonging to and forming a part of the State of Louisiana, she denies, nevertheless, that these facts have the effect of divesting the title and sovereignty of the State of Mississippi to and over said territory, or to invest the State of Louisiana therewith, and she denies that the people of said two states, especially the people of the State of Mississippi, have recognized the territory mentioned and described in said paragraphs as belonging to the State of Louisiana. Defendant says that while it may be true that the lands composing Half Moon Island and Isle a Pitre and the other territory mentioned in said paragraph have been dealt with as stated in said paragraph, the defendant, nevertheless, insists that her title to and sovereignty over said islands are protected by Sec. 3 of Art. IV. of the Constitution of the United States.

Defendant denies that all parts of the said territory have been assessed by the State of Louisiana, but says that on the contrary only small and separate parts and straggling portions of same have been so assessed by that state. Defendant says that, except as to a small portion of Isle a Pitre, in the whole expanse of this territory there is not a single human habitation, nor is there any animal life thereon, nor can any such be thereon. That it is a

low-lying archipelago of irregular islands, sometimes entirely covered by the high tide and at all times soft and boggy, and to walk upon them is at almost all times impracticable, and no actual occupancy of any kind has ever been had of the said territory except by the boats of fishermen, and this has heretofore been almost exclusively by citizens of Mississippi, and such occupants have always insisted, without serious question heretofore, that all this territory belonged to the State of Mississippi, and defendant expressly states and charges that the alleged dealings with the said territory by the Land Office of the United States, and by the State of Louisiana, were not only without the consent or acquiescence of the State of Mississippi, but wholly without her knowledge.

XXI.

Answering the thirtieth paragraph of said bill, defendant denies the statement therein that all constituted authorities competent to create, adopt or consider the boundary line between the said states in the waters thereof have declared the said line to be as stated in said paragraph, namely: The deep Water Channel running from the most southern junction of the eastern mouth of Pearl River through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle a Pitre, southwest of Cat Island, through Cat Island Pass, through Chandeleur Sound, northwest of Chandeleur Islands to the Gulf of Mexico, to be the true water boundary between said states, but she alleges and charges again that the true boundary is as alleged in the cross-bill filed herewith.

XXII.

This defendant now states, alleges and charges that in addition to the foregoing specific denials, she denies generally all of the allegations of the bill of complaint adverse to the matters and claims set up in this answer, and

she calls upon the complainant to sustain the allegations of her bill of complaint, if any she can, by strict proof.

Wherefore this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to her best knowledge and belief, humbly prays this Honorable Court that the said complainant's bill may be dismissed, and that the defendant have and recover her reasonable costs.

CROSS-BILL.

For cross-complaint and for affirmative relief your orator, the State of Mississippi shows to the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

I.

That the southern boundary line of the State of Mississippi was certainly and indisputably fixed and designated by Sec. 2, Chapter 23, of the Acts of the Congress of the United States creating said state and approved March 1, 1817, found in Vol. 3, p. 348, of the Statutes at Large as follows:

"*And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to-wit: Beginning on the River Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of

north latitude, thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning."

II.

Your orator alleges and charges that the purpose and intention of Congress as manifested by said section of the said Act above quoted was to give the State of Mississippi all lands under the waters south of her well defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl River with Lake Borgne, including all islands within said limit, and to give to said State of Mississippi sovereignty thereof, and that by virtue of the said Act all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi.

III.

Your orator alleges and charges that while the boundary line from the mouth of Pearl River to the Gulf of Mexico is not attempted to be defined and none was established by the Acts mentioned in the Bill of Complaint creating and enlarging the State of Louisiana, yet said boundary line is accurately designated, and defined for the first time and established as and for the permanent southern boundary line of the State of Mississippi by Sec. 2, Chapter 23, of the Acts of Congress approved March 1, 1817, above referred to and quoted, and your orator charges and alleges that said line by the said Act established is the real true southern boundary line of said state in said waters, and that said boundary line begins at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, and runs *westwardly with the meanderings of the said shore* six leagues always therefrom until the said line reaches and touches the real mainland of Louisiana, which real mainland and the first touch thereof, your orator charges, in

the line of high tide thereon about two miles due west of the "Indian Mound" and "Lake of the Mound," (See Chart 192), and thence in an almost due northward direction along and on said high tide mark of the Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou (Chart 190) and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern or eastern junction of Pearl River with Lake Borgne (Chart 191), and thence from said point due north to the said Pearl River, including all islands and the land under the waters within the said limits, without regard to the name, character or size of said islands, and your orator here now again alleges and charges that the said line so drawn will include no part of the mainland of Louisiana nor any islands or waters that she is lawfully entitled to. Your orator begs leave to refer to Coast Charts Nos. 19, (June 1900), 190, (June 1900), 192, (Sept. 1899), and 191, (June 1900), prepared and promulgated to the public by the United States Coast and Geodetic Survey, Washington, D. C., Henry S. Prichett, Superintendent, for all descriptions herein referred to, the size and character of which Charts make it impracticable to file them as exhibits to this answer and cross-bill, but your orator will file in due time proper copies thereof, now being made, as diagrams Nos. 1, 2, 3 and 4 and made parts hereof.

IV.

That the Acts of 1812 of the Congress, creating the State of Louisiana and otherwise probably correctly defining her boundary line fails, as is conceded by the said state in her original bill filed in this cause, to describe the water line from the most eastern mouth of Pearl River to the Gulf of Mexico; that in order to supply that part of the line between the two points aforesaid, and to make her water boundary line complete, the said complainant, in her said original bill, proposes without authority in law to

follow the deep water channel from the mouth of Pearl river to the Gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur Sound merge into the waters of the Gulf of Mexico.

V.

That the said Act creating the State of Mississippi was only the organization of a state government in the western part of the Mississippi Territory as such Territory had theretofore existed; that the southern part of the Territory of Mississippi was added thereto by an Act of Congress approved May 14, 1812, passed by the same Congress that created the State of Louisiana and within one month of the date of said Acts creating and admitting the State of Louisiana into the Union. The said Act of Congress making the aforesaid addition to the Mississippi Territory is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all that portion of territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi territory, shall be entitled to one representative in the general assemby thereof." U. S. St. at L., Vol. 2, p. 734.

VI.

Your orator humbly shows that the Congress of the UnitedStates,in the enactment of both the statutes relating to the southern part of Mississippi Territory, that is, the Act last above cited, creating that addition to the Missis-

sippi Territory and that creating and admitting into the Union, the State of Mississippi, both of said Acts being subsequent to the passage of the Act creating and admitting into the Union the State of Louisiana, recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said state and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana Acts are not in conflict with the aforesaid Mississippi Acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said Acts creating and admitting her, as were within the Gulf of Mexico and also within three leagues of her Gulf coast, that is to say, within the Gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl river to the Gulf of Mexico dividing the territory of Mississippi from the State of Louisiana was never defined until the passage of the Act creating the State of Mississippi, when, *for the first time*, the southern boundary of the Mississippi Territory, the western part of which was, by said Act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi Acts, includes no islands which are within three leagues of the Louisiana mainland and also in the Gulf of Mexico as the limits of the Gulf of Mexico are defined by the said state in her original bill herein.

VII.

Your orator shows that the State of Louisana claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana, recited in the original Bill of Complaint herein; your orator charges that said claim to said islands and territory is not well

founded because of the matters herein set forth and because said islands and territory have not been susceptible to actual use and occupation and because said claim is in violation of Sec. 3 Art. IV of the Constitution of the United States prohibiting the transfer of any part of the territory of one state to another adjacent state without the consent of the legislature of the two states, and of the Congress. However, if this Honorable Court should, for any cause or reason, adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said state because of such transfers, then your orator prays that the claim and title of Louisiana thereto be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder. Your orator alleges and charges that she has exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid, and that her citizens have enjoyed the same for all lawful purposes since her admission into the Union; that by her public statutes codified by authority of her legislature in 1857, she declared in terms what had hitherto been in fact the southern or water boundaries of her coast counties in Art. 2, Sec 2, Page 50, Code of 1857; as follows: "* * * and the counties bordering on the Gulf of Mexico—towit: Jackson, Harrison and Hancock—shall, respectively, have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike *the Gulf of Mexico*, or the inlets thereto, on a continuous direct course *to the southern boundary of the State, including all islands that may lie within the limits thus defined*".

(Italics ours.)

By which legislation above referred to, and all other legislation by the Congress and the said State of Mississippi, the "Mississippi Sound" was recognized as a body of water, six leagues wide, wholly within the State of Mis-

sissippi, from Lake Borgne to the Alabama line, separate and distinct from "the Gulf of Mexico."

VIII.

That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf Coast or shore and carving states out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several Acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said states were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each state jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any state jurisdiction over waters adjacent to and immediately south and in front of any other state or territory. But your orator alleges that the deep water channel line contended for by complainant, as indicated by the maps and diagrams filed with the original bill, would take nearly all of the Hancock county water front, much of the Harrison county water front, and possibly some of the Jackson county water front over all of which Mississippi has exercised jurisdiction and sovereignty since she was admitted into the Union.

IX.

Your orator alleges and charges that all of the Mississippi territory between Pearl River and the Alabama line was organized on December 14, 1812, into two counties known as Hancock and Jackson, and that on February 5, 1841 the county of Harrison was organized between the Bay of St. Louis and the Bay of Biloxi by the segregation of parts of Hancock and Jackson counties. Your orator shows that in an official codification of the statute laws of the State of Mississippi the southern boundaries of said three coast counties are described as fol-

lows: Section 44 of the Revised Code of Mississippi of 1880 as to Hancock county says: " * * * thence along the middle of said Bay of St. Louis, southwardly to its entrance, thence due South to the southern boundary of the State of Mississippi, *in the Gulf of Mexico;* thence westwardly, with said boundary, including all islands within six leagues of the *shores of the Gulf of Mexico and Lake Borgne,* to the most eastern junction of Pearl River, and *Lake Borgne,* and to the east mouth of Pearl River; thence up said river, by the middle thereof, to the point of beginning." (Italics ours.)

Section 45 of the code above mentioned describes the southern boundary of Harrison county to the middle of the Bay of Biloxi, and proceeds as follows: " * * * thence along the middle of the said Bay of Biloxi to its entrance, at the east end of Deer Island; thence due south to the southern boundary of the State of Mississippi; *on the Gulf of Mexico;* thence westwardly, along said boundary to a point from which a line due north strikes the middle of the Bay of St. Louis; thence due north to the entrance of said Bay, including all the islands within six leagues *of the shore of the Gulf of Mexico.*" (Italics ours.)

Section 50 of the code aforesaid, as to the east and southern boundary line of Jackson county reads: " * * * thence east, on the line between townships one and two, south, to the state boundary between Alabama and Mississippi; thence southerly, on said boundary, *to the Gulf of Mexico;* thence westwardly with said boundary to the center of range 9, west; thence north *with section lines* to the beginning." (Italics ours.)

Your orator alleges and shows that in an official codification of her statute laws, taking effect Nov. 1, 1892, and by sections 368, 369 and 374 of said code, the boundaries of said counties are the same as given in the Code of 1880 above mentioned. Your orator now alleges and charges that the lines constituting the southern boundaries of the counties aforesaid, in the waters of the Gulf of Mexico,

are and have been since the formation of Hancock and Jackson Counties on Dec. 14, 1812, the consistently and uninterruptedly recognized, fixed and established southern boundary of the Mississippi Territory and of the State of Mississippi up to the time of the controversy referred to in the original bill in this cause of January, 1901, and out of which this litigation grew. That during all of this time the government of the Mississippi Territory and that of the State of Mississippi has exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi Sound" as a part of the three counties aforesaid. Your orator shows that the said Mississippi authorities have recognized the "Mississippi Sound" as a part of the territory of Mississippi, and that her township and section lines are as well established in the waters of the "Mississippi Sound" as indicated by the county boundary aforesaid, as upon the lands within said territory. That the fishermen of all kinds have been taking fish and oysters in said "Mississippi Sound" during all of this long period, and have been governed, as well as all others using those waters, by the laws and jurisdictions of the Mississippi Territory and the State of Mississippi and the local authorities in said coast counties. And, your orator alleges and charges the truth to be, that there has never been any adverse claim known to her by the State of Louisiana with reference to the exercise of jurisdiction and sovereignty over those waters until the aforesaid controversy out of which this litigation arose in January, 1901.

Your orator further shows that this said line was also recognized by the Supreme Court, and by the lower courts of Mississippi, and a judicial interpretation given by the said courts to the Act of Congress admitting Mississippi in the recent case of *Leinhard et al, v. Harrison County*, decided by our Supreme Court, January 12, 1903, (not yet reported), in which controversy the issue was as to the center of the said county and measurements from the eighteen mile limit in the water were held to have been correctly made.

IX.

Wherefore, your orator, to the end that she may obtain the relief to which she is justly entitled in the premises, prays the Court and Your Honors to grant to her your writ of subpoena, directed to the said State of Louisiana, and to William W. Heard, Governor of the said State of Louisiana, and to Walter Guion, Attorney General of the State of Louisiana, commanding and requiring them and each of them, on a day certain, to appear herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

And upon final hearing may it please your Honors to adjudge and decree that the boundary line dividing the States of Mississippi and Louisiana is the line which. beginning, at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line reaches and touches the real mainland of Louisiana about two miles due west of the Indian Mound" and "Lake of the Mound," and thence in an almost due northward direction along and on the high tide mark of the said Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou, and thence further along said mainland at the high tide mark westwardly to that point due south of the middle of the most southern, or eastern junction of Pearl River with Lake Borgne, and thence from said point due north to the said Pearl River; that the said line be located and permanently bouyed at the joint expense of the two states; that the full title and sovereignty over all the islands and the land under the waters north and east of the said line so established be decreed and adjudged to be in the State of Mississippi, and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein, and your orator humbly prays for such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which the facts of the case may require, and for costs of suit.

MONROE MCCLURG,
DODDS & GRIFFITH,
HANNIS TAYLOR,
Of Counsel.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

THE STATE OF MISSISSIPPI,
HINDS COUNTY.

Personally came and appeared before me the undersigned authority in and for said county and state, Andrew H. Longino, who on oath states that he is the Governor of the State of Mississippi; that he has read the foregoing answer and cross-bill and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

ANDREW H. LONGINO.

Sworn to and subscribed before me this 7th day of October, A. D. 1903.

GEO. C. MEYERS,
CLERK OF SUPREME COURT

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 12, Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

BRIEF FOR MISSISSIPPI ON HER DEMURRER TO THE BILL OF COMPLAINT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

We first humbly invite this honorable court to decide whether the governor and attorney general of a State may, of their motion, determine that there is within the contemplation of the Constitution of the United States a controversy between two States and whether they may independently of legislative action bring a suit to settle the same.

Article III, section 2, Constitution of the United States, reads as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which

> shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to *controversies between two or more States;* between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

That this honorable court has jurisdiction over controversies between two States is not questioned. Our first contention is that it must clearly appear from the complaint that there is a "controversy" within the meaning of the Constitution or this court will not take jurisdiction of the cause. The procedure, so far as a defendant State is concerned, has been long since settled. Service of process upon her governor and attorney general requires her to appear.

New Jersey v. New York, 5 Peters, 284.

The primary inquiry being as to whether there is a "controversy," we respectfully insist that the governor and attorney general alone have no authority to determine that there is one. A controversy between two coterminous States as to the location of the boundary line dividing them is, at first, a political question for determination by the political department of the State government, the legislature. It is in no sense an executive act within the scope of the governor's duties or powers. It is not within the duty or power of the attorney general, who belongs to the judicial department.

If we should be mistaken in our contention that the governor and attorney general, of their own motion, have not the power to bring a suit of this character, then we most respectfully insist that in this cause they have misjudged the facts; that the matters contained in the bill of complaint are not sufficient in law to warrant the bringing of the complaint. As we understand it, they rely upon act No.

65 of the legislature of 1884, of Louisiana, for their authority. It is as follows:

No. 65.

AN ACT

To empower the attorney general to institute and prosecute suits without security or advance costs and without bond.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That the attorney general be, and he is hereby authorized and empowered, to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the State; and no court of this State, nor officer thereof, shall demand of the State, or the attorney general, any security for costs, or any advance costs; but all costs for which the State may become liable shall be paid by the attorney general out of the proper appropriation therefor. That in any and all cases where bond is required by law in legal proceedings, the State and the attorney general shall be dispensed from giving such bond.

We respectfully submit that this act is local to Louisiana and defensive of the interests of that State, and does not carry the power to provoke litigation with a coterminous State respecting boundary lines.

Mississippi Law.

Turning now to Mississippi, we find first that there is no statute or other law by which she has consented to be sued in a case like this. Section 4248 of the Code of 1890, the only one bearing upon this question, is as follows:

4248. When the State May Be Sued.—Any person having a claim against the State of Mississippi, after demand made of the auditor of public accounts therefor, and his refusal to issue a warrant on the

treasurer in payment of such claim, may, where it is not otherwise provided, bring suit therefor against the State, in the court having jurisdiction of the subject-matter which holds its sessions at the seat of government; and if there be no such court at the seat of government, such suit may be instituted in such court in the county in which the seat of government may be.

See also—

Dinkins v. The State, 77 Miss., 874.
Hall v. The State, 79 Miss., 38.
Beens v. Arkansas, 61 U. S. [20 How.], 521.

Of course we will not be understood as contending that a State may defeat an action like this by refusing to be sued. We believe that in those cases where she may be sued in this honorable court, by reason of being a member of the Union, she has, nevertheless, the right to humbly demand a strict observance of the laws of the land and the usual practice of this court. The evils that would follow a rule permitting the governor and attorney general of a State to bring suits of this character at their option are obvious.

The importance of the foregoing contention is emphasized by the fact that, so far as Mississippi is concerned, she could neither bring nor defend such a suit without an appropriation by the legislature providing for the expenses of the suit.

In the State *ex rel.* J. W. Barron, district attorney, *v.* W. Q. Cole, auditor Mississippi, December 1, 1902, the supreme court of Mississippi, passing directly upon the question of paying money out of the State treasury without legislative appropriation, said:

"Now, as already said, no salary or other obligation of the State, can be lawfully paid, except out of an appropriation therefor by the legislature definitely fixing the maximum sum which may be drawn on that account. And, although, there are in the code several provisions directing the auditor to issue warrants, he cannot lawfully issue any except to pay out of an appropriation therefor fixing definitely

the maximum sum which may be drawn, and also not continuing beyond six months after the meeting of the legislature at its next session. It seems to us perfectly clear that the auditor rightly refused to issue his warrant in this case, and the judgment of the circuit court is, therefore, affirmed."

The constitution of Mississippi, 1890, reads as follows:

> "SEC. 4. The legislature shall have power to consent to the acquisition of additional territory by the State, and to make the same a part thereof; *and the legislature may settle disputed boundaries between this State and its coterminous States whenever such disputes arise.*"

The authority of a State to settle her boundary disputes independently of constitutional grant will not now be questioned. But the above section gives strength to our contention for what we conceive to be the correct principle. Most of the reported cases show that these suits have been brought and defended by express legislative action.

> *Rhode Island v. Massachusetts*, 12 Peters, 657; same case, 4 How., U. S., 592.
>
> *Missouri v. Iowa*, 160 U. S., 688; same case, 7 How., U. S., 661.

In those cases in which it does not appear by the official report that the complaint is as to State-line controversies [not controversies respecting executive or judicial matters] we presume that the legislature authorized the suit. The importance of such authority cannot be better illustrated than in the instant case, to wit:

Your honors will notice that the governors of these two States undertook, without express authority of any law, to appoint a joint commission to mark the boundary. Had that commission adopted a line, without legislative con-

firmation, it would have been child's play. After that commission failed to agree and before the institution of this suit, as this honorable court will take judicial knowledge, the legislature of both States have held regular constitutional sessions without noticing this alleged controversy. In his message to the legislature of Mississippi, January, 1902, House Journal 1902, p. 140, Governor Longino said:

"Mississippi Boundary Commission."

> "On February 9, 1901, I appointed the following-named gentlemen as commissioners to confer with a like commission appointed by the governor of Louisiana to consider the water boundary line between the two States, and arrange for the easy location and identification of the same by a proper system of buoys, to wit:
>
> Hon. J. I. Ford, Scranton, Miss.
> Hon. E. J. Bowers, Bay St. Louis, Miss.
> A. Keller, Bay St. Louis, Miss.
> Hon. W. A. White, Biloxi, Miss.
> Hon. H. T. Howard, Biloxi, Miss.
>
> "This commission met at Biloxi and elected H. T. Howard chairman and J. I. Ford, secretary. Their report, which is transmitted to you, will acquaint you with the whole matter, and from which you will find that they suggest a friendly suit in the Supreme Court of the United States as the best method to fix a true boundary between the two States.
>
> "I submit the matter for such legislation, as in your judgment, is best."

The legislature took no notice of it. So far as we are informed, the governor of Louisiana did not call the attention of the legislature of that State to the subject at all. Certainly there was no State-line legislation by that State.

As to Construction of Acts of Congress Creating the Two States.

We respectfully submit that when Louisiana was admitted there was no such thing as the "Mississippi sound," probably no "Lake Borgne."

Reading the statutes mentioned in the bill, it seems impossible to escape the conclusion that "the Gulf of Mexico" was at that time all of the great waters out of the "rigolets" and the mouth of Pearl river. From Pearl river westward to the Sabine meant for Louisiana to mark from the high tide on her mainland "coast" three leagues seaward, and in so measuring to follow the meanderings of her high-tide mainland mark. If, perchance, the Mississippi six-league line measured from her well-defined "shore" touched Louisiana's three-league line, it necessarily halted and followed it until the waters widened, as above stated. Hence, we insist there is no possibility of a legal conflict in the two lines. Of course, your honors will quickly observe and appreciate the fact that there is no reference to any "deep-water channel" out of Lake Borgne, through the Mississippi sound into what we now call the Gulf proper. It is confidently believed that this court will not undertake to so amend the acts of Congress mentioned. Congress itself could not do this without the consent of the States. It is not pretended in the bill that the deep-water channel is now where it was nearly a century ago. It will not do to subject State-line boundaries to the shifting changes of the Gulf or of the Sound. The maps show that what is known as "Lake Borgne" ends where what is now known as the "Mississippi sound" begins. In 1812 it was all the "Gulf of Mexico."

So it is, it cannot be said with legal accuracy that the effect of the several statutes mentioned in the bill was to follow the "deep-water channel" into the Gulf of Mexico. We submit that it is not the law to follow deep-water channels generally, and in no case in salt waters or waters similar to the Gulf of Mexico.

D. & D. Bridge Co. v. County of Dubuque, 55 Iowa, 558.

And we submit it is perfectly clear that Congress had no intention of giving to either State a single island by name. The purpose was to embrace all islands with the league limits.

This honorable court is familiar with the rules of construction of statutes. The intent of Congress at the time of passing these laws of 1812 and 1817 is readily gathered from the context of the acts, and will be accordingly interpreted, construed, and declared by this court.

In article II of the constitution of Florida, 1868, part 1, Poor's Charters and Constitutions, p. 348, all of these expressions are used: "*to the* Atlantic ocean;" "*five leagues from the mainland;*" "*five leagues from the shore.*" So in the charter of Georgia of 1732, *ib.*, p. 373, "*to the south seas*" and "*from the sea.*" So in the Gulf boundaries of Louisiana and Mississippi the first touch of the great waters was "*the Gulf of Mexico.*" And thus it is in the large water boundaries of all of the old charters, treaties, and constitutions.

The original line must stand, notwithstanding changes in channels or water-courses.

Indiana v. Kentucky, 136 U. S., 479.
Missouri v. Kentucky, 11 Wall., 395.
Cassill v. Kentucky, 40 Ark., 506.
Missouri v. Iowa, 7 How., 660.
U. S. v. Texas, 162 U. S., p. 1.

"Where land is bounded by a common-law navigable stream, *i. e.*, in which the tide ebbs and flows, the boundary is the high-water mark on the shores."

I. A. and E. E. of Law, 1st ed., p. 504.
Canal Courses v. People, 5 Wendall, 423.
Wheeler v. Spinola, 54 N. Y., 377.
East Haven v. Hemingway, 7 Conn., 186.
Niles v. Patch, 13 Gray, 254.
Stewart v. Fitch, 30 N. J. S., 20.
Middleton v. Pritchard, 4 Ill., 520.

"The same rule applies to land bounded by the sea, or by arms of the sea. The boundary is the high-water mark."

Stores v. Freeman, 6 Mass., 435; S. C., 4 Am. Dec., 155.
Commonwealth v. Rothbury, 9 Gray [Mass.], 492.
Pollard v. Hogan, 3 How. [U. S.], 230.
Goodlittle v. Kibbs, 9 How., 477.
Hodges v. Bookeby, 48 Me., 71.
Cortelyon v. Van Brandt, 2 Johns., 362.
Ledyard v. Tenrick, 36 Brab., 125.
Mecklers v. Chapman, 40 Conn., 382.
Dona v. Jackson Sh. Wharf, 31 Cal., 170.

Where a patent confirming a Mexican grant describes the land as follows: "Beginning on the seashore at station number 13 of the Ballona ranches," the plot of the survey annexed to the patent representing this common corner of the two ranches as commencing on the seashore, it is to be construed that the land is, at that point, bounded by the sea in ordinary high-water mark.

Jones v. Martin et al., 35 F., 348.
See also *Obleniss v. Worth*, 67 F., 303.

In *Coleman v. San. Water Co.*, 75 F., 520, it is held that a Mexican land grant of land bordering "to the west on the sea, included only the lands above high-water mark, and did not cover the tide lands." A boundary on the "sea" means the same thing as on the "seashore."

37 Cal., 432, and *U. S. v. Pacheco*, 2 Wall., 587, followed.

There is no occasion here to invoke rules of construction—the simple interpretation of the acts defining the boundaries of the two States is sufficient. Counsel concedes that these acts are definite and certain. (See sec. 14 of original bill.)

It is beyond question the duty of courts in construing

statutes to give effect to the intent of the law-making power in every legitimate way; but first of all, in the words and language employed, and if the words are free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation.

Sutherland on Statutory Construction, sec. 237 (1891).
Stimpson, Am. Stat. Law, sec. 1020 *et seq.*

When the meaning of a statute is clear, and its provisions are susceptible of but one interpretation, that sense must be accepted as the law.

Sutherland on Statutory Construction, sec. 238.

The complainant here cannot protest against the rule which requires that the words of the statute be followed if clear and unambiguous, for that is a rule enacted into statute in that State.

"Spirit and text.—When a law is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

Article 13, *La. Code*, 1900.

"Laws *in pari materia*, or upon the same subject-matter must be construed with reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another."

Article 17, *La. Code*, 1900.

These are but general rules of construction made statute law of the State of Louisiana. Adopting these rules of construction and applying them, together with section of complainant's bill, to the acts of Congress, in this case, complainant finds itself in the following category:

1. This court is asked to adjudge what is a boundary line where, complainant concedes, it is already plainly defined by the acts of Congress.

2. This court is asked to give a construction to the act defining the boundaries of the State of Mississippi that will give it a meaning not apparent on its face, and at the same time complainant is contending that the act is plain and definite.

3. This court is shown an act defining the southern boundary line of the State of Mississippi, and which seems to give the said State sixteen hundred and twenty square miles, more or less, of territory south of the mainland, and, while conceding the act plain and definite, asks this court to give it a construction which would cut this water territory half in two.

4. While admitting there is no occasion for construction, at the same time, in the same pleading, complainant is attempting to construe the act defining the Louisiana boundary by showing what the legislature meant to be the line from Lake Borgne to the Gulf when this line is clearly not defined by the said act.

5. While admitting that the line has been clearly defined by the acts of Congress, complainant does not show that she has attempted to mark nor that she has been prevented from marking nor that Mississippi has kept her from marking it.

6. That complainant comes into this court asking that something be done for her which, as far as pleadings show, she can do for herself, and which it is her privilege and duty to do, and which it appears she knows how to do.

7. And complainant is contending that the act creating the State of Mississippi does not mean what it appears to

mean, and at the same time protesting that its meaning is clear as written.

8. That the act defining the boundary of Louisiana is also plain as written, and at the same time the act is attempted to be construed.

Complainant is met in this argument by her own statutory law. She admits the Mississippi act is plain. In her attempt to draw a line from Lake Borgne to the Gulf to complete the boundary of Louisiana, she concedes that the Louisiana act is not plain. If it were plain, there would be no necessity for the labored *deep-channel* argument. Hence, that which is plain must prevail. "What is clear in one statute may be called in aid to explain what is doubtful in another."

If the Mississippi act is plain, it renders the Louisiana act plain, where, before, it was doubtful. If the Louisiana line from the mouth of Pearl river to the Gulf of Mexico was never plainly defined before, it was clearly defined when the Mississippi act was passed. What is plainly expressed in the Mississippi act must stand; it cannot yield to simple construction.

We submit with great confidence that the third assignment for cause of demurrer must settle this cause. There is no uncertainty of description in the statute admitting Mississippi as to her Gulf boundary. It is unquestionably six leagues from every part of her shore between Pearl river and the Alabama line. "Westwardly" from the Alabama line was not, as is contended by counsel, intended to draw a line from a point six leagues from the shore at the Alabama line directly to the mouth of Pearl river; but it was intended to draw that line from that point with meanderings of the shore line. In case of bays or other arms of the Gulf the line measures six leagues from the well-known junction between bay and Gulf. Your honors

will not fail to notice that the act admitting Mississippi, page 4 of the bill, does not say *from a point six leagues from the shore to the mouth of Pearl river.* The language is "thence south to the Gulf of Mexico; thence westwardly, including all islands within six leagues of the shore, to the most southern junction of Pearl river with Lake Borgne." It cannot be seriously questioned, we submit, that Mississippi's water territory is six leagues from the shore at the mouth of Pearl river, the same as at the Alabama line, unless it should in such reach touch the previously established line of Louisiana, in which instance her line would give way to and follow that of Louisiana until the waters gave her the full six leagues without interfering with Louisiana's three.

Counsel's argument is suicidal. The act of April 7, 1812, enlarging the territory of Louisiana, conditioned upon the express consent of that State, reads from "Lakes Maurepas and Ponchartrain *to the eastern mouth of Pearl river.*" No provision for the three leagues on her coasts between the lake outlets and the Pearl "to the Gulf of Mexico" is cut out by the amended boundary. Nor does the bill of complaint allege that Louisiana even consented to accept this important change in her limits as that act provided.

This suit cannot be maintained for the benefit of individuals. Nor has Louisiana, as a State, any property rights involved.

The State is not sovereign as to its citizens or as to another State and is under no obligation to collect the debts of its citizens or to otherwise redress their private wrongs. The State cannot loan its name to its citizens or sue in their behalf.

New Hampshire v. Louisiana, 108 U. S., 91.
Louisiana v. Texas, 176 U. S., p. 1.

Notwithstanding the comprehensive words of the Constitution, the mere fact that a State is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another State or her citizens.

Wisconsin v. Pelican Ins. Co., 127 U. S., 287.

No State can be sued either in its own courts or those of any other State or nation without its consent, and States can only be sued in *proper* cases in this court by reason of their agreement in the Constitution that the judicial power of the United States shall extend to all cases arising under the Constitution and laws.

United States v. Texas, 143 U. S., 646.

The controversies existing at the time of the adoption of the Constitution were the cause and origin of extending the judicial power of the United States to controversies between the States, and the only purpose of such constitutional provision was to provide a tribunal for settlement of such controversies as to boundaries and other like controversies.

United States v. Texas, 143 U. S., 639.

It was not the intention of the States in adopting the Constitution to give their consent to be sued whenever a dispute arises between citizens of different States in regard to commerce or any property right affecting such citizens.

Hans v. Louisiana, 134 U. S., 15.

So, we most respectfully insist that the section of the Federal Constitution above quoted in its reference to controversies between States means States in their sovereign and corporate capacity, and not in a sense that administrative officers are the embodiment of such powers, in questions purely of boundary lines.

Finally.

We most respectfully submit unto your honors that Louisiana should cleanse her hands and purge her conscience by attempting, at least, to mark her lines before provoking Mississippi into this controversy. The dignity of the State, we think, demands that she should not complain of her sister until she frees herself of all blame, especially since it is made clear by her bill of complaint that she is, because of her "marshes" and long sweeps at shallow waters, uncertain as to the exact location of her "coast." The "Fish Hawk's" map is convincing on this proposition. Before invoking equity at the hands of this august tribunal, she ought to be free from fault. She alleges at paragraph 15, page 6, of her complaint, that the line has never been marked. She notes the marks of the channel by the United States Coast Survey; but that was unquestionably for purposes of navigation. Therefore we earnestly contend that when the bill shows upon its face a well-defined "shore" for Mississippi and a clear statement of her six-league water limit, with an uncertain "coast" for herself, her complaint ought not to be tolerated until she has undertaken to remove the cause by marking her line.

That Mississippi *permits* the dredging of oysters in that State, while Louisiana *forbids*, as stated in the tenth and eleventh paragraphs of the bill, is, in point of law, no more cause for complaint of the location of the line than if one State *permitted* the carrying of concealed weapons and the other *forbade* it. The offender in the one instance the same as in the other is amenable alone to the State whose laws he has violated. Each State is sovereign as to its own affairs, especially so as to matters of police regulation. The plea of "not guilty" extends to the venue of the crime as well as to the *corpus delicti*. Not a single prosecution or any other judicial determination of a conflict is alleged; not a

warrant issued; not an arrest made; not one act by either State in its sovereign or corporate capacity charged. It simply *is, as positively shown upon the face of the bill, fishermen of Mississippi fishing or dredging in what they believe to be Mississippi waters;* that is the gist of this case, and that is the whole case. Where, when, how, what the cause of an armed conflict between the county peace officers of the two States? The answer is as silent as an echoless tomb.

The governors of these States never intended more than *to quiet the fishermen.* It is next to absurd to suppose that by the proceedings copied into the bill, pages 7 to 14, the chief executive of either State undertook to establish and fix the boundary in the waters of the Gulf. Wholly without authority, save as simple peace measures, the so-called commissions were appointed, and wholly without legal effect was the recommendation for "*a friendly suit in the Supreme Court of the United States.*" The legislature, as before stated, declined to notice the recommendation. Quickly enough did Louisiana act upon the suggestion. But it remains, nevertheless, that this honorable court will not suffer the trouble shifted to its determination by consent of the parties. Ever watchful of questions of jurisdiction, it will not, as we think, suffer such imposition.

There can be no reasonable contention as to the plain and unambigious language of the acts of Congress admitting these two States and defining their water limits. The lines stand where those acts fixed them notwithstanding local constitutions and statutes. There has never been any purpose by Mississippi to cede to Louisiana any of her possessions, nor had the General Land Office Commissioner or any other administrative officers of the Federal Government any power to take away from her and give to Louisiana any of her territory. We do not understand that any claim has been or will be made by Mississippi to any of the mainland of Louisiana, but whatever *islands* that are within six leagues of her shore at any point belong to her and she should have

them. It is immaterial to the present contention that landowners on Half Moon island, or Isle a' Pitre, deraign their titles through the State of Louisiana.

In Virginia *v.* West Virginia, 11 Wall., 39, the counties of Jefferson and Berkeley, formerly belonging to the old State, were adjudged to the new one. (See, also, Tyler's Law of Boundaries (1876), pages 242–'3.)

Summary.

That there is no controversy shown within the contemplation of the Constitution.

That the law itself fixes the lines.

That Louisiana has no standing in this court until she undertakes to mark her own boundary.

That the governor cannot appoint commissions to fix boundary lines.

That a scramble over oyster beds by the fishermen of two States does not constitute a controversy between those States.

That the governor and attorney general of a State have no authority in law to lend the name of the State to a few fishermen to settle their quarrels.

That the property rights of Louisiana, as a corporate State, are not involved.

That Mississippi, in her corporate capacity, has done nothing to provoke this suit.

That Mississippi, in her corporate capacity, has not denied the pretended claims of Louisiana. She pursues the even tenor of her way.

That Louisiana seeks to change the law fixing her water boundary.

That the bill of complaint shows no conflict in fact between the authorities of the two States.

That the bill makes no case.

In conclusion, we beg to submit that the liberal practice in this court respecting suits of this character has not been

overlooked in filing the demurrer or in this argument. But it has appeared to us to be so plain that Mississippi has been unjustly drawn into this contention that *the law* ought to relieve her rather than put her to the great trouble and expense of answering the complaint of Louisiana and filing her cross-bill and proving its allegations. It occurs to us that there is not a well-pleaded fact in the bill that the demurrer does not meet, and we humbly pray the court to relieve the State of further trouble with this premature and wholly insufficient bill.

But after all if Mississippi should be mistaken in her position, then we ask the court to allow her to set up the same matters in her answer and cross-bill and a chance to prove them. This we understand to be the rule announced in Colorado *v.* Kansas, 185 U. S., 126.

We humbly submit that the demurrer ought to be sustained.

WILLIAM WILLIAMS,
Attorney General of Mississippi.

MONROE MCCLURG,
Of Counsel.

N. B.—This cause was, by the court, set for March 2d. Counsel have filed an agreement to submit it on briefs with consent that the court allow counsel for Louisiana 20 days thereafter in which to file their brief.

WILLIAM WILLIAMS,
Attorney General.

MONROE MCCLURG,
Of Counsel.

No. 11, ORIGINAL.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant*,

vs.

THE STATE OF MISSISSIPPI, *Defendant*.

BRIEF OF THE ARGUMENT FOR THE DEFENDANT.

HANNIS TAYLOR,
MONROE McCLURG,
Counsel for the Defendant.

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I.

Acts of Congress Upon Whose Construction this Case Depends.

During the period beginning with 1812 and ending with 1819 the Congress of the United States carved out of those portions of the public domain known as the Louisiana Purchase and the Mississippi Territory the States of Louisiana, Mississippi and Alabama, whose continuous sea-front extends from the west line of Florida to the mouth of the Sabine river, a distance, by the general trend of the coast, of about 623 statute miles, Alabama possessing about 52, Mississippi about 71, and Louisiana about 500 statute miles. When the acts in question are read consecutively there can be no escape from the conclusion that they were enacted as parts of a common design, of a common purpose which they

were the means of carrying into effect, so far as the deliniation of the continuous sea-front described above is concerned. The State of Louisiana was admitted into the Union by the Act of Congress (Stat. at L., Vol. 2, p. 701) approved April 6, 1812, in the preamble of which the boundaries of said State are described as follows: "Whereas, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France and contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said river, including all islands to the 32d degree of north latitude; thence along the said parallel of latitude to the Mississippi River; thence down the said river to the River Iberville (or Bayou Manchac), and from thence along the middle of said river and Lake Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded *by said gulf to the place of beginning, including all islands within* THREE *leagues of the* COAST." By the Act of Congress (Stat. at L., Vol. 3, p. 348), approved March 1, 1817, the inhabitants of the western part of the then Mississippi Territory were authorized to form for themselves a State constitution, and to be admitted into the Union with the following boundaries: "Beginning at the River Mississippi at a point where the southern boundary line of the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee river; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the Gulf of

Mexico; *thence westwardly, including all islands within* SIX *leagues of the* SHORE *to the most southern junction of Pearl River with Lake Borgne;* thence up said river to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi River; thence up the same to the beginning." The State of Alabama was admitted into the Union by the Act of Congress (Stat. at L., Vol. 3, p. 489), approved March 2, 1819, which provides "That said State shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido River; thence, east, to the western boundary line of the State of Georgia; thence, along said line to the southern boundary line of the State of Tennessee; thence, west, along said boundary line to the Tennessee River; thence, up the same to the mouth of Bear Creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; *thence, eastwardly, including all islands within* SIX *leagues of the* SHORE, *to the Perdido River;* and thence, up the same to the beginning." The acts defining the boundaries of Mississippi and Alabama are in almost identical terms, so far as the sea-front is concerned; and their deviation from the terms of the Act defining the sea-front of Louisiana is represented by the use of the word "*shore*" for "*coast*" (convertible terms), and by the phrase, "all islands within *six* leagues of the *shore*" instead of the phrase, used in the Louisiana Act, of "all islands within *three* leagues of the *coast.*" The controversy embodied in this case has arisen out of a conflict of view as to the manner in which the line defining the sea-front of Mississippi on the

south should be adjusted to the line defining the sea-front of Louisiana on the east, and northeast, at a point opposite the most eastern mouth of Pearl River, *where one side of an archipelago of islands lies near the mainland of Louisiana.*

II.

The Foregoing Acts Must be Construed in Pari Materia.

The problems which the Court will be called upon to solve in this case grow out of an apparent conflict or repugnancy between the statutes in question, when applied to the exceptional conformation of the territory, whose boundaries are to be defined. In order to overcome that difficulty it will be absolutely necessary for the Court to apply that all-important rule of construction which provides that, "In arriving at the intent of the legislature in enacting a statute, not only must the whole statute and every part of it be considered, but where there are several statutes *in pari materia*, they are all, whether referred to or not, to be taken together and one part compared with another in the construction of any material provision." Enc. of Law (2d ed.), Vol. 26, p. 620. In *Alexander* v. *Alexandria*, 5 Cranch, p. 8, this Court, speaking through Marshall, C. J., said: "Without deciding this question as depending merely on the original law, it is to be observed that acts *in pari materia* are to be construed together as forming one act. If in a subsequent clause of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases. Consequently, *if a subsequent act on the same subject*

affords complete demonstration of the legislative sense of its language, the rule which has been stated, requiring that the subsequent should be incorporated into the foregoing act, is a direction to the courts in expounding the provisions of the law." In that case an act of 1779 was construed in the light of an act passed seventeen years thereafter. In *Patterson* v. *Winn*, 11 Wheat., 386, it was said: "The land law of Georgia is comprised under several statutes, passed at different periods, varying and modifying the system occasionally, as policy required. But all being *in pari materia*, are to be looked to as one statute, in explaining their meaning and import." In *Pollard* v. *Kibbe*, 14 Pet., 366, it was said: "But if the construction of the act of the 26th of May, 1824, is doubtful, as it is admitted to be, the act of the 2d of July, 1836, is entitled to great weight in aiding to remove that doubt. * * * There is a proviso declaring that this act shall not interfere with or affect the claims of third persons. But giving to this proviso its full force and effect, the enacting clause is a legislative construction of the act of 1824, and locates the patent thereby to be issued upon the lot now in question. *They are acts in pari materia, and are to be construed together, and in such a manner, if the language will reasonably admit of it, as to permit both acts to stand together and remain in full force.* IT IS NOT TO BE PRESUMED THAT CONGRESS WOULD GRANT OR EVEN SIMPLY RELEASE THE RIGHT OF THE UNITED STATES TO LAND CONFESSEDLY BEFORE GRANTED. This would only be holding out inducements to litigation." In *United States* v. *Freeman*, 3 How., 563, it was said: "The correct rule of interpretation is,

that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law. (Dong., 30; 2 Tenn. Rep., 387, 586; 4 Maul & Setw., 210.) *If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute* (*Lord Raym.*, 1028); *and if it can be gathered from a subsequent statute in pari materia, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.* (*Morris* v. *Mellin*, 6 Barn & Cress., 454; 7 Barn & Cress., 99.) Wherever the words of a statute are doubtful or obscure, the intention of the legislature is to be resorted to, in order to find the meaning of the words. (*Winbish* v. *Tuibois*, Plowd., 57.) A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the latter. * * * This Court has repeatedly, in effect, acted upon the rule, and there may be found, in the reports of its decisions, cases under it like the cases which have been cited from the reports of the English courts. In 4 Dall., 14, '*The intention of the legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding.*'" That principle was expressly confirmed in *Cope* v. *Cope*, 137 U.S., 687, wherein it was said: "These several acts of Congress, dealing as they do with the same subject-matter, should be construed not only as expressing the intention of Congress at the

dates the several acts were passed, *but the later acts should also be regarded as legislative interpretations of the prior ones. United States* v. *Freeman*, 3 How., 556, 564; *Stockdale* v. *Atlantic Ins. Co.*, 20 Wall., 323." In *Converse* v. *United States*, 21 How., 463, it was said: "It is obvious, therefore, that in order to carry into execution the intention of the legislative department of the Government, these various laws on the same subject-matter must be taken together and construed in connection with each other. And we should defeat instead of carrying into execution the will of the law-making power, if we selected one or two of these acts, and founded our judgment upon the language they contain, without comparing and considering them in association with other laws passed upon the same subject." In *United States* v. *Walker*, 22 How., 299, it was said: "All of these additional compensation acts are *in pari materia* with the several acts prescribing the sources of emolument, and the whole must be construed together. When they are so considered, there is no such repugnancy as is supposed by the defendant." In *Ryan* v. *Carter*, 93 U. S., 78, it was said: "There is no known rule of law requiring the court to interpret this proviso *according to the literal import of the words employed when the evident intention of the legislature is different.* It may be that the words taken in their usual sense, would exclude the case of Dodier; but if it can be gathered, from a view of the whole law, and others *in pari materia*, that they were not used in that sense, and they admit of another meaning in harmony with the general scope of the statute, it will be adopted as the declaration of the will of Congress on

the subject. * * * If there were any doubt remaining about the correctness of this construction, it would be removed by a consideration of the act of 1807, which is *in pari materia*. Congress passed various laws, from time to time, respecting the claims to lands in the Territories of Orleans and Louisiana. These laws were modified as policy required; but they constitute one land system, are all *in pari materia*, and to be looked to as one statute in explaining their meaning." In *Vane* v. *Newcombe*, 132 U. S., 220, it was said: "It is a rule of interpretation recognized by the Supreme Court of Indiana, in *Stout* v. *Grant County*, 107 Ind., 343, 348, that 'in cases of doubt or uncertainty, acts *in pari materia*, passed either before or after, and whether repeated or still in force, may be referred to in order to discern the intent of the legislature in the use of particular terms, or in the enactment of particular provisions; and, within the reason of the same rule, contemporaneous legislation, not precisely *in pari materia*, may be referred to for the same purpose.'"

Thus it has been settled by the rules of construction which this Court has prescribed for itself in ascertaining the intention of Congress, that "in cases of doubt or uncertainty," or apparent conflict or repugnancy, it will, (1) construe all of the acts relating to the same subject-matter together, and in such a manner, if their language will reasonably admit of it, as to permit them all to stand together and remain in full force; (2) that "if a subsequent act on the same subject affords complete demonstration of the legislative sense of its language, the rule which has been stated, requiring that *the subsequent should be incorpo-*

rated into the foregoing act, is a direction to the courts in expounding the provisions of the law"; (3) that "if a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, *they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute*"; (4) that acts of Congress, dealing "with the same subject-matter, should be construed not only as expressing the intention of Congress at the dates the several acts were passed, but the later acts should also be regarded as legislative interpretations of the prior ones"; (5) that "*it is not to be presumed that Congress would grant or even simply release the right of the United States to land confessedly before granted. This would be only holding out inducements to litigation.*" When a series of acts relating to one subject-matter are thus construed together, as a connected whole, *the Court must presume that the entire will of Congress is not expressed until the last word of the last act is uttered.* The completed intent of the legislature as embodied in the subsequent act or acts is then "incorporated into the foregoing act," and thus becomes "a direction to the courts in expounding" its meaning. It thus follows with the certainty of mathematical demonstration that he who takes under the first act takes nothing more than Congress *intended to grant*, after such intent has been drawn from the provisions of all the subsequent acts *in pari materia*, because, in the words of Marshall, C. J., the pro-

visions of the subsequent act must be "incorporated into the foregoing act." Under that rule of construction it is logically and legally impossible for the party who claims under the first act to contend that he is divested of a vested right by the ascertainment of the real intent of the legislature from subsequent acts, for the simple and conclusive reason that the judicial ascertainment is that what he is pleased to call a vested right was never vested in him at all. In the present case Louisiana cannot set up even a moral claim of that character because, as will appear hereafter, she has never until very recently exercised any real sovereignty over the area in question; and because the parties to whom she has attempted to convey certain parts of it through her agent, the Lake Borgne Basin Levee District, cannot pretend to be *bona fide* purchasers, as they were notified of the infirmity of the title of their grantor in quit claim deeds that recite upon their face "that should the said title be subsequently declared void, the said board shall not reimburse to the purchaser any sum whatever."

III.

A Construction to be Avoided Which Will "Produce Inequality and Injustice."

In connection with the foregoing the Court must apply the equally important rule which declares "that, where a particular construction of a statute will occasion great inconvenience *or produce inequality and injustice*, that view is to be avoided if another and more reasonable interpretation is present in the statute. *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S., 37; *Wilson* v. *Rousseau*, 4 How., 646, 680; *Bloomer* v. *McQuewan*, 14 How., 539, 553; *Blake* v.

National Banks, 23 Wall., 307, 320; *United States* v. *Kirby*, 7 Wall., 482, 486." *Knowlton* v. *Moore*, 178 U. S., p. 77. In *United States* v. *Kirby*, 7 Wall., 482, the court said: "All laws shoud receive a sensible construction. General terms should be so limited in their application as not to lead *to injustice, oppression, or absurd consequence.* It will always, therefore, be presumed that the legislature intended *exceptions to its language*, which would avoid results of this character. *The reason of the law, in such cases, should prevail over its letter.*"

In order to understand the controlling reason, the dominant idea underlying the three acts in question considered as one connected whole, the Court must take into consideration the physical conformation and relative extent of the sea-front, which they attempted to apportion, as equally as possible, among the States of Louisiana, Mississippi, and Alabama. It is well settled that courts will take judicial notice of the prominent geographical facts and features of the country. "It has been very justly observed at the bar that the court is bound to take notice of public facts and geographical positions." The Apolion, 9 Wheat., 362. "We are supposed to know judicially the principal features of the geography of our country, and as a part of it, what streams are public navigable waters of the United States." The Montello, 11 Wall., 411. A court will also take judicial notice of the positions of islands off the coast of a State. *State* v. *Wagner*, 61 Me., 178. The Court has therefore complete judicial knowledge of the geography of the sea-front in question, and of the positions of the islands adjacent thereto, to whose partition

the three related acts must be applied. When, in the light of that geographical knowledge, the court perceives that to the States of Mississippi and Alabama were given, *in identical language*, all islands within *six* leagues of the shore," and to Louisiana "all islands within *three* leagues of the coast," the conclusion is irresistible that the wider zone of islands given to the States first named was intended to compensate for the fact that *the latter has more than four times as long a sea-front as both combined.* Everything indicates the intention of Congress to give to each of the three States in question the islands directly in front of it; and to the first two a zone of islands twice as wide as that given to the latter for the reason stated. The rule of construction which provides that statutes shall be so construed that they shall not "produce inequality and injustice" is based upon the assumption that legislatures always intend by their acts to establish equality and justice. In this case full justice and equality could not be accorded either to Mississippi or Alabama, even by the grant of the wider zones of islands, because of the far more extended sea-front of Louisiana. In view of that fact the Court cannot countenance the contention of that State which demands that the acts in question shall be so construed as to give to her not only all islands adjacent to her hundreds of miles of sea-front on the south, but all those on the east *which extend at least half-way across the only sea-front of Mississippi.* Against that grossly unequal and unjust contention the State last named simply claims "all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne," as the act of Congress

provided. The Court should thus keep constantly in mind the fact that it cannot support the contention of Louisiana without sustaining the gross inequality and injustice which would result from giving to that State, in addition to the islands on her vast southern sea-front, islands on the east which extend half-way across the only sea-front of Mississippi. If complainant should attempt to contend that there is no such doubt and uncertainty involved in the construction of the acts in question as will justify the application of the rule of *in pari materia*, defendant can answer through the mouth of Mr. Edgar H. Farrar, the leader of the New Orleans bar, who, in testifying in behalf of complainant, has said: "I very much doubt whether the Congress, individually or collectively, even the drafters of this act, had, at that time, any definite geographical knowledge of this locality, and that the act was drawn with their usual carelessness which characterizes the drafting of all important legislation in American legislative bodies, and that these acts were not referred to the topographical authorities of the United States for examination, and that they went, as most of our legislation, by happy-go-lucky guesswork. That is the history, in my judgment, of the conflict between these two States. Because of the ignorance of the men who drew those acts." If Mr. Farrar is correct in his surmise as to the cause of the conflict in question, that is the greater reason why this Court, by an application of the scientific rules of construction to these acts considered as one connected whole, should work out a result which will prevent inequality and injustice.

The existence of an apparent conflict or repugnancy

between the acts in question complainant admits, when in Par. 24, she avers that the elimination of her fanciful theory of a deep water channel boundary "*would cause the limits of the two States to conflict and overlap.*" Complainant, by copying into the record a quotation from Mr. William Darby, surveyor, map-maker and historian of that State (1806–1817), has emphasized the doubt as to what the statutes admitting the States in question mean. The statement is also important in that Mr. Darby recognized the application of the doctrine of *in pari materia* to this very contention. He said:

> "The islands of Malheureux, Marrianne and Cat island, are included in the bounds assigned to both the States of Louisiana and Mississippi. There must have been some oversight in framing the respective acts, which marked the possessions of each State." Rec. p. 1140.

The conflicting claims of the States as to possession, sovereignty and jurisdiction, supported by the testimony of many witnesses, as well as conflicting laws, history, and geography, certainly raise such a doubt as to call for the application of the doctrine contended for by defendant.

IV.

A hopeless attempt to extend the rule of international law as to river boundaries, beyond the estuaries of the river, to the open waters of the Gulf of Mexico.

In her bill of complaint Louisiana has based her inequitable and unjust claim upon a rule of international law concerning river boundaries, which can have no possible application to this case. In paragraph 2, the allegations are:

"That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi River, beginning at the northeast corner of said State and extending south to the junction of the said river with the River Iberville (now known as Bayou Manchac), and thence extending eastwardly through the lower end of the Amite River, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the Gulf of Mexico its only course was through the Rigolets, into Lake Borgne, *and thence by the deep water channel* through the upper corner of Lake Borgne, following *said channel*, north of Half Moon Island, through Mississippi Sound to the north of Isle à Pitre, through the Cat Island *channel*, southwest of Cat Island, into the Gulf of Mexico." In paragraph 28 the allegations are: "Your orator further avers that where contiguous states or countries are separated by water, it is, and always has been, the *custom* to regard the *channel* as establishing the boundary line of such states, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own constitution adopted November, 1890." [Reference is thus made to a "*custom*." Counsel have not ventured to state that there is or ever was such a *rule* of international law.] In the prayer of the bill (p. 19) the statement is "that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is *the deep water channel*." Thus an attempt has been made to incorporate into the statutes in question a rule of inter-

national law which, if applicable, *would entirely change the water boundary of Louisiana as expressly defined by Congress in the act of April 6, 1812, admitting her as a State.*

There is a well defined international rule which provides that where there is more than one channel *in a* RIVER *dividing conterminous states*, the deepest channel is the mid-channel or thalweg for the purposes of territorial demarcation. According to Grotius: "A river that separates two empires is not to be considered barely as water, but as water confined within such and such banks and running in such and such channel." De Jure Belli ac Pacis, II, c. 3, Sec. 17. According to Vattel: "If, of two nations inhabiting the opposite banks of the river, *neither party can prove that they themselves, or those whose right they inherit, were the first settlers in those tracts*, it is to be supposed that both nations came there at the same time, since neither of them can give any reason for claiming the preference; and in this case the dominion of each will extend to the middle of the river." *Droit des Gens*, Bk. 1, c. XXII, Sec. 26. *The Court will here observe that this general rule has no application to a case governed by a special rule established by convention, or by a special right based on prior possession.* Sir Travers Twiss has well said that "Grotius and Vattel speak of the *middle of the river* as the line of demarcation between two jurisdictions, but modern publicists and statesmen prefer the more accurate and more equitable boundary of the *mid-channel*. If there be more than one channel of a river, the deepest channel is the mid-channel for the purposes of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of

the deepest depression of its bed. * * * The islands on either side of the mid-channel are regarded as appendages to either bank." After thus stating the general rule, *in the absence of convention or special circumstances*, the same author says: "Such is the general law, but by treaty the mid-channel may be made the water boundary, yet all the islands in the river belong to one power." Hall says that where the boundary "follows a river, *and it is not proved that either of the riparian states possess a good title to the whole bed*, their territories are separated by a line running down the middle, except where the stream is navigable, in which case the center of the deepest channel, or, as it is usually called, the thalweg is taken as the boundary." Int. Law, p. 127. Halleck says: "But where the river not only separates the conterminous states, but also their territorial jurisdictions, the thalweg, or middle channel, forms the line of separation *through the bays and estuaries through which the waters of the river flow into the sea*. As a general rule this line runs through the middle of the deepest channel, *although it may divide the river and its estuaries into very unequal parts*." Int. law (Baker ed.), Vol. 1, p. 171. It thus appears that the rule in question is confined to the *mid-channel or thalweg of rivers*, or to a mid-channel which forms the line of separation through the bays and estuaries *through which the waters of the river flow into the sea*. The moment the sea is reached, or a body of water which is a part of the sea, the rule is at end. So it is beyond all doubt that the rule invoked by complainant as to the flow of the mid-channel or thalweg of the River Iberville (now known as Manchac) to the sea through Lakes Maurepas, Pontchartrain and the Rigolets,

expires by its own limitation when such mid-channel reaches Lake Borgne which, in contemplation of the rule, is the open sea, a part of the waters of the Gulf of Mexico. Certainly it was so regarded in the act of April 6, 1812, admitting Louisiana whose terms are: "thence along the middle of said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico." The attempt to extend the rule beyond the estuaries of the river into the open sea, that is, into the open waters of the Gulf of Mexico, cannot be supported either by reason or authority. Not by reason, because the wide expanse of water, unconfined between banks, utterly fails to serve as a boundary; not by authority, because there is no precedent for such an extension of the rule in any work on international law.

The attempt made by counsel for the United States, in the Alaskan Boundary Case, to apply the doctrine of the thalweg to the narrow and sharply defined channels in the long and river-like fjord "arm of the sea," or estuary known as "Portland Canal" was in perfect harmony with the foregoing authorities. That attempt rested upon the proposition that "Portland Canal" was as much an estuary as if a river system flowed into it; that because this long and narrow arm of the sea, with its rocky and abrupt shores, was in form like a river, that it came within the reason of the rule which applies the doctrine of the thalweg to the channels of rivers. While admitting the application of the doctrine Lord Chief Justice Alverstone was careful to limit it. In replying to Mr. Taylor, he said: "The doctrine of the thalweg applies, but I am bound to say I do not think that even David Dudley Field himself—and Dudley Field

was a very great authority—meant to say what you put upon him, because he refers to Bluntschli, *who is there dealing with rivers.*" The application of the doctrine to the channels of Portland Canal was recognized only because that canal was in physical structure like a river with narrow channels and rocky and abrupt shores. Such a recognition cannot, of course, give countenance to the idea that the doctrine can be extended, *beyond the mouth of an estuary or an arm of the sea*, into the open sea itself where there are no banks between which channels can flow. The attempt made here by complainant to extend the doctrine to a channel in the open sea is without precedent or reason to support.

Whenever it is necessary for two contiguous states to run a water boundary through an archipelago of islands off their coasts it is only possible to do so *by convention*, as international law provides no rule upon the subject. For that reason Great Britain and the United States, in the famous treaty of 1846, stipulated that the line between them should be continued westward along the forty-ninth parallel of north latitude "to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of said channel and of Fuca's Straits to the Pacific Ocean." After prolonged and bitter controversy the Emperor of Germany was called upon, as arbitrator, to decide "whether the boundary line which, according to the Treaty of Washington of June 15, 1846, after being carried westward along the forty-ninth parallel of northern latitude to the middle of the channel which separates the continent from Vancouver's Island is thence to

be drawn southerly through the middle of the said named channel and of the Fuca Straits to the Pacific Ocean, should be drawn through the Rosario Channel as the Government of Her Britannic Majesty claims, or through the Haro Channel as the Government of the United States claims." In the exhaustive discussion embodied in the very able arguments presented by the opposing governments in that case *there was no pretense of the existence of any such general rule of international law or "custom" as complainant claims in this case.* Only the conventional rule laid down in the treaty was contended for by either side, and its construction was the only subject of the award. In the reply of the United States to the British case special emphasis was laid upon the "Worthlessness of the middle channel" as a boundary, because it was "so narrow that it cannot be seen until you are quite near." See Papers Relating to the Treaty of Washington, Vol. V. But the absence of such an international rule as to a *water* boundary is not of the slightest importance here, because it could not be applied even if it existed, for the simple and conclusive reason that Congress saw fit, in the act admitting Louisiana as a State, to establish for her a *land* boundary instead. From the junction of the Rigolets with Lake Borgne to the mouth of the Sabine river the boundary of Louisiana is the "*coast.*" The vital words of the act are: "including all islands within three leagues of the *coast.*" Congress thus established a definite land boundary for that State and not a shadowy and uncertain water boundary as claimed in the bill. A special rule having been thus established by competent authority, a general rule, even if such a one existed, could

not be invoked. General rules of international law are never applied under such circumstances.

See Grotius, *De Jure Belli ac Pacis* II, c. 3.
Bluntschli, XV, 2.
Martens, *Precis*, Sec. 119, p. 320.
Calvo, *Droit Int.*, 1, Sec. 19, p. 109.
Phillimore, Int. Law, 1, pp. 44–45 (2d ed., London).
Twiss, Law of Nations, 1, pp. 130–131.
Lawrence's Wheat., p. 28.
Halleck, Int. Law, 1 (Baker ed.), p. 50.
Lorimer, Ins. of Int. Law, 1, p. 43.

V.

Distinction Between the Coast Line of Physical Geography for the Purposes of Boundary and the Political Coast Line for the Purposes of Jurisdiction.

Physical geography simply reproduces the actual coast lines of maritime states, as they are defined by nature at the point of contact of the sea with the land. The following description of the coast of Maine, from an eminent geographical authority, may be taken as an apt illustration: "On the Atlantic coast, Maine presents an interrupted succession of peninsulas, islands and bays; and all these bays are the mouths of rivers—outlets of valleys having their origin far in the interior. Nothing similar is seen on all the territory of the Union. One must come to Norway or go to the extreme point of South America to find so long a part of the coast—400 *kilometers in a straight line* from the southwest to the northeast—so deeply cut up that we measure on it more than 4,000 *kilometers of contact with the sea.*" See Maine, in *Nouveau Dictionnaire de Géographie Universelle*, Saint Martin, Vol. III, p. 559. The actual coast

line of Maine, as known to physical geography, following, as it does, the sinuosities defined by the contact of the sea with the land, is about 4,000 kilometers, while the political coast line, superimposed upon it by operation of international law, is vastly shorter by reason of the fact that the artificial and imaginary line cuts across the heads of bays and inlets. The natural coast line, as known to physical geography, exists primarily for the purposes of boundary. The artificial coast line, as known to international law, exists only for the purposes of jurisdiction. That obvious distinction is well illustrated by Rivier in his *Principes du Droit des Gens*. Speaking of "*La mer littorale*," he says: "The name territorial sea is applied to all the seas or portions of the sea which belong to the territory: to the littoral sea, to the interior sea, in the various acceptations of the word, to gulfs and straits. It is the general and juridical term (*le terme général et juridique*), while the others are rather physical or geographical (*physiques ou géographiques*). The term, littoral sea, has the advantage of a special meaning. They say also jurisdictional sea, after one of the elements of the juridical situation of that part of the sea. The principle that the littoral sea forms a part of the territory is justified by the necessities of the preservation and security of the state, from the point of view, military, sanitary, fiscal, as well as the point of view of the interests of industry, specially of the right of fishing. The result is, for the coast and for *terra firma*, the littoral sea has the character of an accessory (*le caractère d'un accessoire*), and it cannot be taken independently of the coast (*indépendamment de la côte*)." Speaking

of "*Les Frontieres*," the same author says: "I have spoken already of the frontier on the sea, and of that on the land. There exists also special limits for the wants of administration, because the geographical and political frontier (*la frontière politique et géographique*) do not always answer in a sufficient manner." Vol. 1, pp. 145–146, 170. The distinction thus so clearly drawn between a geographical and political frontier is too obvious to require further illustration. If the geographical frontier happens to be on the sea or ocean, it is known as the *coast*, the point of contact between the sea-water and the land, upon which the political frontier is superimposed as an accessory that cannot be taken independently of the coast (*et qu'on ne saurait l'acquérir indépendamment de la côte*). That dependent and accessorial frontier created by international law, solely for the purposes of jurisdiction, is annexed *only to the outer coast* of a maritime state, which it shortens by cutting across the heads of bays and inlets, thus following what is called the general trend of the coast. The artificial and invisible coast line thus created by international law for the purposes of jurisdiction only, which, following the general trend of the coast, cuts across the heads of bays and inlets is not involved in this case in any form. We are only concerned with the inner coast line of physical geography, the point of contact between the sea-water and the mainland the line inside of the islands from which Congress has seen fit to measure zones of *three* leagues and *six* leagues. This obvious demonstration has been gone through with in order to add another reason to the argument made already against the fanciful theory of a deep water channel in the open

waters of the Gulf of Mexico, as a boundary between the States in question. If such a water boundary could be established at all, it would necessarily sweep around outside of the islands, beyond the political coast line (three miles seaward from low-water mark), that exists for the purposes of jurisdiction. Thus for the first time in the history of international law, we would have *the interior domestic boundary between two states fixed outside of the political coast line*, fencing off the federal commonwealth to which such states belong, from other nations. Such are the confusions and conflicts, which the application of false theories inevitably bring about.

If such a thing were legally possible, the great injustice that would be done Mississippi by declaring the "deep water channel," the real boundary and awarding to Louisiana dominion, sovereignty and jurisdiction over the waters and islands to the south of that line is demonstrated by the fact that this line hugs the Mississippi shore clear across Hancock County and across a large portion of Harrison County. Six miles eastward from the mouth of Pearl river, it is "within a few hundred yards" from the Mississippi shore. The following is copied from the testimony of Mr. George Dunbar, a very intelligent witness, largely interested in the territory in dispute, and put upon the stand by the complainant. On cross-examination (p. 317):—

> "Q. You said something about the proximity of that channel to the Mississippi shore between the mouth of Pearl River and Saint Joseph's lighthouse; does not that channel pass closely to the Mississippi shore?

"A. Yes, sir; right there.

"Q. Within a few hundred yards of it?

"A. Yes, sir; that is the nearest point that it touches.

"Q. How far is that point to the most eastern mouth of Pearl River?

"A. I should judge—I am not going to give you anything exact about that.

"Q. I don't ask you that; I ask for your best judgment.

"A. I should judge about six miles."

He goes on to give distances from points on the Mississippi shore southward to this line as follows: Point Clear is ½ of a mile (p. 430).

Gulf View about 4 miles (pp. 317–318), (nautical).

Waveland " 6 " " " "

Bay St. Louis " 5 " " " "

Pass Christian " 8 " (pp. 318–319) "

Mississippi City " 15 " " " "

Biloxi " 18 " (pp. 319 and 430) "

The deep water channel is less than 18 miles at every point from the Mississippi shore west of Biloxi lighthouse, or from the western end of Ship Island, which is forty miles east of the mouth of Pearl River.

Another more striking illustration of this injustice to Mississippi lies in the claim of sovereignty and jurisdiction three leagues from the northern and eastern outer shore of these islands. Three leagues north of Malheureux Point strikes the Mississippi shore, at or near the most eastern mouth of Pearl River. Three leagues from the north-eastern end of Isle à Pitre almost touches Ship Island, and reaches within a quarter of a mile of the artificial channel

dredged to the depth of 23 feet from Gulf Port to Ship Island, and leaves but a small margin of shallow water thence westward next to the Mississippi shore.

Three leagues from Grand Pass, and from Nine Mile Bayou, it actually reaches the Mississippi shore near Pass Christian. Either measurement leaves Mississippi practically no sea-front west of Ship Island.

See map No. 7, and sketch No. 2, Vol. 1, p. 1006.

It may be readily perceived what a disastrous effect it would have upon Mississippi should either of the above claims be fixed as the true boundary.

VI.

Meaning of "Coast" and "Shore" as Convertible Technical Terms.

With the fanciful theory of a deep water channel boundary eliminated from the case, it will be possible to consider without embarrassment the real issues involved in the construction of the acts in question. Both in their popular and technical senses "coast" and "shore" are identical and convertible terms. As defined in the Century Dictionary, "coast" is "2. The exterior line, limit, or border of a country; boundary; bound; * * * 3 (*a*) The side, edge, or margin of land next to the sea; the seashore * * * (*b*) The boundary line formed by the sea; the coast line." As defined by the same authority, "shore" is "1. The *coast* or land adjacent to a considerable body of water, as an ocean or sea, or a lake or river; the edge or margin of the land; * * * 2. In law, the space between ordinary highwater mark and low-water mark; foreshore." The fol-

lowing is contained in the Am. and Eng. Enc. of Law (2d ed.) Vol. IV, p. 818: "VII. WATERS AS BOUNDARIES. 1. Seashore, estuaries, tidal rivers—a. In general. High water-mark of the civil law was the water line as high up as the greatest winter flood tide rose. By the common law it is the line of ordinary high tide between the springs and neaps. Low water-mark—The shore. Low water-mark is the line of ordinary low tides. The space intervening between the high and low water-mark is the shore." By the same authority, "'coast' is defined to be the seaboard of a country." Vol. VI, p. 171. In *United States* v. *Pacheco*, 2 Wall., 587, this Court said: "By the common law, the shore of the sea, and, of course, of arms of the sea, is the land between ordinary high and low water-mark, the land over which the daily tides ebb and flow. When, therefore, the sea or a bay is named as a boundary, the line of ordinary high water-mark is always intended where the common law prevails. 3 Kent Com., 427. And there is nothing in the language of the decree which requires the adoption of any other rule in the present case. If reference be had to the rule of the civil law, because the bay is given as a boundary in the grant from the Mexican Government, the result will be equally against the position of the appellants." "*In a statute which requires* MEASUREMENT *from the coast*, the coast is the point of contact of the *mainland* with the sea; and when a bay intervenes the point of contact of the bay with the mainland is to be considered coast." Farnham on Waters and Water Rights, Vol. II, p. 1463, citing *Hamilton* v. *Manieff*, 11 Texas, 718. "What is shore.—The tract of land designated as shore,

which may be a parcel of a manor but is *prima facie* in the crown, is that strip lying along tide water over which the tide flows between the line of ordinary high tide and the line of lowest tide." Ibid., Vol. I, p. 227. It is thus beyond question that "coast" and "shore" are convertible technical terms; and that "In a statute which requires measurement from the coast, the coast is the point of contact of the *mainland* with the sea." That simple and obvious rule solves at once the first problem with which the Court is called upon to deal. The decisive word in the statute of April 6, 1812, defining the water boundary of Louisiana from the junction of the Rigolets with Lake Borgne to the mouth of the Sabine river is *coast*, "including all islands within three leagues of the *coast*." Here the statute requires a measurement from the coast, "the point of contact of the mainland with the sea," because Louisiana takes under the grant all islands within three leagues of the coast. How could this Court possibly find the power to wipe out that plain and specific special provision, and substitute in its place a general rule of international law, having no application to the subject-matter, which would prescribe a deep water channel in the open sea instead of the "coast" as a boundary? The decisive word in the statutes admitting Mississippi and Alabama is "*shore*." In the former the phrase is, "thence westwardly, including all islands within six leagues of the *shore* to the most southern junction of Pearl river with Lake Borgue"; in the latter, "thence eastwardly including all islands within six leagues of the *shore* to the Perdido river." It is confidently contended that when the three acts are construed *in pari materia*, as one connected

whole—*a method of construction which necessarily assumes contemporaneous enactment*—it must be held, in order to prevent "inequality and injustice," (1) that it was the intention of Congress to give to each state the islands directly in front of it on its southern seaboard, within the limits specified in each act; (2) that in marking out these limits the measurements shall be made from the "coast" or "shore," that is, from the point of contact of the mainland with the sea. If, in working out that result, a conflict should arise between that clause in the Mississippi Act which provides that that state shall have "all islands within six leagues of the *shore* to the most southern junction of Pearl river with Lake Borgne" and the claim of Louisiana to all islands within three leagues of her eastern *coast*, the claim of Mississippi should prevail under the rule laid down in *United States* v. *Kirby*, 7 Wall., 482, which declares that "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or absurd consequence. It will always, therefore, be presumed *that the legislature intended exceptions to its language, which would avoid results of this character*. The reason of the law, in such cases, should prevail over its letter." As the cardinal purpose of the three acts taken as one connected scheme was manifestly to give to each State the islands directly in front of it to the south, there should be such a construction as will uphold that purpose. Only in that way can "injustice, oppression, or absurd consequence" be avoided. The Court has the right to presume "that the legislature intended exceptions to its language which would avoid results of this character." In

any event, the lion's share must remain to Louisiana, because she would still possess a total sea-front of at least five hundred miles as against seventy-one miles for Mississippi. The effort of Congress was to prevent as far as possible that inequality by giving to Mississippi "all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne." Certainly if there is a repugnance which construction must reconcile, it should be in favor of the effort made by Congress to compensate Mississippi, as far as possible, for the inequality which the nature of the case made inevitable. It will be hard indeed if Mississippi is to have one-half of her narrow southern sea-front cut off by islands belonging to a neighbor far more fortunate, in that respect, than herself.

VII.

What is an Island? Geographical form and not geological origin the criterion.

The construction just contended for will not touch in any way the mainland of Louisiana. It may take away some of the islands within three leagues of her eastern and northeastern coast because of the dominant intention of Congress that each State should possess all islands on its southern sea-front within the limits defined. Certainly it is far more just and equal for construction to harmonize repugnancy by preserving *the cardinal purpose* of the statutes through a sacrifice of *the incidental* than the contrary. In any event, it is all important for the Court to determine where the mainland of Louisiana ends and where the islands on her eastern coast begin, a subject upon which complainant

has been ominously silent. From its judicial knowledge of matters of art and science the Court knows that geographers divide islands into two classes: *first*, Oceanic islands, situated far from any continent; *second*, continental islands, which do not as a rule lie far from continental shores, "from which they are usually separated by shallow seas. * * * Continental islands, as a rule, show community of flora and fauna with the neighboring land." The International Geography, p. 62. It is a fundamental principle with geographers, in the classification of land forms, to determine the character of an island solely by reference to its form, regardless of its geological origin. "From the geographical point of view land forms are best considered, in their larger aspects at least, from the point of view of form alone, *without reference to their geological history.*" Ibid., p. 48. This authority has been cited in view of the attempt made by complainant to maintain, as if it were a matter of importance, that because there is an identity between the soils of some of the islands in question and the mainland, it must be assumed that, at some remote period in the past, they were united. Even a piece of the soil from the Isle à Pitre has been presented here as an exhibit in support of that contention. (See record, p. 346). That the fact thus set up has not the slightest practical or legal value, if true, has been demonstrated by one of complainant's leading witnesses, Dr. Wm. C. Stubbs, who says: "I am engaged in work for the State of Louisiana, first as professor in the State University, second, as director of the Experimental Station, and third, as director of the Geological Survey." This expert, who was offered by complainant as such, when

asked whether the geographical character of an island is affected at all by its geological origin said:

"Q. And we come out in a bay to one of those islands and find it at eight or ten miles from the mainland, and you, as a geologist, take some of the soil and then go to the mainland and take some of the soil and find the soils identical—would that be any the less an island, if it was ten miles away from the mainland entirely surrounded by water, because it was formed in that geological process?

"A. No, sir.

"Q. It would not affect its geographical character?

"A. No, sir; an island is a body of land entirely surrounded by water, *it is immaterial how it is made.*

"Q. The fact of its geological formation has got nothing to do with its geographical character?

"A. No, sir. * * *

"Q. So, is it not true when it comes to determining from the standpoint of a geographer that an island is a body of land surrounded by water, the fact of its geological origin has got nothing to do with its geographical character?

"A. Yes, sir; that is true.

"Q. Now, as I understand you, your opinion is, that this sample No. 1, which the testimony tends to show came from the Isle à Pitre, you say looking at that as a geologist examining the qualities of it, your conclusion is that that is part of the general deposit that has been made by the Mississippi River out in that direction during the same period or epoch, as to which geologists will state no time?

"A. We won't state any length of time. But the geological time in which that was deposited is to-day, it is the present age.

"Q. But that present age, as I understand, may embrace a period of five millior. years?

"A. We don't know.

"Q. It may be five million years?
"A. Yes, sir." Record, Vol. 1, pp. 332, 346.

VIII.

No Basis Whatever for the Contention That the Islands in Question Were Ever a Part of the Mainland of Louisiana.

The net result of the testimony on this point given by the geological expert offered by complainant is this: During an indefinite period of time, possibly five millions of years, an alluvial deposit has been made by the Mississippi river in a shallow sea, out of which these islands have arisen, and such geological origin has nothing whatever to do with their geographical character as islands within historic times. And here the fact should be emphasized that this expert never attempted to say, that, at any time, such islands were ever a part of the mainland. Upon the contrary he says: "These [islands] on the *coast of Louisiana have not been cut off; they have been formed by the waves and winds of the Gulf.*" Record, Vol. 1, p. 345. Nothing could more completely overturn the theory that such islands—formed by the winds and waves of the Gulf out of the shifting alluvial deposits of a great river in a shallow sea—were once a part of the main land. It is hard to over-estimate the importance of this statement in view of the method employed by complainant's counsel to explain the geological process through which the archipelago of islands on the east coast of that State was formed. Dr. Stubbs has taken great pains to state that the alluvium from the Mississippi River "is easily transported by water, by virtue of the fact that its physical size is very minute, consisting mainly of clay and silt, it is easily transported

by water; in other words, it is very nearly of the same specific gravity as water, and hence it is very difficult to settle it." Record, p. 354. When this sediment carried in solution in the fresh water reaches salt water it is precipitated. "It (the salt water) has a chemical effect in precipitating it." B. M. Harrod, p. 126. Dr. Stubbs says: "For instance, the peninsula of Florida has been built up by the Gulf Stream, carrying the sediment from the Mississippi as it turns the coast of Florida and goes up and touches it and Cuba; it is deposited there and it is building up Cuba, so that geologically speaking some of these days Florida and Cuba will be united, but that is a very slow growth." p. 338. In view of that statement the attention of the witness was called to the geological process through which archipelagoes of islands along the coasts of certain countries have been formed by being cut off from the mainland, notably the archipelago near the coast of Alaska which was so cut off from the mainland by submergence. See International Geography, p. 667.

After admitting in general terms that the Alaskan archipelago was formed in that way, Dr. Stubbs emphatically denied, while being interrogated as to "this archipelago of islands lying off the east coast of Saint Bernard Parish, and the south coast of Mississippi," that any such process had been at work on the coast of Louisiana.

> "Q. Is it not a very familiar matter in the study of geology, the causes by which these archipelagoes are formed; the process by which such islands have been cut off from the mainland?
>
> "A. Sometimes, and at others not. *These on the coast of Louisiana have not been cut off; they*

have been formed by the waves and winds of the Gulf." Record, pp. 344-345.

Any other conclusion would be in positive conflict with his theory of the process through which the sediment or alluvium of the Mississippi is moved by the currents and deposited in the Gulf in land formations. At p. 334, he says:

"A. Your question means this, that prior to the levee system what influence did these bayous have on the surrounding country as they went to the sea?

"Q. Yes.

"A. They had, in a small way, the same effect that the Mississippi river had upon its surrounding country in overflows, they deposited a great deal of sediment that was being carried to the sea, and help to build up that section of the country. All the marshlands that we now have along the banks of bayou Terre aux Bœuf that are being cultivated came from the deposit of this stream or bayou that ran through that country, and in fact the whole of Saint Bernard Parish has been built up by that agency, the bayous coming from the Mississippi river."

Vitally important testimony of Major B. M. Harrod:

There is nothing whatever, either from the geological or historical point of view, to give color to the theory that the islands in question were ever a part of the mainland of Louisiana, *as one solid mass*, which has been broken up into islands since 1810, by subsidence, or by the action of storms and tides. Major B. M. Harrod, the eminent civil engineer offered by complainant, has made a lucid statement on that subject that should be conclusive:

"Q. The counsel for Louisiana have spoken of

the Saint Bernard archipelago. Is there an archipelago in that neighborhood, in the neighborhood of Saint Bernard Parish?

"A. Well, I have not heard the expression before. There is an area of land which is pretty well cut up by bodies of water, lakes, and bayous, which I have attributed to tidal movements and subsidence.

"Q. Well, do you believe that since the years 1812, or 1817, the conformations of those islands have been materially changed either by an action of tidal waters or subsidences, or by any other agencies? And we mean by those islands in this question those nearest and adjoining Saint Bernard—the mainland of Saint Bernard Parish.

"A. I could not give any answer about the time, since 1817, or 1819. I believe that peninsula was formed by the river deposits being placed out in a shallow sea, that had tidal movements and *instead of forming a solid peninsula* it left these open areas through it for the tidal movement *in and out of Lake Borgne and Lake Pontchartrain, and that those lakes or spaces of water have been enlarged since their formation, by subsidence. That is my opinion about the formation of that peninsula; that water areas were left there* WHEN IT WAS ORIGINALLY FORMED *and have been subsequently enlarged by subsidence.*

"Q. How long do you think this process has been going on; how many years?

"A. *For centuries I have no doubt.*" Record, p. 135.

Major Harrod thus settles against complainant the most vital fact in the case, which is that the islands in question were formed in a shallow sea by the deposit therein of the river alluvium which never constituted a solid mass as a part of the mainland. His words are: "the river deposits being placed out in a shallow sea that had tidal move-

ments AND INSTEAD OF FORMING A SOLID PENINSULA *it left these open areas through it for the tidal movement* in and out of Lake Borgne and Lake Pontchartrain and that *those lakes or spaces of water* have been enlarged since their formation, by subsidence." The fact that Major Harrod improperly calls the archipelago of islands thus formed a "peninsula" is of no importance whatever, as he admits that "a solid peninsula" was never formed. Upon the contrary a group of islands was formed surrounded by water subject to "the tidal movement in and out of Lake Borgne and Lake Pontchartrain, and that those lakes or spaces of water have been enlarged since their formation by subsidence." He insists "that water areas were left there when it was *originally formed* and have been subsequently enlarged by subsidence." Thus complainant's two experts, Dr. Stubbs and Major Harrod, agree in the self-evident conclusion that, even from the standpoint of geology, the islands in question *were islands from the very beginning*, and were never a part of the mainland of Louisiana. With that decisive fact clearly established a mass of irrelevant testimony, as to subsidence, and storm action subsequent to 1812, passes out of the case. And so nothing is left to complainant, in this regard, except the claim that these coast islands are composed of the same soil as the mainland, a matter which has no legal significance whatever. An island is no less an island because it is so composed. Due importance should also be attached to Major Harrod's statement that the geological process through which these islands were formed has been going on "*for centuries*." He declined to give color to the idea that any material change had taken

place in their conformation since 1817, or 1818. The testimony of Mr. Baylor of the Coast and Geodetic Survey, had already put that contention beyond question.

No stronger confirmation can be given of the fact that the islands in question constitute an archipelago, and that they are not a part of a peninsula, than the following statement by the United States Fish Commission, in a report of the cruise of the "Fish Hawk" made in February 1898, in response to a request, by resolution, of the legislature of Louisiana, for an investigation of the oyster industry in the region in question. That part of the report devoted to a "general description of the region," contains the following: "*The land constitutes* A LOW-LYING ARCHIPELAGO OF IRREGULAR ISLANDS, *separated from one another by shallow bays, muddy lagoons, and tortuous bayous, the area of the water being somewhat greater than that of the land.* The bayous are of two classes, rather broad, short, deep passes, like Nine-Mile bayou, Three-Mile bayou, and Deep Pass, which serve as the main avenues of tidal flow to and from the interior bays [as stated by Major Harrod], and long narrow water-courses, which characteristically run lengthwise of the islands, as is seen in the case of Door Point bayou, Dead Man bayou. The bayous of the first class generally have a depth of from 18 to 42 feet, those of the second class from 5 to 12 feet, and all are more or less obstructed by bars across their mouths." Record, p. 2037

IX.

o Material Changes in the Conformation of the Islands since 1812.

The testimony makes it perfectly clear that there has n no material changes in the general conformation or ation of the islands in question since the year 1812. ch minor changes as have taken place have simply lened or narrowed a bayou here and there, or reduced the re line of an island not exceeding anywhere 300 or 400 . Dr. Stubbs has put forward a theory of the general sidence of this entire territory at the rate of about four to the century. That theory is expounded by him as ows:

"Q. The subsidence of the surface that we have been talking about is going on with the bottom of the Mississippi Sound at the same rate is it not?

"A. Yes, sir.

"Q. Being above the water makes no difference?

"A. No, sir.

"Q. The subsidence of the land under the water is at the same rate as the subsidence of the land above the water?

"A. Yes, sir." Record 354.

The practical result of this theory is that the subsidence, if it takes place, works no material change in the eral physical aspects of the region. That is fully adced by Dr. Stubbs in the following questions and ans:

"Q. Look at this map and examine it and see the general geographical formation along this coast

from Nine Mile bayou eastward to the Isle à Pitre, and then southward through Nine Mile bayou to Lake of the Mound; have you reason to believe that since 1812 there has been any material change in the general physical and geographical aspects of that region?

"A. I would say so, yes; for this reason, I would say that this has undergone the same subsidence as the remaining part of the Mississippi coast, and that many points that were formerly islands are now submerged.

"Q. Have you any reason to believe that any general change in the physical and geographical aspect of the area to which I have referred has taken place except such as would result from that subsidence?

"A. I do not know of any other.

"Q. Except the inference that you draw from the general operation of that subsidence? then—

"A. That is all.

"Q. You know of no reason to suppose there has been any general change of appearance in the physical aspect of the region I have indicated from 1812 down to this date?

"A. *That is right.*" Record, p. 349.

J. B. Baylor, another witness, offered by complainant, who for many years has been connected with the Coast and Geodetic Survey, and who in 1893 made a survey of this particular part of the coast, taking the data for his answer from a prior one made in the 50's, says:

"Q. Did you take any steps by trigonometrical methods to locate any of these points which had been established by the prior survey made in this locality?

"A. Yes, sir; I took angles and examined that marsh to try and find them.

"Q. Do you know or have you any data to show how far back from the coast line these stones were placed at the time they were originally located by the surveyors that were then doing this work?

"A. You mean the coast line between Malheureux Point and Isle à Pitre?

"Q. Yes, sir.

"A. Yes, sir; their stations were fully examined, giving their distance from the shore line, I had that description with me.

"Q. Did you determine by any trigonometrical method where this point should be in any one instance?

"A. I determined within a few yards or feet, something like that.

"Q. How did that point compare as to its distance from the shore line, with the records which you had showing the original distance from that point to the shore line?

"A. Well, as a rule there has been no very marked change in the last fifty years.

"Q. Has there been any change?

"A. Yes, sir; there have been changes; in some places the shore has washed away, but to no great extent.

"Q. What would you call a great change?

"A. I believe a great change would be say 300 or 400 feet.

"Q. What is the maximum change that you noticed in these points established by you?

"A. Well, I did not go into that question very closely; but I should not think, I could safely say, I did not find any change of over 300 feet in 50 years.

"Q. Would that apply to the coast line generally, from Malheureux Point to Isle à Pitre?

"A. Yes, sir, generally; there may be instances where it washed away more than that; but, as a general proposition, my work showed conclu-

> sively to my mind, that there has been no marked change in regard to the washing away of that coast in 50 years. We have accurate work on trigonometrical methods running back to about 1848; most of those points were established in 1855 that I examined there." Record, pp. 415-416.

Thus the complainant has established by a competent expert that it is certain from the scientific data in possession of the Coast Survey and from a recent survey made by him, "*that there has been no marked change in regard to the washing away of that coast in 50 years.*" The data to which he refers reaches back to 1848, a point of time only thirty-six years subsequent to the admission of Louisiana as a State. Can it be presumed that any marked change took place by the washing away of the coast during that thirty-six years in view of the scientific demonstration that no marked change from that cause has taken place since then? This aspect of complainant's case has perished at the hands of her own witnesses. A specially hard blow at the subsidence theory has been delivered by complainant's witness, Charles Marshall, Superintendent of the New Orleans and Mobile division of the Louisville and Nashville railroad, who says: "Q. And I understand you to state, in your direct examination, that you are of the belief that these marshlands over which your road runs are increasing in height rather than subsiding. A. Yes, sir; I stated that I did not know anything about the general or geological theory of subsidence; that my personal belief was that by accretion the ground was getting firmer. Q. And that belief is based on your observation during the last 20 years of that section? A. Yes, sir; 18 years. Q. And that

applies to the marshland east and west of Pearl River? A. West of Pearl River. Q. You think those marshes are firmer than they were in 1886? A. I think so." Record, p. 691.

X.

What Must be the Character of the Land Composing an Island?

"An island is a body of land surrounded by water." Enc. of Law, Vol. XVII, p. 530. The elements involved are: (1) the land composing the island, which must be of a certain character; (2) the water severing it from the mainland, which must be of a certain character. A body of land continually covered by water is not an island. It was held in *Weber* v. *The Pere Marquette Boom Co.*, 62 Mich., p. 626, that a submerged fen is not an island. The court, in that case, said: "No land has ever been seen above the water within the territory described in the plaintiff's declaration in this case." An island does not, however, lose its character as such although "at high tide it is almost covered by water." Such was the vital question in *De Guyer* v. *Banning*, 167 U. S., 723, in which an action of ejectment, according to the statement made by this court, was brought "to recover the possession of a certain island, known as Mormon Island, in the inner bay of San Pedro, California. At mean high tide the island has an area of less than 1 acre; at mean low tide, about 18.88 acres. The area of the bay, including the island, is 1,100.59 acres." Banning, the defendant and purchaser of the island, testified: "This tract of land known as Mormon Island is an island; at about half tide, it is an island, and is now an

island at low water; at low water it is only partially surrounded by water; at low water it would not be surrounded by water; at mean tide there would be about 2 feet of water around it; at high tide it is almost all covered with water. * * * A very small portion of the island is above ordinary high water. At mean tide, I don't think there is an acre above water." Upon that state of facts it was held that "an island within the exterior limits of a bay and almost covered at high tide is not included in a patent for a private land claim." As the title to Mormon Island was the subject of the suit, no conclusion could be rendered without a determination, upon the proof before the court, as to its character as such. It was held to be no less an island, because at high tide it was almost covered by water. That an island does not lose its character as such by erosion or submergence was settled in *Widdicome* v. *Rosemiller* (Circuit Court W. D. Missouri, C. D., October 21, 1902), 118 Fed. Rep. 295: "Island No. 24 in the Missouri River, within the present State of Missouri, was surveyed by the United States in 1820, and then contained about 50 acres. Subsequently during floods, it was submerged, and a portion of the surface was washed away; but on the subsidence of the waters a portion of it re-appeared and at no time was it washed away to the level of the bed of the river; a channel remained between the island and the west bank of the river. * * * Held, that the title of the United States to the island was not lost by the erosion or submergence, and that, by its conveyance after it re-appeared on the reliction of the waters, plaintiff took title thereto with the additions made by alluvion and accretion." The facts

in this record, drawn largely from complainant's witnesses, show beyond all question that the archipelago fringing the east coast of Louisiana is composed of islands which are such in the full geographical and legal sense of that term. As complainant contends the soil of these islands is identical with that of the mainland, and under all normal conditions they are above water. Each of the larger ones has an individual character and a name of its own. To all inhabitants of that vicinity, no matter whether they dwell in one State or the other, Isle à Pitre, Petit Pass, Racoon Island, Little Racoon Island, Crooked Island, Mud Cross Island, Pirate Point Island, Nigger Island, Dead Man's Island, Shell Island, Brush Island, Mink Island, Wild Goose Island, Elephant Point Island, Sundown Islands, Door Point Island, and others, are as well known as Cat Island, or Half Moon Island. By these names they have been known as islands from time immemorial. That they are distinct bodies of land surrounded by navigable tide water is as indisputable as any other fact in the physical environment of that region. As illustrations of that statement the following particulars will be given of the nature of the soil of these islands and of their capacity to be made the seats of human habitations. Alfred Joseph Monier, a witness for complainant, testifies that in January, 1904, he walked from Malheureux Point to Isle à Pitre in company with George Thiel, who rowed a boat along the water's edge to carry him across Nine Mile Bayou and other waters, dividing the islands from each other.

"Q. Did you have any difficulty in walking along this shore line?

"A. None at all.

"Q. What was the character of the shore line as you went along?

"A. The shore line was hard.

"Q. Was it above water?

"A. Yes, sir.

"Q. What did you do when you came to Blind Pass?

"A. Well, the one that was with me pulling the skiff crossed me over.

"Q. Did you get out of the skiff again when you got to the other side of Blind Pass?

"A. Yes, sir.

"Q. Did you have any trouble in walking along the shore line?

"A. No, sir; no trouble at all.

"Q. About how much above the water was the shore line?

"A. About a foot and a half to two feet. * * *

"Q. Could you have driven a buggy on any part of that shore line?

"A. Yes, sir. * * *

"Q. Could you have driven it the whole way, a horse and buggy?

"A. Not the whole way, because they had those bayous to cross. * * *

"Q. Did you get your feet wet walking along there?

"A. No, sir.

"Q. You went dry shod?

"A. Yes, sir. * * *

"Q. Do you undertake to tell the Commissioner that that sort of a trip could be made at any time during the year?

"A. Yes, sir.

"Q. And that there is no difficulty about it all?

"A. No, sir; there is not.

"Q. There is no tall grass or anything to interfere with you?

"A. Very few places they have tall grass.

"Q. Do you mean to say that is the character of the islands across to the south of you? Could you have made that trip anywhere across those islands from Malheureux Point to the east end of Isle à Pitre the same as you made it along the water's edge?

"A. Yes, sir.

"Q. What houses did you find along that route, habitations that people lived in?

"A. Well, I did not find but one house that people live in.

"Q. Where was that?

"A. Couldn't tell you the name of the bayou.

"Q. It was by Three Mile bayou was it not? Is it not true that that is the only house you say on that trip?

"A. At Three Mile bayou there is one house, but nobody lives in it." Record, pp. 325–327.

George Thiel, another witness for complainant, who was the companion on this trip of Monier, testifies:

"Q. What purpose did you go there for?

"A. I was sent over there for the purpose of pulling a boat along the lake and Monier was to walk the marsh, and I pulled the boat along and while I went along I would get off from time to time and go ashore and walk the marsh a piece to find out whether it was solid and it was solid, the best marsh I ever went in, *you can carry cattle there and turn them loose and they would be very well off*, that is one of the best marshes I ever traveled on and I have been on many marshes, but that is the best I ever traveled on.

"Q. Did you follow along with the skiff all the way from Malheureux Point to Isle à Pitre?

"A. Yes, sir.

"Q. Did you see Alfred Joseph Monier walking along there?

"A. Yes, sir; I saw him walk every step of it.

"Q. Did you see him walk that whole distance?

"A. Yes, sir.

"Q. What did you do when he came to a bayou or anything like that?

"A. Then I pulled him to the shore, I carried him across the bayou, then he would get out on the other side and walk again, and I would row into the lake and go to pulling again. * * *

"Q. You have had some experience in trembling prairies?

"A. Yes, sir.

"Q. Was that a trembling prairie?

"A. No, sir; it was perfectly solid, there was no trembling prairie about that. * * * A. I didn't find anything of the kind there, but I suppose if they would go there and plant it it would grow such as cotton that can stand salt water, rice, cane." Record, pp. 330–331.

The Court should bear in mind that these two witnesses were specially delegated by complainant to make a careful examination of the lands on these islands with a view to testifying in this case. Monier says:

"Q. That trip was made to prepare you to testify in this case, was it not?

"A. Yes, sir.

"Q. And so it was with your companion?

"A. Yes, sir.

"Q. The time was selected by others for your start?

"A. Yes, sir.

"Q. And you were paid for the trip?

"A. Yes, sir." Record, pp. 329–330.

Under these conditions complainant is estopped to deny the physical character of the soil on these islands as

described by her own witnesses. The mistaken theory upon which complainant acted in offering this proof was that the geographical character of an island can be affected by its geological origin, and no doubt by the idea that these islands were once a solid body of mainland since broken up. Both assumptions have been proven to be entirely untenable, the last by complainant's expert, Dr. Stubbs, who, speaking as a geologist, said that these islands were not cut off from the mainland.

> "Q. Is it not a very familiar matter in the study of geology, the causes by which these archipelagoes are formed; the process by which such islands have been cut off from the mainland?
>
> "A. Sometimes, and at others not. *These on the coast of Louisiana have not been cut off; they have been formed by the waves and winds of the Gulf.*" Record, p. 345.

Complainant's witness, Louis Cucullu, president of the Peoples' Bank, of New Orleans, who says he knows well the territory in question, testifies as follows: "A. Like I tell you, on the shore, all along the shore of Lake Borgne and the Gulf, *those marshes are always above water*, and it takes a high tide to cover most of those marshes."

XI.

What Must be the Character of the Water Surrounding an Island—Test of Navigability.

It is necessary that a strip, not necessarily a wide strip, of navigable water should separate an island from the mainland. In *Dumphry* v. *Williams*, 2 Pugsley (N. B.), 350, it was said: "so far as appeared, the island in dispute existed as a separate and distinct island, long before Currie

got possession of the Flat Island; and at that time, and until recently, there was a channel between the two islands about one or two rods in width, navigable for canoes, at low water in summer." In *King* v. *Young*, 76 Me., it was held that a mussel-bed was not an island because no navigable water flowed between it and the shore at low tide. An island must be surrounded not only by water but by navigable water. "A stream which has sufficient depth and width to float vessels, boats, or other water craft used in the transportation of freight or passengers, or both including rafts of lumber is navigable." *American River Water Co.* v. *Amsden*, 6 Cal., 443. "Tide water navigated for pleasure is navigable water, although the craft on it have never been used for the purposes of trade or agriculture." *Atty. Gen.* v. *Woods*, 108 Mass., 436. See also *Grand Rapids* v. *Powers*, 89 Mich., 94; *Bamprey* v. *State*, 52 Minn., 181. "All tide water is *prima facie* public and navigable, *the burden of proof is on the person alleging the contrary.*" Farnham on Waters, Vol. 1, p. 125, citing *Sullivan* v. *Spotswood*, 82 Ala., 163. See also *Dumas* v *Garnett*, 32 Flor., p. 73. There is nothing in the evidence to give color to the idea that the islands in question are submerged islands. Upon the contrary it clearly appears from the proof offered by complainant, that they are composed of firm soil elevated generally from a foot and a half to two feet, and some at 3 to 4 above the tide, upon which a man can walk dry shod even in the most rainy month of the year; that even a buggy can be driven conveniently along their shores; that there are some houses upon them; that certain plants, such as rice, cotton, and

cane could be grown upon them; that they are swept by water only in storms or during extraordinary tides. Such being the uncontradicted testimony of complainant's own witnesses, specially prepared to testify on that subject, it only remains to be proven that such islands are surrounded by *navigable* water. Complainant's witnesses have with equal emphasis, settled that fact. Mr. Baylor of the Geological Survey, who has critically examined the entire area, says:

> "Q. What is the usual definition given by geographers to an island. What is an island from the standpoint of physical geography?
>
> "A. An island is a body of land surrounded by water.
>
> "Q. Well, now, let us begin from Nine Mile Bayou and take the piece of land that is bounded on the west by Nine Mile Bayou and on the east by Three Mile Bayou and on the north by Mississippi Sound and on the south by Nine Mile Bay. Under the ordinary definition of physical geography, isn't that an island, a piece of land surrounded by water?
>
> "A. Yes, sir; that is an island.
>
> "Q. Isn't it a piece of land surrounded by water? Can't a craft sail all around that piece of land—a craft of moderate draft?
>
> "A. Well, a craft can sail all around a good deal of that portion of Louisiana.
>
> "Q. I ask you this particular question: can a craft sail all around this piece of land, a craft of moderate draft, this piece of land I have named?
>
> "A. Yes, sir; moderate draft.
>
> "Q. Let us go to the next piece of land, bounded on the west by Three Mile Bayou and on the east by Johnson Bay and the neck of water connecting it with Mississippi Sound, on the north by Mississippi Sound, and on the south by the

body of water around Nigger Point; is that a body of land surrounded by water around which a craft of moderate draft can sail?

"A. Yes, sir.

"Q. Now, let us take the next piece bounded on the east by Turkey Bayou, bounded on the north by Mississippi Sound, bounded on the west by Johnson Bay and the bayou connecting Johnson Bay with Mississippi Sound; isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

"A. Yes, sir.

"Q. Now, let us take the next piece bounded on the west by Turkey Bayou, on the north by Mississippi Sound, on the east by Grand Pass and the bayou connecting Grand Pass with Karako Bay; isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

"A. I want to look at this chart here. Yes, that is true; a craft of moderate draft can sail around that body of land.

"Q. Let us take the next one, Isle à Pitre, isn't that a body of land surrounded by water around which a craft of moderate draft can sail?

"A. Yes, sir.

"Q. So, then, is it not true that what you have spoken of as the coast line between Nine Mile Bayou on the west and Isle à Pitre on the east, is it not composed of a string of islands such as you have described, bodies of land surrounded by water around which a craft of moderate draft can sail?

"A. You expect me to give you my honest frank opinion?

"Q. Yes.

"A. *I think it is*, but no more than a great deal of the Mississippi delta.

"Q. That you see is purely argument. That may be so; they can argue you that. But I am just trying to get at the facts.

"A. *They are certainly bodies of land around which vessels of moderate draft can sail.*" Record, pp. 421, 422.

Capt. Alfred C. Ruiz, deputy inspector of the La. Oyster Com., in charge of its patrol boat "Majestic," of a draft of 3½ feet with ballast, admitted that he can navigate the waters around these islands with only a little difficulty in that boat.

"Q. What is the average depth of the water inside of the Louisiana marshes?

"A. Taking the average it would be about 2½ to 3 feet. * * *

"Q. How much water does the "Majestic" draw?

"A. Three feet and a half, with ballast

"Q. She has been going through these marshes as you have testified?

"A. With high tide. I have to take my chances to go, and then I am dragging, I can't use my centerboard."

But the fact remains that a boat of that draft can go. In some places of course the channels are very deep. The same witness says:

"Q. Has that Nine Mile bayou a deep channel?

"A. Very deep." Record, pp. 307–308.

Complainant's witness Charles Sanger, who has navigated among these islands, in the interior waters, as far as Lake of the Mound, says:

"Q. Ever sailed through these interior waters?

"A. Once.

"Q. Once?

"A. At Treasure Bay I know we went through there in ordinary tide.

"Q. Show me your course, how you travelled, where you went into it and where you went out

that one time? Where did you go in, through what?

"A. We went in through Nine Mile bayou, then we went through.

"Q. Bay Bordeaux, then into Treasure Bay, then where did you go?

"A. I think somewhere up in here, that is where we stopped. (Witness here pointed out on the map before him the Lake of the Mound.) By Mr. Zacharie:

"Q. Do you mean to say you went into the Lake of the Mound?

"A. Somewhere up in here.

"Q. Somewhere near Lake of the Mound?

"A. Yes, sir.

"Q. Did you go out there with your boat?

"A. Yes, sir.

"Q. Did you come out the same route?

"A. Yes, sir."

The navigable character of the water as far as Lake of the Mound was thus clearly established. Record, pp. 264–65.

Capt. A. S. Cowaon, who has been familiar with the region in question, "for half a century," says:

"Q. Is it not true that any time during your knowldege of that coast that water craft of light draft could pass southward through any of these water courses?

"A. Yes, sir; they could always go southward through them.

"Q. How far south?

"A. Vessels drawing three feet of water came down as far as Morgan Harbor, that is about 24 miles down in the marsh, that is about southwest from the entrance of Three Mile Bayou, it don't show on this map at all, it is way south of Drum

Bay; mind you; I am speaking of common tide. In a northwester they couldn't go through at all."

John Walker, a steamboat-man since 1855, says: "Q. What craft did you have in going through Three Mile Bayou? A. I had a small steamboat. (1867). Q. How much did she draw? A. Well, she only drew about four feet, *but I found seven feet of water there.* Q. You found seven feet of water where? A. In the entrance. Q. You say that you went through Three Mile Bayou? A. Three Mile Bayou. Q. Where did you go, Captain? A. From Chandeleur into Lake Borgne. Q. From Chandeleur Sound through Three Mile Bayou into Lake Borgne? A. Yes, sir. Q. With a steamer drawing four feet? A. Yes, sir; she was a steamer." Record, p. 1271. And here reference must again be made to the report of the United States Fish Commission, as to the result of the cruise of the "Fish Hawk." In describing the navigable character of the water by which the "low-lying archipelago of islands" is surrounded, that report states: "The bays, with the exception of several of those opening into Chandeleur Sound, communicate with the outer water by narrow mouths. Their floors are comparatively level and, with one or two exceptions, are composed principally of soft mud, with scattered patches of hard mud and sand, usually so small in area as to be negligible in plotting and soundings. *The depth of water is generally from 3 to 6 feet although in some of the bays, particularly those to the eastward, there are channels through which a considerably greater depth can be carried.*" Record, p. 2037.

XII.

Worthlessness of Maps in Boundary Controversies.

The business of a cartographer, or map-maker, is to describe land forms, not to settle titles of particular sovereignties to particular parts of the earth's surface. The value of every map depends upon two factors: first, the completeness of the data out of which it is constructed; second, the skill of the cartographer in working such data into an harmonious whole. Early maps, which are necessarily based upon incomplete data, are almost invariably misleading guides. For that reason, international jurists generally regard such maps as of little or no value in boundary controversies. The great English jurist, Sir Travers Twiss, in speaking of the uselessness of maps in the investigation of boundary questions, has even regretted that they are ever appealed to at all. He says: "Maps, however, are but pictorial representations of supposed territorial limits, the evidence of which must be sought for elsewhere. There may be cases, it is true, where maps may be evidence; when, for instance, it has been specially provided that a particular map, such as 'Melish's Map of North America,' shall be the basis of a convention; but it is to be regretted that maps of unsurveyed districts should ever have been introduced into diplomatic discussions, where limits conformable to convenient physical outlines, such as headlands or water-courses, are really sought for, and are understood to be the subject of negotiation. The pictorial features of the country which, in such cases, have been frequently assumed as the basis of negotiation, have not unusually

caused greater embarrassment to both parties in the subsequent attempt to reconcile them with the natural features, than the original question in dispute, to which they were supposed to have furnished a solution." The Oregon Question, p. 228. As an illustration of "the general futility of the argument from maps in the case of disputed territory," the author refers to a letter written during the Oregon dispute, by Mr. Buchanan, while President of the United States, to Mr. Pakenham, the then British Minister at Washington, in which the former says: "Even British geographers have not doubted our title to the territory in dispute. There is a large and splendid globe now in the Department of State, recently received from London, and published by Maltby and Co., manufacturers and publishers to 'The Society for the Diffusion of Useful Knowledge,' which assigns this territory to the United States." Sir Travers adds: "The history, however, of this globe is rather curious. It was ordered of Mr. Malby (not Maltby), for the Department of State, at Washington, before Mr. Everett quitted his post of Minister of the United States in this country. It no doubt deserves the commendation bestowed upon it by Mr. Buchanan, for Mr. Malby manufactures excellent globes, but the globe sent to Washington was not made from the plates used on the globes published under the sanction of 'The Society for the Diffusion of Useful Knowledge,' though this is not said by way of disparagement to it. The Society, in its maps, has carried the boundary line west of the Rocky Mountains, along the 49th parallel to the Columbia River, and thence along that river to the sea; but in its globes the line is not

marked beyond the Rocky Mountains. *Mr. Malby, knowing that the globe ordered of him was intended for the Department of State, at Washington, was led to suppose that it would be more satisfactorily completed, as it was an American order, if he coloured in, for it is not engraved, the boundary line proposed by the Commissioners of the United States. The author would apologize for discussing so trifling a circumstance had not the authorities of the United States considered the fact of sufficient importance to ground a serious argument upon it.*" Preface, pp. VII, VIII. In "Greenhow's History of Oregon and California," note "F" at p. 437, this pungent statement occurs: "These discrepancies should not excite surprise, for maps and books of geography, which are most frequently consulted in relation to boundaries, are or rather have been, the very worst authorities on such subjects; *as they are ordinarily made by persons wholly unacquainted with political affairs.*" In *United States* v. *Texas*, 162 U. S., 1, this Court has recognized the general rule of international law as stated by Sir Travers Twiss, that when a particular map is referred to in a treaty or compact, it is to be given the same effect as if it had been expressly made a part of such treaty or compact. In that case it was said: "If, as asserted by the State, this case should be determined upon the basis that the 100th meridian is where the Melish map located it, and not where it is in fact, this Court may well decline to recognize a claim attended with such grave consequences as those suggested by the answer, unless it be clearly established. * * * But are we justified, upon any fair interpretation of the treaty, in assuming that the parties regarded that map as absolutely

correct, in all respects, and not to be departed from in any particular or under any circumstances? * * * We have said that the treaty itself, upon a reasonable interpretation of its provisions, left it open to the contracting parties, through commissioners and surveyors, to fix the lines with precision, and, therefore, to show, by competent evidence, where the true 100th meridian was located." It thus appears that this court will not permit an inaccurate map to be accepted as a guide in the settlement of a boundary controversy, even when it is made a part of the convention or compact into which the parties have entered.

No one of the mass of maps, ancient and modern, offered in this case comes within the special exception discussed above, for the reason that *the acts to be construed make no reference to any map whatsoever*. Thus the whole mass falls under the general interdict pronounced by Sir Travers Twiss and Mr. Greenhow against the use of maps in boundary controversies, "as they are ordinarily made by persons wholly unacquainted with political affairs." When the entire inadequacy and inaccuracy of the earlier maps offered in this case are considered, it is easy to understand how such maps "have not unusually caused greater embarrassment to both parties in the subsequent attempt to reconcile them with the natural features, than the original question in dispute, to which they were supposed to have furnished a solution." The reason for that condition of things here is easy of explanation. Until very recently the islands within this disputed territory were of no value; they were an unexplored, unsurveyed, and uninhabited expanse, in which neither State took any special interest. It is not

therefore strange that the early cartographers were without data upon which to construct maps of the archipelago in question especially when we find on the Darby map (No. 20 and 20a), as late as 1816, the statement that the disputed territory "has never been surveyed N. E. of Bayou Terre aux Bœufs; the coast and interior remain, but imperfectly known. The surface is flat and but little elevated above the level of the sea." And yet it must be said to the honor of the early cartographers of this section that they were careful to declare, *on the face of their maps*, that they had no adequate data as to the topography of the region in dispute. For instance on the Dutch map (No. 9 and 9a), of 1766, which has for legend "*De Uitloop van de Rivier Mississippi,*" a line is drawn around the area occupied by the archipelago in question, and then at the side is printed, "*Ondiepte met verscheide kleine eilanden die weinig of niet bekend zyn*" (*Shallow water with many small islands which are little known.*) In the same way on the English map of 1775 (No. 10 and 10a), published by Thomas Jeffreys, Geographer to Her Majesty, and describing "The coast of West Florida and Louisiana," is printed in the same way at the side of the region in dispute—"*Shallow water with many small islands, but very little known.*" Again, on a map of the same date, taken from the same atlas of 1775 (No. 11 and 11a), describing the "Course of the Mississippi river from the Balise to Fort Chartres," as drawn on an expedition to the Illinois in the latter end of the year 1765, by Lieut. Ross of the 34th regiment, is printed in the same way, at the side of the region in dispute—"*Shallow water covered by many small islands which are but little*

known." Again, on the English copy of the Dutch map made by Isaac Tirion in 1766 (No. 12), first published in a periodical called the "London Magazine" and representing the course of "the River Mississippi from the sea to Bayagoulas," is printed in the same way, by the side of the line inclosing the area occupied by the archipelago,—"*Shallow water with many small islands very little known.*" The absurd inaccuracy of all these early maps in the location of even so prominent a feature as Lake Borgne is a cogent illustration of the fact that the term, "very little known," should have been applied to the larger bodies of water as well as to the more important divisions of the land. In juxtaposition with the foregoing statements, which appear in almost identical form upon the four maps described above, should be printed the confirmatory statement of complainant's witness, the eminent engineer, Major B. M. Harrod, who in describing the geological origin of the archipelago in question has said: "The river deposits being placed out *in a shallow sea* that had tidal movements and instead of forming a solid peninsula it left these open areas through it for the tidal movement in and out of Lake Borgne and Lake Pontchartrain and that those lakes or spaces of water have been enlarged since their formation, by subsidence." And so the testimony of the geologist that the islands in question were formed in "*a shallow sea*" is confirmed by the earlier cartographers who find "*Shallow water* with many small islands, which are little known," or "*Shallow water* covered by many small islands which are but little known." Thus geology and geography join hands in contributing a series of interlinked facts which no

ingenuity can be clever enough to break, no criticism sharp enough to sever—facts which declare that, from the very beginning, the islands in question, *formed as such in a shallow sea*, were never a part of the mainland of Louisiana.

If a few careless or ignorant cartographers, prior to a survey of these islands, have described the area occupied by them as a peninsula, the mistake, so common in the map-making of unexplored regions, is of no importance whatever. The fact is that no accurate or reliable maps of this region were ever made until the data for them were collected by the experts sent out by our Coast and Geodetic Survey. When upon such data accurate maps were at last constructed the fact that the region in question was occupied *by an archipelago of islands*, clearly and distinctly defined, was put beyond all questions. The larger islands such as Petit Pass Island, Racoon Islands, Little Racoon Island, Wild Goose Island, Deadman's Island, Mud Cross Islands, Crooked Islands, Mink Island, Shell Island, Brush Island, Door Point Island, Sundown Island, Pirate Island, Nigger Point Island, Elephant Point Island, Isle à Pitre, Martin Island, Mitchell Islands, and the larger bodies of water surrounding them, such as Nine Mile Bayou, Three Mile Bayou, South Bayou, Johnson's Bayou, Turkey Bayou, Drum Bayou, Grand Pass Bayou, Pierre, Elephant Bayou, Creole Gap, Jack Williams Bayou, Greque Bayou, Picnic Bayou, South West Pass, Door Point Bayou, Dead Man's Bayou, Oyster Bay, Bay Brodeau, Kirchunbs Bay, Cranetown Bay, India Mound Bay, and False Mouth Bayou are as well known in the geography of the region in question, *and are as distinctly named and defined on the maps describing*

it, as any other islands or bodies of water in that part of the world. How is it possible to maintain that this long list of islands, each with its well established geographical name and each surrounded by navigable tide water, in which craft of considerable size can sail, constitute a part of the mainland of Louisiana? Why should they ever have been designated as islands, by those best acquainted with them, if they are not such?

As heretofore pointed out, in connection with the testimony of Mr. Baylor, the Coast and Geodetic Survey "have accurate work on *trigonometrical methods* running back to about 1848," a date within 36 years of the admission of the State of Louisiana. That work puts beyond all question the fact that no material changes in the general physical aspects of the region have taken place since that time. When asked, "Has there been any change?" Mr. Baylor answered: "Yes, sir, there have been changes; in some places the shore has washed away, but to no great extent. Q. What would you call a great change? I believe a great change would be 300 or 400 feet. Q. What is the maximum change that you noticed in these points established by you? Well, I did not go into that question very closely; but I should not think, *I could safely say I did not find any change of over 300 feet* in 50 years." p. 416. If minute scientific investigation has thus established the fact that no material changes have taken place since 1848, there is certainly nothing in the evidence to justify the idea that any material changes have taken place in the character of the islands as such since 1812. The grotesque and unplausible theory that the archipelago

of islands, as it exists to-day, was formed, since 1812, out of the mainland of Louisiana by subsidence and the action of storms and tides is really too fanciful for serious discussion. It is unplausible for four reasons: first, because the geological origin of these islands as described by the experts produced by complainant crushes such a theory, Prof. Stubbs maintaining that the islands in question "have not been cut off; they have been formed by the waves and winds of the Gulf," and Major Harrod maintaining that they are the result of "the river deposits being placed out in a shallow sea that had tidal movements. * * * that water areas were left there when it was *originally formed*"; second, because the early cartographers recognized and noted the fact that the area in question was occupied by a body of small and unknown islands in shallow water; third, because the scientific investigations of the Coast and Geodetic Survey have settled the fact that no material changes in the general aspects of the territory in dispute have taken place in recent times; fourth, because the testimony of the geological experts demonstrates that if any such radical changes as complainant contends for ever took place, such changes must have been the work of hundreds, if not thousands of years of gradual transformation. In the light of the present controversy as to the title of the disputed territory between two sovereignties, it is hardly necessary to add that any mistake as to the merits of the legal questions involved made by recent cartographers, even by Col. Hardee, cannot be of the slightest importance. As Mr. Greenhow has well said such maps "are ordinarily

made by persons wholly unacquainted with political affairs." Mr. Edward H. Nall, the Land Commissioner, of Mississippi, in speaking upon the subject of the Hardee Map, said: "I don't believe any man has ever made a map of Mississippi or Louisiana that knew any more about the dividing line that is now in contention than we do about the burial place of Moses."

Mr. William Beer, of the Howard Memorial Library, of New Orleans, who furnished most of the maps put in evidence by complainant, and who was several times recalled, *on cross-examination* admitted their glaring imperfections and inconsistencies in no uncertain terms. For instance when asked (Record, p. 617), "I want to ask you to do us the kindness to examine the map of B. Lafon, 1806, and tell us what islands you find on that map within six leagues of the Mississippi shore. Let us begin at the mouth of Pearl River and travel eastward." He answered, "We have to begin by discussing, or by stating that this map is not necessarily correct. You are asking me now about a special distance which I can measure correctly. Now, it may so happen that that was not truly at that distance. This Lafon map is Lafon's presentation of the coast at that time. All I can say is that on Lafon's map as measured by the scale given on it, there are certain islands within six leagues, that is all I can say." Again when asked (Record, p. 793), "You had something to say this morning and heretofore, with reference to coloring. I will ask you in view of your qualifications, as an expert on these maps and on all other matters with reference to which you have qualified yourself, whether you give any

special significance to the geographers or map-makers, with reference to coloring of outlying islands?" He answered, "very little indeed." Any attempt made by any cartographer, since 1812, to determine by coloring to which sovereignty the area in question belongs, amounts to nothing more than a guess upon his part as to the manner in which this court will determine the issues involved here. As a general rule wherever a cartographer has made more than one map, he has guessed on both sides of the question. Even more frivolous is the claim that the archipelago in question must be considered a part of the mainland of Louisiana, because the area occupied by it is embraced within the region known since time immemorial as the "Louisiana Marshes," even before the State of Louisiana was admitted into the Union, and before the United States acquired the said territory, and while the southern part of Mississippi was also a part of the French territory known as Louisiana. If by virtue of that vague and general appelation, Louisiana can claim the area in question, then Florida can with equal right claim possession and sovereignty over the parishes of that State north of the River Iberville, because they are known as "Florida parishes."

XIII.

Practical Application of a Rule of Construction That Removes All Conflict Between the Acts in Question by Giving Effect to Every Provision of the Respective Grants.

There is nothing, even in complainant's evidence, to raise a doubt that the Congresses that defined the boundaries of Louisiana, Mississippi, and Alabama, saw the mainland of the first named separated from the islands in

question, just as we see that separation to-day; and the most conclusive evidence of the truth of that statement is to be found in the provision that Mississippi should possess all islands within *six leagues* (practically 18 miles), of her coast. If what defendant claims as islands were not such when her boundaries were defined, *at least one-half of the grant of islands to her has no subject-matter upon which to operate.* Congress might just as well have limited the grant to islands within *three leagues* of the Mississippi coast, if there were no islands beyond that limit. The fact that Congress attempted to grant to Mississippi all islands within eighteen miles of her coast is conclusive evidence *that that body considered the islands in question as such, and that they had not been previously granted to Louisiana.* Here the court should apply the rule laid down in Pollard *v.* Kibbe, 14 Pet., 366: "*It is not to be presumed that Congress would grant or even simply release the right of the United States to land confessedly before granted.*" The act of 1817, is an affirmative declaration by Congress that at its date the islands in question were such, and that they had never been previously granted to Louisiana. That Congress actually attempted to grant the islands to Mississippi the bill admits when, in par. 24, it avers that the elimination of the deep water channel theory "would cause the limits of the two States to *conflict and overlap.*" If Congress did not attempt to make the grant in question to Mississippi an overlapping would be impossible. And, if the islands in question are not such then the grant to Mississippi, beyond the nine-mile limit, must perish for want of subject-matter. *Thus the entire attempt made by Congress to com-*

pensate Mississippi for her narrow sea-front by giving her a zone of islands twice as wide as that granted to Louisiana would come to naught, because, forsooth, there were no islands within such wider zone upon which the grant could operate. Apart from reasons given already such a construction will be rejected under the rule that directs every court to strive to give effect to all the words of a grant *ut res magis valeat quam pereat.* In the construction of statutes as in the construction of deeds the cardinal rule is to effectuate, if possible, the entire intention of the grantor, and in ascertaining that intention regard must be had to the situation and the relative position of the parties, and the objects which they had in view. *Saunders* v. *Saunders*, 20 Ala., 710; *Strong* v. *Gregory*, 19 Ala., 146. No better statement of the rule can be found than the following: "In the construction of statutes one part must be construed by another; to collect the legislative intention the whole must be inspected. The Stafford Justices, Brock-R., 162, *and recourse may be had for this purpose to a proviso which has been repealed by a subsequent act. Bk. of Savings* v. *Collector*, 3 Wall., 495. Statutes are to be interpreted so as to give effect to all the words therein, if such interpretation be reasonable, and be neither repugnant to the provisions, nor inconsistent with the objects of the statute. *U. S.* v. *Bassett*, 2 Story R., 389. * * * *It is not to be presumed, that the legislature intended that any part of a statute should be without its proper meaning, force or effect.*" Potter's Dwarris on Stat. and Const., p. 188, note 8. The moment the court determines that the acts in question are *in pari materia*, then, under the rule laid down in *Alexander* v.

Alexandria, they "are to be construed together as forming one act." When that point is reached, "It is not to be presumed that the legislature intended that any part of a statute should be without its proper meaning, force, or effect." The grant to Mississippi of all islands within eighteen miles of her coast thus becomes, in contemplation of law, simply a *subsequent clause* in the act of 1812, admitting Louisiana. Nothing then remains but application of the following rule as defined in *Alexander* v. *Alexandria:* "If in a subsequent clause of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used that sense is be adopted in constructing those phrases. Consequently, *if a subsequent act on the same subject* affords complete demonstration of the legislative sense of its own language the rule which has been stated, requiring that the subsequent should be incorporated into the foregoing act, is a direction to the courts in expounding the provisions of the law." Effect can thus be given to every part of the grant made by Congress to the two States in question, and all conflicts avoided, by the application of a settled rule of construction which directs courts, under such circumstances, to qualify the general terms first used in a statute by subsequent exceptions in modification of them. Thus Louisiana would take all islands within *three leagues* of her coast, *excepting such as are within six leagues of the coast of Mississippi.* If the grant made to Louisiana by the act of 1812, and that made to Mississippi by the act of 1817, were contained in a single statute, the grant to the former, appearing in the first section of such statute, and

the grant to the latter appearing in a subsequent section, would the court for a moment hesitate to limit the general terms of the first grant by the special terms of the second? Under the authorities, the fact that these grants are contained in separate statutes *in pari materia*, is a matter of no legal significance whatever.

XIV.

Louisiana's Claim of Title Under the Swamp and Overflowed Land Act of March 2, 1849.

By an act approved March 2, 1849, entitled "An Act to Aid the State of Louisiana in Draining the Swamp Lands Therein," it was provided that "to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, which may be found or are found unfit for cultivation, shall be, and the same are hereby granted to that State." There is nothing in the act to give color to the idea suggested in par. 29, of the bill by the following unjustifiable statement: "The Congress of the United States, as well as the various departments of the United States Government, having authority in the premises, have themselves *recognized the boundary line contended for by the State of Louisiana*, by reason of the fact that the United States Government has *confirmed* to the State of Louisiana the lands composing Half Moon Island, etc." So far from there being the slightest foundation of truth for that suggestion the fact is that the act in question undertook to give to complainant as a donation certain lands which, *by her application for them, she admitted belonged, not to her, but to the United States.* The very improper

use of the word "confirmed" in this connection, as evidence of the recognition by the United States of the claim of complainant to the boundary in question, is too manifest to require argument, however much it may justify condemnation. Complainant can claim no benefit under the foregoing act, unless she can demonstrate, (1) that the United States was possessed of title to the territory in question on March 2, 1849; (2) that such act had or was intended to have application to these island lands which were not of the character contemplated in it. And yet despite the fact that the United States had, nearly forty years before, made an express grant of these islands to the State of Mississippi; and despite the fact that the lands composing them was neither "swamp nor overflowed" within the meaning of the act, complainant unlawfully attempted to acquire color of title to the same by making a pretended selection under the terms of said act. Under a misapprehension as to his authority in the premises, and while acting beyond the limits of his jurisdiction, the Secretary of the Interior undertook to approve such selections, and under and by virtue of such approval complainant claims title to said lands. After issuing a few patents to several individuals, such patents purporting to convey title to the Isle à Pitre, and after creating the Lake Borgne Basin Levee District by the act of 1892, complainant patented to said Board the residue, constituting the bulk of said lands. Since that time said Board has been going through the form of selling said lands at a nominal price (12½ cents per acre), to persons desiring them for fishing and oyster purposes, under deeds expressly excluding warranty in the following

terms written upon the face of said deeds: "It is distinctly understood by the parties hereto that the Board of Commissioners for the Lake Borgne Basin Levee District, through their said president, transfer, assign, and set over, only those rights and interests which the said Board now have in and to the aforesaid lands, giving hereby simply a quit claim, and making and giving no warranty whatsoever; *and further, that should the said title be subsequently declared void, the said Board shall not reimburse to the purchaser any sum whatever.*" Record, p. 1088; Doc. No. 59. A more emphatic declaration could hardly have been made of the flimsiness of the pretended claim of complainant under the act in question—a claim whose invalidity will be demonstrated on three distinct grounds, either of which is conclusive against it.

In the first place if defendant's contention is sound that the islands in question were conveyed to her by an express grant upon her admission to the Union in 1817, then the subsequent Act of March 2, 1849, purporting to donate certain swamp and overflowed lands to complainant can have no possible operation for the simple reason that the United States had, at the date of said act, neither title nor interest. Grants made by a legislature are not warranties; and if the thing granted was not in the grantor at the time of the grant, no estate passes to her grantee. *Rice* v. *Minn. & N. W. R. R. Co.*, 1 Black, 358; *Polk* v. *Wendal*, 9 Cranch, 87. If that be true, then the *ex parte* proceeding of the Secretary of the Interior in 1852, was simply null and void as an attempt to take away a part of the domain of a State without the consent of its legis-

lature. Art. IV, Sec. 3, of the Const. In *Stone* v. *United States*, 2 Wall., 525, involving the validity of acts of the Secretary of the Interior under like circumstances, it was held that where land claimed never was within the tract alloted to the Delaware Indians, but was within the limits of a reservation legally made by the President for military purposes, the patents issued therefor were void because the Secretary exceeded his authority. In the second place, the act in question could not be applied to the lands of which these islands were composed, because they were not "swamp and overflowed lands," within its meaning, nor in any way connected with the levee system it was designed to promote. It was long ago settled that lands subject "to periodical overflow" are not "swamp and overflowed," that term applying only "to those lands which are overflowed and will remain so without reclamation or drainage." The phrase "subject to periodical overflow" has reference to a condition, which may or may not exist, and which when it does exist is of a temporary character. *Heath* v. *Wallace*, 138 U. S., 573. In that case it was firmly settled that lands described as "subject to periodical overflow" cannot be certified as "swamp lands." Complainant's own evidence puts the fact beyond question that, under normal conditions, the islands in dispute are never under water; only during storms or phenomenal tides does the water sweep over them. The well known expedition of Monier and Thiel was made, at complainant's instance, to demonstrate that fact; and complainant's witness Louis Cucullu, a member of the City Council of New Orleans and President of the People's Bank of that city, who

has known the region in dispute from infancy,' was careful to say (Record, p. 977); "all along the shore of Lake Borgne and the Gulf, *those marshes are always above water*, and it takes a high tide to cover most of those marshes." Theil said: "I don't say it don't, *it overflows sometimes*, in storms it will be overflowed like anywhere else." On her own evidence complainant can only claim that the islands are "subject to periodical overflow," and that settles the fact that they were never within the purview of the act in question—the term *swamp* having no possible application to lands of the character of those composing these islands. If an appeal be made to the doctrine that decisions of the Secretary of the Interior upon matters of fact, *within his jurisdiction*, are, in the absence of fraud or imposition, conclusive (*Heath* v. *Wallace*, 188 U. S., p. 573), the answer is that in this case he was entirely *without jurisdiction*, as the title to the lands in question had long before been vested in the State of Mississippi, by a definite and specific grant from the United States, a grant made of the islands as such regardless of the character of the lands that composed them. In the third place, the Secretary of the Interior was entirely without jurisdiction, because the clear and definite purpose of the act in question was "to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein." Thus by this and subsequent acts of a like character a certain class of lands situated in the States adjacent to the banks of the Mississippi River were given for the building of levees and drains for the purpose of their reclamation. The lands in dispute were not only

not of the class known as "swamp and overflowed," but they were in a district apart to which the levee system could not be extended, and to which it had no application. The subject-matter was not, therefore, drawn, either by the letter or spirit of the Swamp and Overflow Land Acts, within the Secretary of the Interior's jurisdiction. It is not, therefore, strange, under such circumstances, that ordinary prudence should have prompted the Board of Commissioners for the Lake Borgne Basin Levee District to declare on the face of their quit-claim deeds, "that should the said title be subsequently declared void, the said Board shall not reimburse to the purchaser any sum whatever." This aspect of the case is not worthy of serious consideration save so far as it goes to show that the authorities of Louisiana, by seeking to acquire color of title to the islands in question, by an appeal to the Swamp and Overflowed Land Acts, were convinced that that State possessed no title to them, under the act of April 6th, 1812, admitting her into the Union. If these islands did pass to Mississippi, under the act of 1817, admitting her into the Union, of course she could not be divested of title to them under a proceeding to which she was not a party had before a ministerial officer.



The Claim of Acquiescence.

No part of the case stated by complainant is more vague and shadowy than that in which the claim of acquiescence is embodied, if such a claim, upon the allegations of the bill, can be said to have been made at all. If the

pleadings actually present it, it can only be inferred from the following statements which contain all that has been alleged concerning it: "Your orator further avers that where contiguous states or countries are separated by water it is, and always has been the *custom* to regard the *channel* as establishing the boundary line of such states, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own constitution, adopted November, 1890, in the following words (par. 28th), * * * 29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government, having authority in the premises have themselves recognized the boundary line contended for by the State of Louisiana, by reason of the fact that the United States Government has confirmed to the State of Louisiana, the lands composing Half Moon Island, which is just south of the deep water channel, and which is composed of section 36, etc. * * * in the aforesaid land district, and parts of which are claimed by the State of Mississippi under its right angle line to belong to the State of Mississippi, have in fact been also confirmed to the State of Louisiana, by the United States Government, and are recognized as belonging to and forming part of the State of Louisiana by the said United States Government *and have always heretofore been so recognized by the people of the said two States.*" Defendant's counsel trust that they have successfully demonstrated two propositions: first, that the fanciful theory that international law can extend the deepest channel of a river, generally known as the thalweg,

beyond its estuaries into the open waters of the sea is entirely unsupported either by reason or authority; second, that the pretension that a State can win a recognition from the Government of the United States of its view of a boundary controversy by obtaining from such Government, *through an illegal proceeding admitting its entire lack of title*, an invalid donation of certain lands as swamp and overflowed, which were not such, is too destitute even of plausibility to justify its presentation here. If that demonstration has been successful, then nothing remains of complainant's claim of acquiescence except the general and concluding allegation: "and have always heretofore been so recognized by the people of the said two States." In defining the elements, which constitute acquiescence in a boundary controversy between States, this Court, in *Indiana* v. *Kentucky*, 136, N. S., 479, has said: "Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. In the case of *Rhode Island* v. *Massachusetts*, 45 How., 591, 639, this Court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the action of the commissioners of the Colonies, said: 'Surely this connected with the lapse of time, must remove all doubts

as to the right of the respondent under the agreements of 1711 and 1718.' " In that case this court held, in 1841, that the time necessary to operate as a bar in equity is fixed at twenty years; but where two political communities are concerned, *and the boundary in question was in a wild, unsettled country*, such a rule of limitation would not apply 15 Pet., 233. It is not pretended that in the "wild, and unsettled country" involved herein, complainant has ever exercised actual physical sovereignty and jurisdiction; and nothing is more notable in the testimony offered in her behalf that the absence of proof of acts which might be held to constitute a constructive exercise of sovereignty and jurisdiction. So far as the coast is concerned from the Rigolets eastward, the State of Louisiana has never asserted sovereignty or jurisdiction, by legislative act or otherwise, from her admission into the Union down to about 1900. The origin of complainant's claim to rights in that locality is thus stated in the bill: "9th. Now your orator avers that there has developed in *recent years* in the waters south of the State of Mississippi, and east of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom; 10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and *permits* the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made; 11th. That the State of Louisiana has by legislative enactments regulated

the oyster industry in the said State of Louisiana, and *prohibits* the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made. 12th. That the provisions of the laws of the said two States differ considerably in many other respects." The acts of the respective States thus referred to show that said difference has resulted from a conflict between an act passed by the legislature of Mississippi *in 1896*, and an act passed by the legislature of Louisiana *in 1902*. Nothing can more clearly illustrate how very recent has been the assertion of sovereignty and jurisdiction upon the part of Louisiana in the area above described.

The assertion of sovereignty and jurisdiction upon the part of Mississippi over the entire region in dispute should be dated from its annexation to the Mississippi Territory, by the act of Congress approved May 14, 1812 (U. S. Stat. at L., Vol. 11, p. 734), just one month after the admission of Louisiana into the Union. That act provides "That all that portion of territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory; to be governed by the laws now in force therein, or which may hereafter be enacted." On August 1st, 1812, the Governor of the Mississippi Territory under the authority of said act erected the area so annexed into a county known as the County of Mobile, from which a representative was to be elected to the territorial legislature. On December 14th, 1812, that legislature carved out of the said county of Mobile, the counties of Jackson and

Hancock, and in 1841, the legislature of Mississippi created out of parts of said counties the county of Harrison. As early as 1821, John Baker and Martin Hogan were convicted and sentenced to death in the Superior Court of Hancock County "for robbery committed *in the Gulf of Mexico, within the boundary of this State*"; and the Legislature of Mississippi, in an act passed in November of that year, awarded to John Quavre $200 "for having detected and delivered to justice, John Baker and Martin Hogan, for a robbery committed *in the Gulf of Mexico, within this State.*" Record, p. 2131. On the 29th of October, 1886, an inquest was held by the authorities of Harrison County upon the body of John Kennedy, who was drowned south of the Cat Island Channel, and whose body was found in Creole Gap, which is one of the interior waters of the Isle à Pitre. Record, pp. 1897–1904. In 1893, F. P. Lizana, constable and deputy sheriff of Harrison County, appointed by the Board of Supervisors to see that licenses were obeyed for fishing oysters, and to see that oysters were properly culled—his office being called "oyster inspector," it being his duty to exercise his functions within "18 miles. Supposed to be six leagues from the shore"—arrested John Bowen "between Grand Pass and Sundown Island, but more towards Grand Pass," for violating the oyster laws of Mississippi. Record, pp. 1509, 1510. That he was so arrested at that place Bowen admits. p. 1501. In 1830, the legislature of Mississippi enacted "That the south boundaries of the counties of Hancock and Jackson be, and they are hereby, extended to the south boundary of this State" (Record, p. 2118); and in 1842, said legislature

enacted, "That the county of Harrison shall be bounded on the south by the southern boundary of the State of Mississippi." Record, p. 1889. In 1839, the Mississippi Legislature passed an act providing for a survey of the "whole sea coast on the southern boundary of this State." Record, p. 2120. In 1842, said legislature requested Congress to make a "sufficient appropriation for the erection of a light-house on St. Joseph's, sometimes called Half Moon Island, situated in Lake Borgne, and lying between the mouth of Pearl River and the Bay of St. Louis" (Record, p. 2124); and at the same session said legislature consented that the United States "purchase a site on St. Joseph's, or Half Moon Island, for the purpose of erecting a light-house thereon" (Record, p. 2105). In 1843, said legislature began to protect the oyster industry by the passage of "An act to prevent the destruction of oysters in the waters of the State of Mississippi." Record, p. 1956. In 1856, said legislature passed a law entitled "An act for the preservation of game and oysters in this State, which act gives to the board of police of the three coast counties full jurisdiction to protect and preserve oysters and game within said counties. Record, p. 1958. In 1857, said Legislature enacted that "the counties bordering on the Gulf of Mexico—to wit: Jackson, Harrison, and Hancock—shall, respectively have and possess jurisdiction and extend to the southern boundary of the State within the space embraced by extending their boundary lines which strike *the Gulf of Mexico*, or the inlets thereto, on a continuous direct course to the southern boundary of the State, including all islands that may lie within the limits thus defined."

The substance of that act was embodied in the Rev. Statutes of said State of 1871, 1880, and 1892. Record, pp. 86–87. It has been settled by this Court that "Within what are recognized by the law of nations as the territorial limits of states, a state can define its boundaries on the sea and the boundaries of its counties. Massachusetts can include Buzzard's Bay, the headlands of which are less than two marine leagues apart, within the limits of its counties." *Manchester* v. *Massachusetts*, 139 U. S., 240. In the exercise of that right Mississippi did, by affirmative legislation of the most specific character, redefine in 1857, the boundaries of her three coast counties in such a manner as to include with greater minuteness of description than ever before, every foot of the territory in dispute. Her jurisdiction and sovereignty thus affirmatively asserted has ever since been maintained. And laws of like tenor and effect were passed in the years 1871, 1880, 1884, 1886, 1888, 1890, 1892, 1896, and 1902. Record, pp. 1960–1979. It has been held by this Court in *Indiana* v. *Kentucky*, 136 U. S., 479, that the enactment of legislation by a State for the assertion of its sovereignty and jurisdiction, and the taking of judicial action for the same purpose, is such affirmative action as should be taken to that end. Or, as this Court has expressed it, "Whilst on the part of Indiana there was a want of affirmative action in the assertion of her present claim and a general acquiesce in the claim of Kentucky, there was affirmative action on the part of Kentucky in the assertion of her rights, as we have seen by the law, declaring the boundaries of her counties on the Ohio River, passed in January, 1810; there was action

taken in the courts of the United States, and of the State by parties claiming under her, or her grantor, and there was also action by her officers in the assertion of her authority over the land; all of which tends to support the claim of rightful jurisdiction." When tested by that standard it appears that Mississippi, from her territorial days down to the present time, has been diligently asserting her rights of sovereignty and jurisdiction over the region now in dispute by all available means, legislative, executive, and judicial, while, on the other hand, it appears that Louisiana has done practically nothing, either by legislation or by the action of her judicial authority, to assert her sovereignty and jurisdiction prior to the enactment, as alleged in her bill, "*in recent years*," of certain laws for the regulation of "the oyster industry in the waters of said State." It may be worthy of mention here that Mississippi has also asserted her sovereignty and jurisdiction over the area in question, by ordinances adopted by her three coast counties regulating the taking of fish and oysters within the waters of said counties as heretofore defined, and in the ordinances of the boards of health of said counties, and in her pilot and harbor laws, co-extensive in point of time, with other legislation discussed above. Record, pp. 1905–2018.

The testimony as to the belief and claim of Mississippians that the possession, sovereignty, and jurisdiction of their State extends six leagues from her shore, covering all the territory in dispute, is absolutely overwhelming. It is based upon the actual judicial exercise of authority as demonstrated by the Baker and Hogan robbery cases

of 1821, by the Kennedy inquest of 1886, by the enforcement of the oyster laws, and by other acts of said State, as in the arrest of Bowen near Sundown Island, as well as by the unmolested enjoyment of the territory by thousands of fishermen for more than fifty years. Indeed it may be stated with certainty that at least sixty of the seventy-seven witnesses called by Mississippi sustain this statement. In that number are included governors, judges, district attorneys, sheriffs, clerks, mayors, justices of the peace, constables, and all classes of citizens along the coast from capitalists to the poorest tongmen. An illustration of the firm belief in the claim to such rights may be found in the following extract from the testimony of H. Heidenheim, Rec., p. 1692: "In 1885 our company organized a factory here (canning, at Biloxi), and we conferred with counsel in Jackson, Mississippi, and Gen. Joseph Davis, who was our counsel here, and before we invested money in that corporation as business people, it was necessary to be governed by intelligent legal advice, and we were advised at that time that the Mississippi boundary line was as it reads in that statute and as it was made by Congress, otherwise we would never have come here with this question hanging over us, with a doubt of getting it settled right and investing $75,000, or $100,000." At p. 1707, he says: "Well now, to give you some idea what the loss would be; when I came here Biloxi (18½ years ago) had 1,200 population, and to-day she has 7,500, or 8,000. The other places on the sea shore have equally grown directly or indirectly by this industry. The industry is in its infancy and in my opinion if we consider time, depreciation of real

estate, and other commercial conditions that now exist, that would be disturbed in the present and future that I could safely say the losses would be over $100,000,000.00, in the space of not over 25 years. * * * that is if you exclude that territory, that is the loss that would result." p. 1708. The following is the testimony upon this subject of complainant's witness, Wm. K. M. Dukate, manufacturer of canned products, as drawn from him on cross-examination. "Q. I want to ask you first, this question, whether you and other persons interested in the oyster and fishing industry from Biloxi and other points on the Mississippi shore, have regarded the sovereignty and jurisdiction of the State of Mississippi as extending 18 miles from her shore as indicated by the red lines on this map, and if so how long you have regarded the rights of the people of Mississippi and the jurisdiction and sovereignty of Mississippi to that extent? A. *We have always regarded the boundary of the State of Mississippi as reaching six leagues, or 18 miles from the shore, including all islands as indicated by the boundaries as mentioned in the Code of Mississippi.* Q. And so regarding that limit, have you, and other Mississippians exercised the rights granted under the laws of that State within the territory indicated on the map as belonging to that State? A. I believe that we have. Whenever the question has been brought up. I will state, however, that there has been never any molestation on the part of either State until I think the past two or three years." Record, p. 376. No more conclusive answer can be given to the pretension set up in the bill that the line as claimed therein has "always heretofore

been so recognized by the people of the said two States," than that embodied in the replies of Mr. Ducate, while testifying in complainant's behalf, and in those of many witnesses for the defendant.

XVI.

Summary.

If the arguments contained in the two preceding sections have demonstrated, first, that complainant derived no title to the region in dispute from invalid proceedings under a swamp land act, having no application to lands not of that character, and which, at its date, did not belong to the United States; second, that so far from defendant ever having acquiesced in the claim asserted by the bill, she has continually contested it through all the agencies of government, legislative, executive and judicial—then the Court has before it, *unembarrassed by subsequent events*, the merits of the original controversy as they arise upon the face of the acts now presented for interpretation. As the burden is upon complainant to make out her case as stated in the bill the fact cannot be lost sight of that the foundations of it are, first, the *contention of law* that a water boundary is defined by international law between the two States in the open waters of the Gulf of Mexico, because as complainant says, "it is, and always has been, the *custom* to regard the *channel* as establishing the boundary line of such States"; second, *the contention of fact* that the islands in question were in 1812, a part of her mainland. If, as defendant confidently claims, both foundations have

entirely given way, in what attitude does the case now stand before the court? Certainly upon the issues presented by defendant's cross-bill, which prays for affirmative relief upon the case made by it. Apprehending that result, no doubt, complainant has taken the precaution to state her case in the alternative, as follows: "27th. * * * *but if your honors should feel that any part of this disputed area was* ISLANDS *by reason of the presence of shallow water, then* AS ISLANDS *they are within the nine-mile limit of distance from the shore line of the State of Louisiana, and therefore belong to and form part of the State of Louisiana by that second prevision of the act of Congress, giving Louisiana all islands within three leagues of its shore line.*" In par. 24, complainant had alleged "that any other boundary than the *deep water channel* as aforesaid would cause the limits of the two States to *conflict and overlap.*" In no possible aspect of the case can the Court listen to the suggestion made by complainant in her answer to the cross-bill in the following terms: "Repliant further, especially and particularly denies that the limits of the State of Louisiana are to be defined and determined from the 'mainland' of said State, as claimed by respondent, but are to be defined, determined, and delimited from the islands, as the 'coast' of the State of Louisiana." The only merit in this suggestion is contained in the admissions that the "islands" exist as such separate and apart from the "coast." Assuming that the deep water channel theory has perished and passed out of the case as an impossible expedient, then the real and only issue that remains is this: Will this Court, construing the conflicting acts, *in pari materia*, so reconcile

them as to carry out the cardinal purpose of Congress, which evidently was to do equity and justice between these States, by giving to each the islands directly in front of it, and at the same time prevent any *overlapping*. To Mississippi was given all islands within *six leagues of her sea-front*, as some compensation for the great inequality arising out of the possession by Louisiana, of a coast line nearly six times as long as her own. Because of that advantage Louisiana was only given islands within *three leagues of her coast*. The effort of Congress thus to do something like equity and justice will be entirely broken down, if this Court so construes the acts in question as to give to Louisiana islands on her eastern coast, which extend about one-half of the way across the narrow sea-front of Mississippi. This argument must therefore end as it began with the contention "that, where a particular construction of a statute will occasion great inconvenience *or produce inequality and injustice*, that view is to be avoided if another and more reasonable interpretation is present in the statute." *Knowlton* v. *Moore*, 178 U. S., p. 77. The moment the Court determines that the acts in question are *in pari materia*, it follows, as a matter of law, that they "are to be construed together as forming one act. If in a subsequent clause of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing those phrases. *Consequently, if a subsequent act on the same subject* [passed seventeen years after the first], *affords complete demonstration of the legislative sense of its own language, the rule which has been*

stated, requiring that the subsequent should be incorporated in the foregoing act, is a direction to the courts in expounding the provisions of the law." Marshall, C. J., in *Alexander* v. *Alexandria*, 5 Cranch, p. 8. If in obedience to that rule, here defined and never questioned, this Court will simply "incorporate" the provisions as to boundaries contained in "the subsequent" act of 1817, into the provisions on the same subject contained in "the foregoing act," of 1812, all conflict will be removed by the recognition of the grant in favor of Mississippi [*thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne*], as *a limitation* upon the general terms of the prior act. Such a method of construction so firmly applied in *Alexander* v. *Alexandria*, was confirmed in *United States* v. *Kirby*, 7 Wall., 482, wherein it was said: "All laws should receive a sensible construction. General terms should be so *limited* in their application as not to lead to injustice, oppression, or absurd consequence. It will always, therefore, be presumed that the Legislature intended *exceptions* to its language, which would avoid results of this character. The reason of the law, in such cases should prevail over its letter." The court is thus authorized to give effect to the reason of the two statutes construed together as one law, by simply holding that the "general terms" of the first are to "be so limited in their application as not to lead to injustice, oppression, or absurd consequence," which would result if they were permitted to annul or abridge the grant to Mississippi, in the second of "all islands within six leagues of the shore to the most southern junction of Pearl River

with Lake Borgne." Complainant's bill clearly admits, a matter of law, that it was the intention of Congress give that area to Mississippi, when it says that the elimin tion of the deep water channel theory "*would cause t limits of the two States to conflict and overlap.*" Par. 2 The ultimate question, therefore, is this: How can th Court give effect to the grant to Mississippi, so as not cause "the limits of the two States to conflict and ove lap?" The adoption of the construction contended f would render impossible all conflict and overlapping, a would leave Louisiana, with her mainland untouched, full possession of her southern and eastern coast line wi all islands within three leagues thereof, excepting only t small group within six leagues of the narrow sea-front Mississippi. The only objection which Louisiana urges, can urge, against this rule of construction is that her a is prior in date, an objection which loses all legal signi cance the moment the *in pari materia* method is adopte for the conclusive reason that that method *eliminates d dates* by providing that all acts "are to be construe together as forming one act." By that method provisio of subsequent statutes are "incorporated into the for going act," and become a part of it, *just as if they were incorporated at its enactment.* Otherwise the method wou have no efficacy whatever. Under that method of co struction the court must presume that when it enacted t statute of 1812, Congress *intended* that its *general ter be limited by the special provisions of the statute of* 181 Therefore it cannot be said that the subsequent act impa the grant made in the preceding because, in legal conte

plation, *no such prior grant was ever made*, Congress never having had such an intention.

HANNIS TAYLOR,
MONROE McCLURG,
Counsel for Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 11, ORIGINAL.

STATE OF LOUISIANA, COMPLAINANT,

VERSUS

STATE OF MISSISSIPPI, DEFENDANT.

BRIEF FOR THE DEFENDANT AND CROSS-COMPLAINANT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

For a statement of the facts of this case the court is referred to the brief filed for the State of Mississippi by associate counsel.

Under Section 3 of article IV of the Federal Constitution, the Congress alone has authority to create states and fix their boundaries. In the exercise of this authority the Congress passed the Acts of 1812 and 1817 creating the States of Louisiana and Mississippi. These two said Acts are supposed to contain a description of the boundaries of the two States; it is to them we have to look for correct answers to the questions raised in this controversy. Everything is valuable in this investigation only in so far as it may aid in the ascertainment of the truth from these two statutes.

And not only is the authority of Congress in creating states and fixing their original boundaries exclusive, but boundaries cannot be changed, in view of this same section of the Constitution, without the consent of the Congress. Even the Legislatures of the states by joint, deliberate action, cannot change

boundary lines without the concurrence of the Congress. The Union retains this power over its members for reasons which are obvious.

Hence, the Department of the Interior through the Land Office, cannot determine boundaries between two states by confirming lands to the one state or the other. That the Land Office, in the year 1852, approved certain lands in the disputed territory to Louisiana is not a fact to be taken into consideration here, unless, in some way, it may throw light upon the meaning of the said Acts of 1812 and 1817.

Nor can it affect the issue here that numerous map-makers have drawn their lines so as to place this disputed territory within the limits of one or the other of these two States. Map-makers and cartographers have no authority to fix or change state boundaries. They can only depict their individual conclusions as to where a line really is.

In the same category are the offered opinions of various persons as to the correct location of the boundary line in the waters between the two States, whether such opinions aree ntertained by witnesses for Louisiana or Mississippi. Such persons, having opinions, cannot supplant nor supersede the Congress in its high function of state-making. They cannot, by taking thought, add a cubit to the domain of any state, nor can they by any sort of mental exertion take anything from the declarations of the Congress as to where and how a line shall be drawn.

Proof of the exercise of jurisdiction by the governments of the two States over the disputed territory is pertinent only in so far as it may appear that such exercise of jurisdiction is connected with or grew out of the accepted meaning of the laws when they were passed. So far, the exercise of such jurisdiction may be regarded as a continued expression of what was at the time well understood. The two governments could not agree upon a change and make it effective. They could not change the boundaries by encroachment on the part of the one State and concession on the part of the other. What they could not do by a solemn compact, they could not do by indirection or by inaction resulting from ignorance or mere supineness.

The same test of relevancy must be applied to the offered

proof of long possession by citizens of one of the two States. Neither the citizens of the States, nor the States themselves, can locate or change the line between them. If their occupation is of such long standing and was begun under such circumstances as to make it referable to the well understood contemporaneous meaning of the said statutes then this testimony is of value. But the doctrine of prescription cannot be utilized in this controversy. The law may presume that long possession was preceded by a valid grant from the party attacking the right of possession. But such presumption cannot be invoked against one of the States interested in this controversy when the grant which would have to be presumed is of the kind which the State could not have made originally. Neither State will be presumed to have done something which it had no power to do. This contention is not in conflict with any expression of this court in state boundary adjudications. In Missouri v. Iowa, ——————U. S., 12 L. ed., 658, consideration was given to long possession by one party and acquiescence for the same period by the other, but Iowa was treated as the successor of the United States, and the prescriptive rights, if any, had arisen when the interested parties were the State of Missouri and the United States, parties who could make and accept grants. In State of Indiana v. State of Kentucky, 136 U. S., 479, 34 L. ed., 329, the court considered the fact that Kentucky had, since her creation, exercised jurisdiction over Green River Island, yet the fact was used for the purpose of showing the original line, that is, the meaning of the terms used in the Act of Congress creating the State of Kentucky, and in the cession by Virginia to the United States of the territory out of which Indiana was formed. The long possession was not regarded as having changed the original line, nor as having established a line not intended by the Virginia grant or the Act of Congress, but it was considered as proof of the original intention and of the ancient boundary. The same is true of the holding of this court in State of Virginia v. State of Tenenssee, 148 U. S., 503, 37 L. ed., 537, 544, in which case the court gave effect to an agreement of long standing between the two States on the ground that such agreement was conclusive of the correctness of that particular location of the line. "The line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

The boundary line between these two States in the waters between them is now what it was in 1817. It has not been changed by the United States Land Office; by the Legislatures of the two States; by the map-makers and cartographers; by the historians and civil engineers; by the speculations of geologists; by the resolutions of boundary commissions; by agreements between boards of oyster commissioners; by the civil authorities of the two States; by the acts of the citizens of the two States who have taken possession of part of the territory in dispute; nor has it been changed by the action of the winds and waves. It was firmly established by the Congress, the only power having such original authority; it could not be changed but with the concurrence of that same power. The boundary of Louisiana in the waters of the Gulf in 1812 is the boundary now.

"In looking at transactions so remote, we must, as far as practicable, view things as they were seen and understood at the time they transpired. There is no other test of truth and justice, which applies to the variable conditions of all human concerns." *Rhode Island v. Massachusetts*, 4 *How.*, 591, 11 *L. ed.*, 1116. "Her (Kentucky's) dominion and jurisdiction continue as they existed at the time she was admitted into the Union, unaffected by the action of the forces of nature upon the course of the river. The question then becomes one of fact: Did the waters of the Ohio pass between Green River Island and the mainland of Indiana when Kentucky became a State and her boundaries were established?" *State of Indiana v. State of Kentucky supra.* The single purpose of this inquiry is to find out what the Congress intended; what has been done since 1812 and 1817, or what has happened since those dates, is of value to the extent that it aids in the discovery of this truth. And in the consideration of the question, What did the Congress intend? the court will try to view the territory in dispute as it was seen by the lawmaking body in 1812. It will be necessary to know what information that body had before it—what history, what maps, what general or official information. All such information possessed by an intelligent public, available to the Congress at the time, a part of the history of the country, would be considered by this court even if no proof of it had been offered here. *Lewis' Sutherland on Statutory Construction* (*2nd ed.*) *Sec.* 462, *and authorities cited in note* 65.

We apprehend that this court, in pursuit of the inquiry as to what was intended by the authors of the statutes, and in applying the statutes to the situation as it appeared to the Congress in 1812, will give little weight to the concessions, if any, in the pleadings, made by counsel for these States, since the line as declared by the Congress in these Acts could not be changed by any concession, agreement or mistake on the part of the counsel for the two parties litigant. And we assume, too, that if the prayer of neither bill nor cross-bill should be granted, this court will construe the laws involved, apply them to the facts as they may now appear to have existed in 1812, and give specific directions by which the line may be marked, as was done in Missouri v. Iowa, 7 How., 660, 12 L. ed., 861. It is a case in which the parties cannot speak finally as to their rights, hence their counsel could waive no substantial rights nor bind them by any blunder or concession.

The foregoing preliminary suggestions are intended to indicate our idea of the importance of section 3, article IV of the Constitution in defining clearly the real issue before the court, and of its value as an alembic to separate the good from the bad in this record. Starting here we know we have started right.

We will assume, too, for the purpose of this presentation, that there is occasion to invoke rules of construction. The two statutes are not readily reconciled. The presence of these parties in court demonstrates that fact. An effort, at a glance, to say to whom an island within six leagues of the Mississippi and within three leagues of the Louisiana coast belongs, will make the difficulty prominent. It is impossible to give Louisiana the islands within three leagues of her eastern mainland, and at the same time give Mississippi those within six leagues of her mainland, as the eastern mainland of Louisiana is defined by either party hereto. It is impossible to give effect in detail to the contentions of both States, although both parties stand upon these statutes. It is an occasion for the court to restore order between the two enactments and apply them so as to accomplish the great pervading purpose of Congress despite the appearance of physical details unknown to the lawmaking body.

Looking forward from the safe and sound position that, from the judicial standpoint, the sole object of this litigation is to ascertain what the Congress intended in the enactment of the statutes erecting the two States, we direct the court's attention to one large rule of statutory construction which, in our judgment, is of controlling importance here. We select the statement of the rule made by Sutherland: "The presumption is that the law-maker has a definite purpose in every enactment, and has adopted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it; and that if they have the intended effect, they will, at least, conduce to effectuate it. * * * * This intention affords a key to the sense and scope of minor provisions. From this assumption proceeds the general rule that the cardinal purpose or intent of the whole Act shall control, and that all the parts be interpreted as subsidiary and harmonious." This rule is of such frequent use as to be generally applied without being stated.

In the case at bar the general purpose of the enactments is large and clear. Whatever doubt may arise from a consideration of isolated parts are resolvable by reference to the general intent. The country was a waste; it had not been surveyed nor settled; only its continental outline was known; the meanders of the shore line, the location and extent of bays and lakes and other arms of the sea were not known; the authors of the statutes could not be accurate and consistent in detail; but the general object and the controlling intention may be known, and inaccuracies of detail will be dealt with by this court so as to make every part of the laws contribute to the success of the larger plan. It is this familiar rule of construction we especially invoke to harmonize and give effect to the Acts of 1812 and 1817. Chief Justice Marshall recognized its peculiar value as applied to controversies of this kind when he said "in great questions which concern the boundaries of states, where great natural boundaries are established in general terms, with a view to public convenience, and the avoidance of controversy, we think the great object, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals." Handly v. Anthony, 5 Wheat., 374, 5 L. ed. 113.

II.

The General Purpose of the Authors of the Acts of 1812 and 1817.

A majority of the members of the two Congresses that passed these laws were from states facing on the Atlantic. They all knew the value to a state of a frontage on the water. They could not look at a map of the original thirteen states without observing that they had been so laid off as to give to each its front door opening upon the sea. They knew the value of navigable waters, and of the wealth in and under the waters; they knew the value of ports and harbors, and the expediency of giving each state jurisdiction over the water adjacent to its land territory. They knew how sovereignties have universally contended for the shores of great waters. Engaged in state-making, in dividing a continent, they will be presumed to have kept this large object in view. "It is assuredly the incumbent duty of the General Government to make such a partition of its territories on the waters of the Mississippi, as will combine with local advantages a due regard to national policy. These essential objects cannot, in the opinion of your committee, be secured without a suitable division of the seacoast, acquired by the purchase of Louisiana." *Report of Committee of House of Representatives, on proposed admission of Mississippi Territory, in December,* 1811. *Am. St. Papers* (*Miscellaneous*) *Vol.* 21, p. 163. And in fact one of the strong arguments used by the people of West Florida, in their application to be annexed to the Mississippi Territory, of date November 20, 1811, in compliance with which application West Florida was annexed to said Territory, was that "by the addition the Mississippi Territory will derive the advantage of an extensive sea coast, of which she will otherwise be deprived." R. p. 2003. If this court had read neither of the Acts creating the two States, but had been informed of the general outline of the territory to be divided up into states, we submit that you would expect to find that Congress was moved by the considerations of expediency and right so universally recognized and that it erected states and fixed their boundaries so as to give to each a fair portion of the advantages derivable from a frontage on the open sea and jurisdiction over adjacent waters for a certain distance in front of the land territory. A glance at a map convinces one that, in a general way, the authors of these statutes

were moved by these large considerations. Alabama is 290 miles north and south, with about 40 miles of sea coast. Mississippi is 325 miles north and south with 72 miles of water front on the Mississippi Sound. Louisiana is about 230 miles, at its greatest length north and south, and claims more than 500 miles of water front.

In section VIII of the cross-bill filed by Mississippi in this cause appears the following:

"That the Congress of the United States, in the early history of the Republic, in dealing with the Gulf coast or shore and carving states out of the Louisiana purchase, was not perfectly familiar with said coast or shore line, and, as is shown by the several Acts of Congress, creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west, and the said states were intended to be formed and bounded, and, in the contemplation of Congress, were in fact so formed and bounded, as to give to each state jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give any state jurisdiction over waters adjacent to and immediately south and in front of any other state or territory."

This allegation needs no proof. It only attributes to the members of Congress the simple virtue of fairness, and an acquaintance with the natural laws of convenience and right. *Vattel's Law of Nations p.* 125 *et seq.* It assumes that the members of that body desired to do right; that they intended to give the people of one state no abnormal share of benefits universally esteemed to be of great value. It takes for granted that the Congress intended to do the sensible and natural thing; that it did not intend to embarrass one state or territory by giving jurisdiction over waters which regularly belonged to it and as a matter of convenience and expediency should belong to it, to another state. To say they did not intend thus to divide up the sea-front among the several states is equivalent to saying that the members of that body did not take into consideration the advantages to be derived to any state from a frontage on the open sea. But it is a matter of history that it was proposed to divide the territory embracing what is now Alabama and Mis-

sissippi by a line running east and west. The line was at last run north and south so as to make both states extend to the sea. In the effort to provide this open sea-front for Alabama and Mississippi, the Congress stretched them out so as to overcome the numerous bays and the Mississippi sound and give them their outlook upon the Gulf—a door opening into the wide world. The usual three miles from the mainland was not sufficient. This would have dropped their line within the Sound still hedged in by islands and still without a view of the high seas. The lines were drawn so as to reach out to the Gulf proper and embrace the intervening islands.

The Congress knew something of the recession of the mainland north of Mississippi sound from the Gulf line running from east to west and tried to save to the two States their ocean frontage by giving them six leagues from the shore. It was not necessary to extend the Mississippi line this far south if the only purpose was to embrace the small islands between the Gulf and mainland north and east of the present Cat Island Channel, because these islands are only about half way between the mainland and the 6-league limit. It seems to have been the large purpose to give these states jurisdiction over the same ocean domain as they would have had if the mainland extended to the line of islands. It was intended that these States, Alabama and Mississippi, should lose none of the usual open sea territory by reason of the presence of Mississippi sound and the bays. This Sound and the bays were not treated as the open sea. Mississippi sound is, on an average about three leagues wide from north to south. Mississippi's rightful and intended ocean territory should measure three leagues from about the southern shore of Mississippi sound, which line now coincides with the line drawn three leagues from the shore of the mainland. These said Gulf States were created looking southward; they face south. The Congress did not know that a part of the mainland of the Island of New Orleans extended quite as far east as it really did and does. The west shore of what is now called Nine Mile bayou was thought to be on the same meridian with the most eastern mouth of Pearl river. The said river was thought to be on the line of the most eastern mainland boundary of the Island of New Orleans and of the mainland of the new State of Louisiana. The line of the eastern Gulf boundary of the new

State of Louisiana was intended to be the line of the eastern boundary of the addition made north of Lake Borgne. It was not thought, of course, that an island could be within six leagues of the north shore of Mississippi sound east of Pearl river, south of the mainland, and at the same time within three leagues of the coast of the State of Louisiana, referred to in the Act creating the latter State.

If the court should find that we are correct in our position that it was the pervading and controlling purpose of the authors of these statutes to create and bound these States so as to give to each the advantage of property in and jurisdiction over the waters immediately south and in front of the mainland, then the large plan of the Congress can be executed without friction and with certainty. All the parts of the two statutes may be made to harmonize and every detail will be permitted to make its contribution to effectuate the general purpose. *It needs only to do, with perfect and exact information, what the Congress in* 1812 *undertook to do with crude and false information.* It needs only to do now what the Congress tried to do then; to apply the Acts to the modern situation so as to achieve the original purpose; to construe the laws so their purpose will not fail, although they were based upon misinformation.

But this large purpose of the lawmakers is thwarted by any construction of the Acts which cuts down the water front of Mississippi to two-thirds of the coast line, and reduces her water territory by at least one-third, and, to the same extent, unequally and abnormally increases the water territory of Louisiana, and gives to Louisiana an extent of water front far greater than was contemplated. It will be presumed that the Congress intended to make no such unequal division of these great advantages.

III.

In pursuit of our inquiry as to what Congress intended, we will ascertain, as far as possible, what material the lawmakers were dealing with. What information did the members of Congress have before them in 1812? What information as to the

now disputed territory was available in 1817? How far does the discovery of the extent and character of that information aid in the solution of the problems in hand? Do the two Acts of Congress, considered in the light of the information then accessible, show the presence of the overruling purpose to divide the Louisiana Purchase into states in such a way as to give to each state jurisdiction over the high seas immediately south and in front of its mainland?

In the large problem this record presents to the court there is one known quantity, to-wit: *the shore line of Mississippi.* That line is known with certainty. There are no conflicting contentions as to the point on the mainland, "due south" of of the "northwest corner of the County of Washington," nor as to the point of the "most eastern junction of Pearl river with Lake Borgne." Between these two points, along the mainland, is the shore line of Mississippi, all the islands within six leagues of which were, under the Act of 1817, to belong to that State. No nice distinction is necessary to be made between the words coast and shore. A few yards north or south of any line claimed as the shore line between these two points would not give rise to any controversy. The line runs east and west. It was known in 1817, as it is today, and there has never been the slightest uncertainty as to the point of either extremity. This suit was not filed for the purpose of ascertaining it more definitely. No proof has been taken to establish any point of it. Nor is it questioned by counsel for Louisiana that this is the line from which measurements are to be made to determine whether a given island is within the limits of the State of Mississippi. It is only contended that much territory within the calls of the Act of 1817 was given to Louisiana by the Act of 1812. The real question as to any island in dispute is not whether it is embraced within the description of Mississippi's boundaries in these waters, but whether it had already been made a part of the State of Louisiana.

There is, therefore, no occasion to construe the two Acts of Congress to determine what shore line was meant by the provision in the Mississippi Act: "thence westwardly, including all islands within six leagues of the shore to the most eastern junction of Pearl river with Lake Borgne." We may safely assume, for whatever purpose the fact may be used in this argument,

that the line within six leagues of which Mississippi was to have all islands is an established line.

And then it follows that every island within six leagues of this established line in 1817 which had not been previously made a part of Louisiana, belongs to Mississippi. In other words, if there is any limitation upon the plain meaning of the provisions of the Mississippi Act it is to be found in the Louisiana Act. The question is not What is Mississippi? but What is Louisiana? As stated by witness Hodgkins (R. p. 480), the Mississippi Act, standing alone, is plain except in that it requires a decision as to what are islands. We are not to determine what Mississippi should have under her Act, for that is manifest, but how much, if any, of the territory embraced within the calls of her Act does she lose to Louisiana. Mississippi contends that her Act gives her all islands within six leagues of any part of her shore; her adversary contends that she is not entitled to those within six leagues of the western part of her shore line, nor to any which may happen to be south or west of the deep water channel extending from the Rigolets to the Gulf.

Then since the meaning of the Act of 1817 is plain on its face; since it is easy to determine whether a given island is embraced within Mississippi's defined boundaries, there is no necessity to consider that Act here. Attention must be addressed to the Louisiana Act; that is the law to be construed. And in the examination of that enactment we certainly expect to find that it does not conflict with the Act of 1817. Since the latter Act plainly gives Mississippi all the islands within six leagues of an established shore line, the Louisiana Act will, if possible, be so construed as to allow to Mississippi all such islands. Every part of both Acts must stand.

Again, since we know the general purpose of the Congress in the two enactments, and know the shore referred to in the 1817 law, this court will expect to find for Louisiana a coast line—the "coast" referred to in the 1812 Act—having its location so far from the Mississippi shore line that an island cannot be within three leagues of it and at the same time within six leagues of the established Mississippi line. Because the lawmakers intended no conflict. The coast line of Louisiana within three

leagues of which all islands were to belong to that State, was, in the eyes of the lawmakers, so located that no such island could be within six leagues of the Mississippi shore.

Our purpose now, therefore, is to locate the Louisiana "coast" referred to in the Act of 1812. From the said Act of 1812, it appears that the State of Louisiana was to be erected out of "part of the territory or country ceded under the name of Louisiana by the treaty made at Paris on the 30th day of April, 1803." Nothing was intended to be embraced in the new State of Louisiana which was not understood at that time to have been ceded to the United States by France in 1803. It will hardly be contended even by counsel for Louisiana that it was the purpose to make the new State of Louisiana embrace any territory which was not agreed by all to have been ceded by the treaty of 1803. "The territory or country ceded under the name of Louisiana" was the territory which France and Spain and the United States agreed upon as being embraced in the said treaty. It was the "Louisiana" claimed by France in 1803 and referred to by President Jefferson in his message to Congress hereinafter discussed. The new State of Louisiana as created under the said Act of April 6th was to embrace no part of West Florida and no part of that country north of the Lakes or otherwise described by President Jefferson in his said message as being probably a part of the territory ceded by Spain to France in 1801 and by France to the United States in 1803. No doubtful territory was intended to be embraced within the limits of the original State of Louisiana. There was discussion and hesitation when it was proposed by the Act of April 14th, eight days later, to add to the State of Louisiana the territory between the Mississippi and the Pearl and south of the 31st parallel. It was suggested that this addition should not be made and this territory should not be included in any state until the title of the Federal Government was quieted, because it was said no state could settle the matter with a foreign nation. R. p. 1034.

Besides it clearly appears from the history of the controversy between Spain and the United States that at the time the treaty of 1803 was made it was not dreamed that the United States would get West Florida with the Louisiana Purchase. In 1812

the controversy was still on as charged by counsel for Louisiana in their replication. R. p. 95.

So it appears that not only must the territory forming the new State be within the boundaries as defined particularly by the said Act, but such territory must also have been a "part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803." If the particular definition of the boundaries east of the Mississippi is doubtful then we may consider the other description and ascertain what part of the country called Louisiana in the treaty of Paris was located on the east bank of the Mississippi. For this purpose it is necessary to go back prior to 1763. Up to that date, for more than half a century, France had owned all the country in that part of the world. She owned what was afterwards West Florida and Louisiana. She necessarily owned the territory now in dispute between these two States. On that date, the boundaries between the French and British possessions was established along the middle of the Mississippi River down to the Iberville, "and from thence, by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain, to the sea." This line was intended to give to Great Britain everything "on the left side of the River Mississippi, except the town of New Orleans and the island on which it is situated," which said island was to remain to France. R. p. 1010. This boundary line from Mississippi eastward through Iberville and the Lakes is the one adopted in the Act of 1812 and is the one which from 1763 to 1812 formed the boundary of Louisiana east of the Mississippi. It will be noted that it is not an accurate description. The line from the Mississippi eastward was only intended to cut off the Island of New Orleans. This description when it was used by the Congress of 1812 had been treated for fifty years as *one which carried nothing on the east side of the Mississippi except the town of New Orleans and the island on which it stands.* Louisiana embraced nothing on the east side of Mississippi but this island. There were no islands depending upon the Island of New Orleans. There is no mention in history of any island which passed with a cession of the Island of New Orleans. This description is the one adopted in the Act of February 20, 1811, authorizing the people of the territory of Orleans to form a constitution and state government. R. p. 1018. This

description was supposed to embrace the territory of Orleans.

History furnishes us further evidence that "Island of New Orleans" conveyed a distinct and familiar idea. The new State of Louisiana was intended to face south on the Gulf. It was intended to embrace nothing on the left bank of the Mississippi except the city of New Orleans and the island on which it stands. The description of the line from the Mississippi east is precisely that which had been used to embrace the said island. The long southern coast line which Congress intended to give to that state was not the coast of this island but the coast of the mainland.

President Jefferson in 1803 undertook "to consolidate the information respecting the present State of Louisiana, furnished to the Executive by several individuals among the best informed upon that subject." He describes the eastern boundary line of the Island of New Orleans, from the Mississippi to the Gulf "thence through the middle of that (Iberville) River, and the Lakes Maurepas and Pontchartrain to the sea." Again, he says, "the parish of Iberville then commences, and is bounded on the east side by the river of the same name, which, though dry a great part of the year, yet, when the Mississippi is raised, it communicates with the Lakes Maurepas and Pontchartrain, and through them with the sea, and thus forms what is called the Island of New Orleans. Except on the point just below the Iberville the country from New Orleans is settled the whole way along the river, and presents a scene of uninterrupted plantations in sight of each other, whose fronts to the Mississippi are all cleared and occupy on that river from 5 to 25 acres with a depth of 40, so that a plantation of 5 acres in front contains 200." And again, he says, "By recurring to the maps and examining the position of Louisiana, it will appear that the lower part projects considerably into the sea. It has in all probability been formed by the sediment brought down by the current and deposited on a flat coast. There is therefore on the east side but a very narrow slip along the bank of the river, from the sea to the Iberville."

Andrew Ellicott had the same idea about the Island of New Orleans, as shown by his map filed in this cause.

"The English had acquired the cession of Florida and all Louisiana east of the Mississippi, whose course became common

to the two nations, French and English. The former, however, preserved the isle of New-Orleans, formed by Iberville River and the lakes. * * * * The city is on the island which bears its name, 32 leagues from the mouth of the river, and one league from a narrow channel running to Lake Pontchartrain, which connects with the Gulf." *Memoir of the present State of Louisiana by Chevalier de Champigny, translated by B. F. French.*

But it would seem to be necessary only to call the court's attention to the historical fact that since the first settlements along the coasts of West Florida and Louisiana the Island of New Orleans has been known by that name. The idea which Champigny, Ellicott and President Jefferson had about it is that which the public had and which was in the mind of the authors of the Act of 1812. It was regarded as a distinct island on the east side of the River and extending not farther east than the mouth of Lake Pontchartrain at the Gulf. It was considered a narrow strip of land. The picture of it made by Bowen on his map of 1764 and especially that made by Ellicott show it as a narrow strip of land extending east to a line running north and south through the mouth of Pearl river. If the members of Congress had gone into the books all the information available would have shown them that this island extended only as far east as the Pearl river line. In the treaty of 1763 among the three nations the line between the French and English possessions in that part of the world was described as drawn along the middle of the Iberville River and the Lakes Maurepas and Pontchartrain to the sea and then it was provided that France ceded everything to Great Britain on the left side of the River Mississippi "except the town of New Orleans, and the island on which it is situated, which shall remain to France." In the letter to M. d'Abbadie, Director General and Commandant of Louisiana for France, from the King, that officer was directed to turn over to the King of Spain the French possessions in America, and he referred to the City of New Orleans *and the island on which it stands*, and he was directed to deliver to the King of Spain nothing on the east side of the River except the city of New Orleans and the island on which it stands. R. p. 1980. In a letter to James Madison in 1803, Albert Gallatin said, "The possession of West Florida, even without *New Orleans Island*, is extremely important and if it can be obtained, it ought expressly to include all the islands

within twenty leagues, or such distance as to include those which are marked on the map." R. p. 1984. In a letter to Mr. Cevallos by Messrs. Monroe and Pinckney in 1805, the *Island of New Orleans* is referred to as a division familiar to all. R. p. 1988.

The territory erected into the State of Louisiana was mainly west of the River. The Gulf coast available at that time was that from the mouth of the Mississippi west. Nothing on the east side of the river formed a part of the old Louisiana and of the Territory of Orleans except this island. It was not intended that the Island of New Orleans and all the other islands within three leagues of the eastern coast of that island should be embraced in the new State. No other islands bleonged to the United States at that time. The framers of the law knew nothing of any other island; and if they had considered the question they would at once have decided that there was but one island on the left bank of the Mississippi to be embraced in the new State. They expressly adopted the historical description of this island with the same meaning which had been given it for the fifty years previous.

The presence of the idea of the distinct, segregated character of the Island of New Orleans at the framing of the Act of 1812 explains the action of the same body of men, twenty-two days later, in extending the boundaries of the Mississippi Territory so as to include all the islands within six leagues of the mainland. *It was not contemplated that Louisiana would get any islands east of the Island of New Orleans.* This conclusion must be true because under no theory of the case, in the light of no information then available, could the islands within six leagues of the mainland of the Mississippi Territory have been added to it without taking territory close up to the Island of New Orleans. While the said island was thought of as a narrow strip running along the east bank of the Mississippi, yet it was thought to extend as far east as the line running north and south through the eastern mouth of the Pearl. Immediately on the east side of the Pearl Mississippi Territory began. Under the said Act of May 14, 1812, an island within six leagues of the mouth of the Pearl belonged to the Mississippi Territory. It is idle to contend that Congress committed so great a blunder as to provide for measurements from both sides of the right angle, to the east from the Louisiana side, to the south from the Mississippi side. The con-

clusion is inevitable that the lawmakers thought a line could run south six leagues from the eastern bank of the Pearl and not touch Louisiana territory.

The present State of Louisiana, like the Territory of Orleans, and like the Louisiana purchased from France in 1803, *and that ceded to Spain and delivered to her in* 1763 *by France, includes nothing east of the Mississippi and south of the Iberville except the city of New Orleans and the island on which it is situated.* All the remaining territory was West Florida, was added to the Mississippi Territory May 14, 1812, and made part of the State of Mississippi in 1817. The Island of New Orleans was the only available territory in that quarter.

The description of the line from the River Mississippi eastward was used and is to be understood with its historical meaning —with the meaning it had in 1763, in 1803, in 1811, that is, since 1763. The city of New Orleans happens to be on the left bank; it was the only considerable town in the entire territory; it was the seat of government for the territory, and was the center of trade and travel. Every cession of the territory was carefully framed so as to save their city to the people of Louisiana. In general, the River was the eastern boundary, but enough east of the River was always embraced to carry the city along with the country on the right bank. Reference to article VII of the Treaty of Paris of 1763 shows the soundness of this contention. "And for this purpose the Most Christian King cedes to His Britanic Majesty, and guarantees to him, the entire possession of the river and part of Mobile, and all that he possesses or should have possessed, on the left bank of the River Mississippi, with the exception of New Orleans and the island whereon that city stands, which are to remain subject to France." *Only enough east of the river was attached to the west side to carry the city.* This line was never changed. It is the line adopted the same year by King George in defining the boundaries of West Florida. It is consecrated by time. And in determining this line between France and England in 1763 there could have been no difference of opinion as to whom an island belonged. It all belonged to England with the exception of one island, namely, the one on which the city of New Orleans was situated. This much was carved out of the east side territory and constituted the single

exception to the general provision that the Mississippi river should be the boundary. In 1812, on April 6th, the United States (or Spain, her predecessor) stood where Great Britain stood on February 10, 1763. She claimed as territory all east of the Mississippi with the single exception of a single island, to-wit: the island on which the city of New Orleans is situated, that having been made a part of the newly erected State of Louisiana. The State of Mississippi has succeeded to the claims and rights of the United States in this same territory. What England might have claimed in 1763 and the Federal Government in 1812, Mississippi is entitled to now.

That the description of the line eastward from the Mississippi river as used in the Act of Congress and in the preamble to the constitution of the State of Louisiana is to be taken with its historical meaning—as a description for the Island of New Orleans—is capable of further proof. The public had a definite idea of the "Island of New Orleans." The court's attention is called to the numerous references and the familiarity with which such references are made. No writer paused to explain what he meant by "Island of New Orleans." The Congress itself called it by this name with no other description. R. p. 1868. The Land Office continually made use of it in naming the land district "east of the River Mississippi and island of New Orleans." And this court in its discussion of the conflicting claims of Spain and the United States, after the Louisiana purchase, to the lands between the Mississippi and the Pearl and south of the 31st parallel, refers continually to the island and recognizes the historical meaning to be given the said description. *Foster et al. vs. Neilson*, 2 *Peters*, 300. In fact, it would seem that the preceding general description contained in the Act of April 6, 1812, would place beyond the pale of discussion the position that the particular description must be given its historical meaning. The said general description is "part of the territory or country ceded under the name of Louisiana, by the Treaty made at Paris on the 30th day of April, 1803." The "Louisiana" of the Treaty of Paris of 1803 embraced nothing east of the River except the said island, hence nothing more could possibly have been made a part of the new State. The description is to be read just as if it contained the additional provision: "but nothing on the left bank of the River Mississippi is to be embraced in the State of Louisiana except the

city of New Orleans and the island on which it is situated." For the line east of the Mississippi described in the said Act of 1812 is the historical and ancient boundary of the said island on which the city of New Orleans stands.

And again, this ancient boundary was, by another Act, recognized by the same Congress that erected the State of Louisiana. The said line was twice declared in 1763: by the treaty made in that year defining the line between France and Great Britain in that part of the world, and by the proclamation of King George defining the boundaries of his province of West Florida. And this said 1763 line was twice declared by the Congress of 1812, and in the same terms used in 1763. The island of New Orleans was still treated as an exception, a reservation, a point of departure from the general description,— the one thing on the left bank of the River attached to the right bank. This reservation or exception was made in the words of France used in 1763; West Florida was added to the Mississippi Territory,—the West Florida described by King George in 1763. The West Florida of 1763 was described as follows: "bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast from the River Appalachicola to Lake Pontchartrain." This coast line embraced what is now Alabama and Mississippi. From that time West Florida was a well-known province and was always called by that name. In the Treaty of Versailles of December 3, 1783, it was ceded to Spain with no other description than "West Florida." In the treaty of 1819 between Spain and the United States the province was ceded under the same name with the additional description "the adjacent islands dependent on said province, * * * * are included." R. p. 1878. See the frequent mention of the province in the correspondence between Spain, France and the United States relative to the eastern limits of the Louisiana purchase not mentioned in Foster et al vs. Neilson: Madison to Livingston, (1801), R. p. 1982; Gallatin to Madison (1803), R. p. 1983; Madison to Monroe (1803), R. p. 1984; Instructions addressed to Monroe and Pinckney (1804), R. p. 1989; Monroe to Talleyrand (1804), R. p. 1993; Talleyrand to Gen. Armstrong (1804), R. p. 1995; Monroe and Pinckney to Cevallos, (1805), R. p. 1998; Madison to Monroe (1805), R. p. 2002; Minister of Spain to Secretary of State (1815), R. p. 2005; Monroe to Minister

of Spain (1816), R. p. 2006; Minister of Spain to Secretary of State (1816), R. p. 2007; Secretary of State to Minister of Spain (1816), R. p. 2008; Don José Pizarro to Mr. Erving (1817), R. p. 2011; Don Luis to Secretary of State (1818), R. p. 2014. And in the petition to Congress by the people of West Florida to be annexed to the Mississippi Territory (1811) it was assumed that everybody knew that province. The West Florida mentioned in these letters, the one known to history, is the province whose boundaries were defined by the King of England Oct. 7, 1763. And it was this same territory that was added to the Mississippi Territory at the instance of the inhabitants of West Florida by the Act of May 14, 1812. That the island territory of West Florida was clearly intended to be added by the said Act, is apparent when it is observed that no further addition was ever made to the Territory and five years later when Mississippi was created out of the western half of the Mississippi Territory its water line was made to follow the south line of West Florida. If West Florida, in 1763, was so framed as to embrace what is now disputed territory, the State of Mississippi embraces it.

This position may be further strengthened by an examination of the descriptive words used in the Proclamation of the British King in 1763 and those used in the Treaty of Paris of that year, and in the Treaty of Paris of 1803, in the Act of February 20, 1811, and in that of April 6, 1812. West Florida included "all islands within six leagues of the coast from the River Appalachicola to Lake Ponchartrain." R. p. 1979. The mouth of Pontchartrain was the eastern extremity, on that line, of the island of New Orleans. That lake was regarded as emptying into the Gulf of Mexico at that point. No islands were considered as being attached to that island. The coast line of West Florida extended westward to the island of New Orleans, and the eastern water line of that island was supposed to run south from the mouth of Pontchartrain, and of the mouth of the Pearl, the mouth of Pontchartrain and of the Pearl being at the same point. The West Florida description necessarily included islands (if any there were) along the eastern water line of the said island of New Orleans; it included every island within the 6-league limit except the Island of New Orleans itself however close such other islands might lie to that on which the city of New Orleans stands. The King of England had the right to do this since France had

reserved nothing east of the River except that one island. And the said treaties and the Acts of 1811 and 1812 use terms which clearly indicate that the mouth of Pontchartrain marked the eastern extremity, on that line, of the island of New Orleans. In all these descriptions Pontchartrain opens into the Gulf. Proceeding eastward from the Mississippi with the line, the authors of the treaties and laws stopped when they carried the description to the mouth of Pontchartrain. Thence eastward the country was known as West Florida; the line extending from the River to that point cut off the island. South of that line was the island of New Orleans, the one island going with the west bank of the River. Think of Spain while in possession of Louisiana after 1763 attempting to claim anything east of the Mississippi except the city and Island of New Orleans! How would Great Britain, in 1765, have entertained a contention on the part of Spain that the latter government owned the islands off the coast of the Island of New Orleans? The claim of Louisiana as against Mississippi can be no stronger nor better than such a claim by Spain in 1765.

That part of the coast line of West Florida from the most eastern junction of Pearl River with Lake Borgne to Pontchartrain now belongs to Louisiana. The selection of the Pearl for the eastern boundary of Louisiana was doubtless influenced to some extent by the discovery that the island of New Orleans extended that far eastward as shown by Ellicott's map hereinafter discussed.

The testimony taken by Mississippi to prove that this historical meaning is the one which tradition says was the contemporaneous understanding of the laws creating the States is of considerable weight. Witnesses for Mississippi many of them testifying as to information received fifty years ago say they heard it from "the old people" or "the old-timers" or "the old settlers" that all the islands claimed now by Louisiana and being within the 6-league limit are within the limits of Mississippi. They all say they have heard from these old people that Mississippi included every island within eighteen miles south of her coast. This is valuable testimony,—especially in view of the fact that no witness (with one or two exceptions) has said that it was ever considered by the old people to be a part of Louis-

iana. Louisiana did not attempt to show what tradition says as to her limits. She permits the proof of tradition offered in support of Mississippi's claim to stand unchallenged, to be accepted by this court at its face value. As far as this record shows, tradition tells but one story about it. B. R. Clements, a boatman, 74 years old, fished among these islands as early as 1851. He says: "it has always been my impression and all the boatmen's impression that Pearl river was the dividing line between Louisiana and Mississippi running due south." R. p. 1206. Cross-examined as to whether the line south from the Pearl is straight he said: "Well, Judge, that way we haphazard that. We say Pearl river runs due south. It might run southeast, or east southeast or somewhere around there. We never mentioned anything of that kind, but the supposition was among the boatmen (1851 to 1862) that this was the boundary line between the two States." Asked, "And that was the prevailing idea among the fishermen, you say?" he answered, "Yes, sir." And "That the line was due south 18 miles from Pearl river?" he answered, "Yes, sir." R. p. 1216. John Walker, a boatman, 71 years old, was asked: "Could you say whether or not the deep water channel line has ever been regarded as the dividing line between Louisiana and Mississippi?" He answered: "I never heard of it until this controversy arose between the two States. I always heard and always considered that the boundary line was due south from Pearl river 18 miles. I always did so consider it and always heard it spoken of in that way until this lawsuit." R. p. 1270. This witness says, too, that while he lived in New Orleans (1867), he and others thought that the jurisdiction of Mississippi extended to the mouth of the River, which idea was doubtless a remnant of the old understanding that Louisiana had nothing east of the River except the one island on which the city of New Orleans stands. R. p. 1274. Frank Fountain, 70 years old, an oysterman, on being asked about the line said he knew nothing only what the old people told him. "Q. What did the old people say? A. They said that the line was 18 miles south of Pearl river mouth. I don't know it though. I cannot prove it. Q. How old were you then? A. About ten years old." R. p. 1308. This witness says he heard it from old people as early as 1844. J. B. Fountain, 67 years old, testified: "Q. Where did you hear that the line was,

Captain? A. I have always heard that the line was 18 miles south of Pearl river. That is what I have always heard. Q. Have you regarded it as being 18 miles south all your life? A. No, sir, that is what I have heard, but I am not certain about it. Q. How have you regarded it? A. All the old settlers used to tell me that that was the limit." R. p. 1314. J. B. Mozan, 68 years old, born and raised on the coast and travelled these waters when he was ten years old, says his father told him 60 years ago that the Mississippi line ran south 18 miles from the mouth of the Pearl. His father lived there all his life and would be about 90 years old if now living. He says, too, that the people along the coast always understood it as his father explained it to him. R. p. 1341. Eugene Tiblier, Frenchman, 63 years old, raised on the coast, his father having lived there before him, says that he has always been told that the line runs south 18 miles from the mouth of the Pearl. His father would be 93 years old if now living. R. p. 1352. Richard Lanus, 57 years old, had always heard the same tradition as to the line. R. p. 1376. Charles Williams swears to the same thing. R. p. 1397. Peter Anglada, 40 years old, born and reared on the coast says: "My old father told me that the dividing line was Pearl river and that it runs 18 miles south, as I always thought that." His father would be 76 years old if living. R. pp. 1421, 1423. Wilmer Mathieu, 43 years, said "I considered the line and I have always heard that the line was 18 miles south of Pearl river." R. pp. 1435, 1438. U. Desports testifies to the same understanding "that the line was due south 18 miles from Pearl river." R. p. 1452. Earnest Desports, 51 years old, swears to the same general understanding. R. p. 1457. His grandfather came to the coast in 1825. T. R. Friar had lived at Ocean Springs 50 years and had "always heard that Pearl river was the line and from there running south." R. p. 1462. A. Ryan, 59 years old, commenced oyster fishing about 1870. He says, too, "I have always heard it said you know that the lines run south from the river straight out." R. p. 1466. He says he speaks entirely from what he has heard. A. Beaugez, 45 years old, lived on Cat Island eleven years. Always heard that Isle a'Pitre is in Mississippi and that the boundary line runs south from mouth of the Pearl. R. pp. 1469, 1470. J. B. Beaugez, 48 years old, said: "I have heard a good many times that the line ran from east Pearl river south • • • •

about 17 or 18 miles. That is what I have heard • • • • ever since I was a little boy. I have always heard my folks say so. That is, the old people." R. p. 1473. E. Ladnier, 37 years old, said: "I always heard that the line run due south from the mouth of Pearl river • • • • 18 miles." He said this is the tradition. R. p. 1475. F. P. Lizana, 45 years old, had heard his father say that these islands within six leagues of the coast are in Mississippi. His grandfather was a Spaniard and his father would be 89 years old if now living. R. pp. 1512, 1513. Capt. S. R. Thompson, 65 years old, born on the coast immediately north of the disputed area, boatman since 1867, said: "Well, the dividing line between the two States has always been understood with me and most of the captains that I talked with to be eastern Pearl river. The line followed this river while it flowed in its banks, and after it left its banks and emptied into the lake we thought the line extended due south 18 miles." R. p. 1524. K. L. Thornton, 49 years old, lived on the coast of Hancock county for the last 40 years. He says: "Well, as far as I can understand from hearsay and otherwise they have all claimed that the southern boundary is 18 miles from the shore, though it was not definitely located at any particular point. That is, I have never heard them speak of any particular islands or particular marshes or coast or anything else as being the southern boundary, but we have always spoken of it as being 18 miles from the shore." R. p. 1545. He says, again: "My recollection was from hearsay when I first came down to the coast as a child," and that "this was the general acceptation amongst the fishermen and people along here." He says, too, that he thinks all those people from whom he heard it 40 years ago are dead. Fred Eleuterius says the general understanding has always been, as far as he knows, that the line runs 18 miles south of the mouth of Pearl river. R. p. 1575. Cross-examined: "Where did you derive your information about the southern boundary of Mississippi being 18 miles south of the mainland? A. It was hearsay. Asking older men than myself about it. The boatmen." R. p. 1577. To the same effect is the testimony of Capt. George McCaughan, a seaman, 63 years old, born and reared on the coast. R. p. 1612. J. A. Breath, 58 years old, always understood that the line runs 18 miles south out of the mouth of Pearl river. R. p. 1645. Pascal Luzzi, born in Rome,

1855, came to this coast 1872. He says when he was among these marsh islands within six leagues of the Mississippi shore he always understood he was in Mississippi. "The old time people told us that we were in the State of Mississippi." R. p. 1652. He says they told him that 30 years ago.

It will be noted that we have quoted those witnesses who had the idea that the Pearl river extended is the line. This is as strong proof of the existence of a tradition as could well be offered. The "old settlers," the "old people" and the "old time people" from whom these witnesses received their information were contemporaries of the authors of the Acts of 1812 and 1817. Their impressions were made at the time of the publication of the laws and the creation of the States. What the public thought at that time, it is safe to assume, is what the Congress intended. The said proof is overwhelming.

And the said tradition, being in perfect accord with the historical account, the two—tradition and history—support each other. They speak the same truth. The conclusions we have drawn from the history of the lines were known to the public of 1812 and 1817, and have been transmitted from father to son, to the third and fourth generation.

No witness for either side says that any tradition gives these marsh islands to Louisiana. As we have already suggested, it does not appear that the people of that section ever thought of claiming them for Louisiana except in so far as such claim may be shown by the application made to the land department under the Swamp Land Act, and this transaction was probably known to no more than a dozen people. It stands to reason that the settlers knew of the limited extent of Louisiana east of the Mississippi—that nothing on the left bank of the River belonged to her except the one island. This understanding and the Pearl river boundary idea have been in the same minds all these years and they belong together.

The island of New Orleans, well defined, segregated, set apart, the only territory of the ancient and modern Louisiana east of the River—this *one-island* idea, could not live in the same mind with another idea that the islands along the coast of this single island belong to it and go with it. But it could be entertained

along with the general understanding that the ancient West Florida and the modern Mississippi includes everything except the one island reserved to Louisiana. "New Orleans and the island on which that city stands." These are the words of history and of tradition.

This truth could not be ignored by counsel for Louisiana in their pleadings and proof. Its presence with them at every stage of the proceedings is manifested by this record. They do not claim Isle a'Pitre or any marsh island because it is within the 3-league limit. They contend that it is a part of the original island of New Orleans, a part of what they now call mainland. They undertake to show that these marsh islands have been formed in recent years by the forces of nature. Why go to this trouble if they are entitled, under the Act of 1812, to the islands within three leagues of the coast of the island of New Orleans? Why depend upon the wind and waves if the Act creating the State gives to it these islands within the 3-league limit? This laborious effort on the part of counsel for Louisiana is a recognition of the truth of history that Louisiana was given but one island east of the River, and of the necessary conclusion that in order to place these islands in Louisiana in 1902 it must be made to appear that they were not islands in 1812, but were part of the *one-island* which their State received on the left bank of the River. Louisiana was made to extend across the River only to take in one island: they must therefore prove that these islands in dispute are fragments of the said one island. In this way alone can the historical description used in the Act of 1812 be made to contain them.

This same one-island idea has been entertained too by the Legislature of Louisiana and by the civil authorities of that State until the development of the oyster industry in this section. The Legislature has never defined the boundaries of the parish of St. Bernard so as to embrace these marsh islands; nor had the boundaries of the older parish of Plaquemines ever been made to surround them. Counsel were expressly requested by counsel for Mississippi to produce such legislation, but it was not produced. We infer that there is no such Louisiana statute. The legislature of Mississippi however, as early as 1857, extended the boundaries of our coast counties so as to make them embrace these islands. Nor does it appear that the civil authorities of Louisiana

ever exercised jurisdiction or claimed jurisdiction in this disputed area until a few years ago. The people of Louisiana have consistently confined their claims as citizens of that State to the *one island*. The single exception is the claiming of this island territory at the United States Land Office in 1852. And to save the territory to Louisiana it has been undertaken to weld the parts together and claim the entire territory as one island.

Suppose the Congress did not use the historical description of the line from the Mississippi eastward, but traced the line on a map and selected the description from the map on which the line was traced. We are entirely willing to take up and examine this suggestion. If the authors of the Act of April 6, 1812, did take the description of the said line from a map we will be permitted to assume that they used the names found on the map. The description to be examined is "thence along the middle of said River (Iberville) and Lakes Maurepas and Pontchartrain to the Gulf of Mexico." It is evident that if any map was depended upon it was one which ignored the Amite River and represented the Iberville as connecting the Mississippi with Maurepas. No map need apply for the distinction which does not possess this peculiarity. No mention is made of the Amite although on modern maps, and on a majority of the old maps it forms the larger part of the connection between the Mississippi and Maurepas, the Iberville flowing into it. When the second Act of April 14th was framed, the Amite was recognized in describing precisely the same line from the same extremity. And in the second place, it appears that no mention is made of the Rigolets in the said Act of April 6th, "Thence along the middle of said River and Lakes Maurepas and Pontchartrain to the Gulf of Mexico." Nothing is mentioned between Pontchartrain and the Gulf, although there are two routes some distance apart and nine or ten miles long, Chef Menteur and the Rigolets, from Pontchartrain to the Gulf. The map taken for a guide, if any, showed an open easy connection between Pontchartrain and the next waters which required no description. And in the third place, no map can be considered as a probability which called the waters into which Pontchartrain opened "Lake Borgne." Neither Louisiana Act mentions Lake Borgne. The line traced and described did not pass through Lake Borgne else it would

have been described. Again, no map can be elected which does not make Pontchartrain open easily into the Gulf. The description stops at the mouth of Pontchartrain and calls those waters the Gulf of Mexico. Let us see whether there was then extant any map which can stand the test of a trial under the Act itself. It does not appear that the maps of this section were numerous, hence it ought not to be a difficult matter to select the eligible.

Of course, we will discuss here those maps only which were in print in 1812, and which might have been examined by the authors of the Act of April 6th. And the court is asked to consider them, not for their inherent worth—for no two agree and all are wrong—but because they deal with this territory and furnished the only information pertaining to the same then available. For the purpose of this immediate inquiry, they are to be treated as primary evidence, not of the shape of the land pictured thereon, but of the character of the information which was then accessible to the members of Congress. They are as valuable for what they omit as for what they contain.

Bowen's map of 1764 represents the island of New Orleans as extending eastward as far as the Pearl, connects the Mississippi and Maurepas by the use of the Iberville, has a large open mouth for Pontchartrain into the waters next east, makes no mention of Lake Borgne, and opens Pontchartrain into the Gulf. This map might have been referred to since its description of the line is the same as that used in the Act. It was published in an atlas and was very likely at hand.

Bellin's map of 1764 pictures a solid island cut off by a channel extending nearly south from the southern part of Lake Borgne to the Gulf. It shows numerous arms of the sea and also places Lake Borgne between Pontchartrain and the Gulf. It does not represent the open sea as being immediately east of Pontchartrain. If the lawmakers had been looking at this map they would have found it necessary to describe the boundary much farther east than the mouth of Lake Borgne before reaching the Gulf. It is easy to conclude that they did not have this old map before them.

Tirion's map of 1766 does not show the Iberville or the Amite; it does not show the broad open exit from Pontchartrain into the open sea; it shows at least three mouths of Pearl River.

It represents a channel from Pontchartrain to the next waters east and calls it Pass à Guyon.

Jeffery's map of 1775 shows a narrow channel from Lake Pontchartrain to the next waters east and names it Passe à Guyon. The same criticism may be made of Lieutenant Ross' map of the same date. Besides, the said Ross map plainly marks the Iberville as connecting the Mississippi with Lake Maurepas. His map is but a copy of that made by Jefferys. And the map of 1766 taken from the London Magazine is but a copy of Tirion's map.

Lafon's map of 1806 is the one to which counsel for the State of Louisiana have given especial attention in the taking of testimony. We apprehend that this is the map which they will insist was taken for a guide when the Act of 1812 was framed. But it cannot stand to be tried by the Act itself. It clearly marks the Amite as forming the larger part of the connection between the Mississippi and Maurepas, while the original Act creating the State of Louisiana does not mention the Amite at all as forming a part of this channel. The Lafon map plainly marks the Rigolets, but there is no mention of the Rigolets in the Act of 1812. Lafon places Lake Borgne and other waters between Pontchartrain and the open sea. If the framers of this statute had been looking at Lafon's map they would not have failed to mark the line from the mouth of the Rigolets to the Gulf.

All the above named maps, Lafon's and Bowen's excepted, were made by foreigners. It is more probable that the Congress, if using any, looked to the map or maps made by persons living in this country. The contest would seem to lie between Lafon's, Bowen's, and one other map, made by Andrew Ellicott, a then recent map. An examination of these two maps, Ellicott's and Lafon's, in the presence of the Act of 1812, renders a decision easy and certain as to which of these two maps, if either, was taken for a guide.

Andrew Ellicott's Journal of his explorations and surveys had recently been published, and was official. He had been into this territory and published his journal and map as being based upon first hand information. He was paid by Congress to do the work; he made actual surveys. This journal and map were immediately at hand and we would expect to find that the mem-

bers of Congress, having special confidence in their own representative and employe, looked to Ellicott's map and journal for their information. Let us try his map by the Act of 1812 and determine whether the use of terms in those Acts and the peculiarity of the descriptions were likely taken from this map. In the first place, it will be noted that Ellicott's map gives no name to the channel from Lake Maurepas to the junction of the Iberville and the Amite. One cannot look at his map and decide whether the channel from the junction of these two rivers to Maurepas is the Amite or the Iberville. The original Act of April 6, 1812, calls it the Iberville, the Act of eight days later calls the part east of the junction the Amite. In the second place Ellicott allows a large, free opening from Lake Pontchartrain to the open sea. It does not show the Rigolets, but places the waters of the Gulf next after Pontchartrain going east. In the third place, Ellicott does not represent Lake Borgne at all and does not place any body of water between Pontchartrain and the Gulf. In the fourth place, Ellicott shows two mouths of Pearl River and shows them too immediately at the mouth of Pontchartrain, so close that there is no necessity for a description of the line connecting the eastern mouth with Lake Pontchartrain. The feature of this map which, to our mind, makes it reasonably certain that it was before the makers of the law at the time the description of the boundary of the original State of Louisiana was being described, is that the Gulf of Mexico is represented as being in direct close connection with Lake Pontchartrain. The description contained in the said original Act covers the entire distance from the mouth of Pontchartrain to the Sabine River with "thence bounded by the Gulf of Mexico." If the lawmakers had their eyes on a picture it was one which brought Pontchartrain and the Gulf together, one which showed no route to be defined from the mouth of Pontchartrain to the waters of the Gulf.

We may, therefore, with safety infer that the authors of the said Act of April 6th, used the description of the line from the Mississippi eastward as it was found in the several treaties concerning that territory with its historical meaning since there was then in existence no map which employed the same description for the line as that used in the said Act. The said maps make a stronghold of the position to which we had already been con-

ducted by history and tradition. We respectfully submit that the said position is invincible.

And if, under any view of the case, our conclusion above stated should not be accepted by the court, there remains only an alternative, to-wit: the conclusion that the framers of the Acts used Ellicott's map for a guide. That is the only map which ignores Lake Borgne and the Rigolets, gives Pontchartrain a wide opening into the waters immediately east and calls these waters the Gulf of Mexico; and is the only one which combines all these said peculiar features with a doubtful connection of the Mississippi with Maurepas.

But we are willing to accept either alternative—we are willing to stand upon the conclusion that the historical description was used, or that Ellicott's map was before the lawmakers. We have already demonstrated our readiness to accept the description with its historical meaning. And it will appear that Ellicott's map presents the several historical and traditional ideas for which we are contending: the Pearl River line extended south along the eastern water line of the island of New Orleans; the isolated, well-defined island on which the city of New Orleans stands. This map presents the picture which was in the mind of the authors of the Act. It is true to history though not strictly true to the facts. The island of New Orleans is set apart. The lawmakers looking at this map might still have employed the historical description.

Our conclusion is that the State of Louisiana was intended to embrace no territory east of the Mississippi except the island on which the city of New Orleans stands, this conclusion being based upon the following facts:

1. The description of the territory on the east bank of the River, used in the Act creating the State, is the one whose meaning was established; it is the ancient description for the island of New Orleans.

2. The same Congress that passed the said Act added all the other islands to the Mississippi Territory in the annexation of West Florida east of the Pearl to the said territory, the said province of West Florida including all islands within six leagues of the coast.

3. The Congress of 1817 erected the State of Mississippi in the western part of this territory and adopted, as a matter of course, the West Florida lines.

4. History represented the island of New Orleans as a narrow strip along the east bank of the River with its north and south line on the east side as an extension of the east Pearl river line, thus making apparent the impossibility of allowing to West Florida, or Mississippi Territory, or the State of Mississippi islands within six leagues of the eastern bank of the Pearl if any island had previously been attached to the said island of New Orleans.

5. Tradition, proved by satisfactory evidence, says that the east Pearl river line extended is the line understood generally at the time the States were formed. And no tradition says the territory was ever considered to be in Louisiana.

6. Louisiana has always confined her jurisdiction to the island of New Orleans in these waters, her Legislature having never extended the boundaries of any parish around it and her civil authorities having never exercised jurisdiction over it. The only claim ever made to it consisted in an application to the United States Land Office under the Swamp Land Act of 1850 and the subsequent sale and taxation of the land. And it does not appear that any Mississippian ever heard of this.

7. The only map in existence at the time which can with reason be insisted upon as having been taken for a guide by the authors of the said Act, shows the island of New Orleans segregated, well defined, its eastern water line an extension of east Pearl river, and with the islands southwes' of Cat Island close up to the Mississippi shore.

IV.

But what signifies the conclusion that the historical description of the island of New Orlea s was used and that nothing east of the Mississippi was to be in Louisiana except the said island, when the said conclusion is viewed in the light of the large purpose which we have been insisting controlled the authors of the laws? It restores order and prevents a conflict between the enactments. The two great truths of history fit the two States together firmly and wisely and vindicate the justice and

clearness of vision of the Congress. Louisiana had nothing on the east of the River but the one island; her coast line with its dependent islands was and is on the south; the coast line from which measurements were intended to be made—to ascertain which this investigation was instituted—runs generally east and west; the islands within the 3-league limit which Louisiana was to have were and are "'immediately south and in front of her mainland," not on her east line, at her side door, on the coast of her island of New Orleans, in front of and south of Mississippi. It enables every part of both Acts to stand. It makes each detail to contribute its part in the accomplishment of the single purpose. It relieves the necessity of an operation upon the Mississippi Act to make it appear not to mean what it says. It locates a coast line for Louisiana, the one intended, from which measurements may be made to determine her ownership of islands, and at the same time leaves undiminished the well-known shore line of Mississippi unequivocally defined by her Act within six leagues of which she is to have all islands.

V.

In the foregoing argument we have assumed that the island on which New Orleans stands has the same shape and extent that it had in 1812 or 1763. Of course, if that island extended as far eastward as Isle a'Pitre in 1812 and the area now in dispute was part of a continuous body of solid land, part of that island, Louisiana is entitled to it. She gets whatever was then the island of New Orleans, however great its extent. If the lawmakers were mistaken as to the extent, at that time, of the said Island, and its east line was at Isle a'Pitre and not at Nine Mile bayou south of the eastern mouth of the Pearl, the Isle a'Pitre line should still be adopted. If the islands for which we are contending have been formed since the States were created we concede them to Louisiana.

We have already demonstrated, however, that the lawmakers thought this territory was composed of islands. They thought the east line of the island of New Orleans was south from the eastern mouth of the Pearl. We apprehend, therefore, that if there was in 1812 a channel on the line south from Pearl river separating the mainland of New Orleans island from the marsh

territory, this line will be accepted although there might be room for difference of opinion as to whether the bodies of land, at that time, were properly called islands, and although it might further appear that the said marshes originally formed a part of the said large island. The Congress considered them islands.

We will now proceed to inquire whether the evidence proves that these islands have been formed since 1812. Testimony is offered as to subsidence; as to storms; as to particular changes.

It will be observed that the consensus of opinion among geologists is that all this peninsula was formed by the Mississippi river from its deposits. No geologist guesses at the age of this river; no one of them speculates upon the time during which it has been making deposits in these waters. All the land south of Maurepas and Pontchartrain was doubtless constructed from these deposits. Since this disputed area was created, the river has built more than a hundred miles of banks with thousands of acres of land. This has required so many thousand years that the most daring geologist will not under take to fix the limit of time. And although this land was formed so far back in the history of the world; and although we find it now broken up into well-defined islands, yet counsel for Louisiana insist that this court should conclude that it has been so broken up within the last century. Can such remote and doubtful facts be proved by mere speculation, itself indefinite and doubtful? Or by the hearsay of map-makers? The burden certainly is upon Louisiana to prove that these islands were, in 1763 and 1812, a part of the Island of New Orleans.

The testimony of Maj. B. M. Harrod, a member of the Isthmian Canal Commission, is eminently fair. He says lines have been run from Baton Rouge down into the Parish of St. Bernard, but the changes were not perceptible. While it is generally believed that the subsidence is going on it has never been discovered by instruments. He knew the country before 1850, but has noted no change within this disputed area. Asked, "Well, do you believe that since the years 1812 and 1817 the conformations of those islands have been materially changed either by action of tidal waters or subsidences or by any other agencies, and we mean by those islands in this question those nearest and adjoining Saint Bernard—the mainland of Saint

Bernard parish?" He answered, "I could not give any answer about the time, since 1817 or 1818. I believe that peninsula was formed by the river deposits being placed out in a shallow sea that had tidal movements and instead of forming a solid peninsula it left these open areas through it for the tidal movements in and out of Lake Borgne and Lake Pontchartrain and that those lakes or spaces of water have been enlarged since their formation, by subsidence. That is my opinion about the formation of that peninsula; that water areas were left there when it was originally formed and have subsequently enlarged by subsidence." And then he said the process has been going on "For centuries I have no doubt." R. p. 135. Capt. Thomas Summerall noted changes at Creole Gap and at the mouth of Three Mile Bayou made by the 1893 storm. R. p. 243. Capt. J. D. Railey says Three Mile bayou was only about 100 feet at mouth when he first knew it and now it is three times that. R. p. 250. Also noted changes between 1869 and 1889 at Point Comfort and Martin Island. Says Three Mile bayou was so called in 1869. Always 2 1-2 feet of water through Three Mile bayou south at very low tide, and 4 feet at high tide. Says the general body of the island area is now just as it was in 1869. R. p. 259. Charles Sanger testifies as to changes within the last 10 years. R. p. 260. To the same effect is the testimony of William Dillard. R. p. 266. Says Nine Mile bayou is 30 to 40 feet deep in one place. R. p. 277. Capt. Alfred C. Ruiz made trips down Nine Mile bayou in 1874. R. p. 294. Round island has disappeared since 1876, and there have been changes along Nine Mile bayou. R. p. 295. Nine Mile bayou has a very deep channel. Has gone through the marshes with the Majestic drawing 3 1-2 feet of water. Alfred Monier, in January, 1904, walked from Malheureux Point to Isle a'Pitre, being carried across the bays and bayous by George Thiel. It is a hard coast line, and about 50 miles long. Shore from 1 1-2 to 2 feet above sea level. Had no high tides. R. p. 326. William C. Stubbs, professor of agriculture in Louisiana State University, 58 years old, says the whole Mississippi Delta was formed by deposits; that Maurepas and Pontchartrain are fragments of the Gulf; that Louisiana belongs to the recent or present geological period, and that this *period may cover five thousand or five million years.* Says it is the opinion of geologists that the Mississippi Delta on the Gulf

sinks at the rate of four feet a century; that the area now in dispute sinks less perhaps; that the bed of the Mississippi Sound, the land under water, subsides at the same rate with that above water, and says he is certain there have been changes within the last hundred years, but could not call them great changes. R. p. 332. John McGraw, a purchaser of lands in disputed area from Louisiana says St. Joseph island has disappeared. Knows of changes at Creole Gap, Three Mile bayou and Grand Pass. He and other witnesses speak of a tradition as to how Creole Gap was formed. (But, it will be noted, there is no tradition which tells of the creation of any other pass or bayou along from Petite Pass to Isle a'Pitre or of the mainland of New Orleans island ever including this territory.) R. p. 409. J. B. Baylor, connected with United States Coast and Geodetic Survey since 1873. First survey by United States in the 50's. Made surveys on Mississippi coast and outlying islands in 1903 and found there had been no marked change along the line from Malheureux Point to Isle a'Pitre in last 50 years. "As a general proposition my work showed conclusively to my mind that there has been no marked change in regard to the washing away of that coast in 50 years." R. p. 416. Says the original topographic and hydrographic sheets made 50 years ago are on file in the archives of the Coast Survey and that a re-survey would show precisely what changes have taken place within the last 50 years in the widening of bayous between Malheureux Point and Isle a'Pitre. R. p. 434. William C. Hodgkins, an assistant in the Coast and Geodetic Survey, with which department he has been connected since 1871, says the Land Office surveys are shown by topographical maps, and that a survey of country south of Lake Borgne and the Sound was made in 1845. R. p. 483. James Wilkinson, 48 years old, ex-district attorney for parishes of St. Bernard and Plaquemines, testifies in a general way about the agencies at work to sink the whole of the Louisiana country. R. p. 525. Joseph C. Gilmore owns a part of Isle a'Pitre and was on the island as early as 1881. Has never noted any material change. R. p. 541. Capt. A. S. Cowand, 65 years old, says he knows every bay and pass in the disputed territory, having been in it frequently since 1853. He camped on Half Moon island in 1857. Then there were several islands known as Malheureux "on the corner of Petite Pass, on the Lake Borgne side." R. p. 545. These islands have disap-

peared. In the marsh you frequently find more than 20 feet of water. There have been changes at Nine Mile bayou, it being about double its width in 1853 and 1857; Three Mile bayou has widened 150 feet in the same time. Heard the lighthouse keeper say, in 1858, that he remembered when Petite pass was made. Noticed that shell banks at Johnson bayou, Turkey bayou and Grand Pass have disappeared. Creole Gap has been formed since 1857. Has noticed changes at Sundown island, Brush island, Martin island, Elephant pass; every island in the marsh has decreased in size. Says Lafon's map of 1806 comes nearer to showing the territory as he first knew it than Mississippi Exhibit A. He does not recall any bayou similar to that marked "B. Guillemard" on the Lafon map. R. p. 561. His father settled in this section in 1832, and he told witness of the tradition that the early French settlers named Isle au Pied from the discovery of a great many tracks on it. R. p. 566. Has known all these passes and bayous running south from Mississippi sound since 1857 and they were well-defined water courses when he first knew them. Knew these islands in 1857 and believes they were smaller then than in 1812. Fished oysters in the marshes in the 50's. Can trace on map No. 17 the route he followed in 1857. Mississippi Sound, Lake Borgne and the bays had the same names in 1833 when his father settled here that they have now. He is of the opinion that the territory contained much more land and much less water in 1812 than it contains now. R. p. 597. C. Donovan, civil engineer, 53 years old, for 25 1-2 years employed to inspect the work done by Eads on the jetties. Says the subsidence of the land necessitated a change of the plane of reference by which the depth of the jetties was determined. Thinks the subsidence in the country around Port Eads amounted to 1.54 feet in 25 years, and that there was no change in the Gulf level. R. p. 646. Ernest Cucullu, 69 years old, born in New Orleans, lived in St. Bernard parish all his life. Went through Nine Mile bayou in 1846, but no farther into the marsh; is not certain, but thinks there was more land there in 1846 than is shown now by map 17; Nine Mile bayou was 500 feet wide at mouth when he first saw it, and was a deep bayou. R. pp. 670, 671. Charles Marshall, superintendent, Louisville and Nashville railroad, says the marsh traversed by his road is becoming higher and firmer. R. pp. 691, 692. Hugh C. Smith, civil engineer, 45

years old, employed in 1895 to make a map of St. Bernard parish, the said map being No. 52. He made this map without new surveys, relying mainly upon the surveys by Powell and Richardson, made in 1843, '44, and '45.

The testimony mentioned in detail above was offered to prove subsidence and particular changes. But the proof of changes is strikingly uniform in that the witnesses tell of the same changes—the principal being at St. Joseph island, Three Mile bayou, and Creole gap. They all know about these three and some of them tell of a few others. Such testimony goes only to prove conclusively that no general change has been going on and only such particular ones as occur wherever bodies of land and water rub together. The general change is in theory only. The fact that these three prominent ones are remembered by all indicates that they are the only noticeable ones and that they stand out prominently.

The proof offered as to particular changes certainly does not prove that these islands did not exist in the same general shape and size two hundred years ago. The testimony may be sufficient to raise a doubt as to whether they were islands one thousand years ago, but it certainly falls far short of proving it with such certainty as to justify an assumption of the fact. There is no tradition as to the formation of Nine Mile bayou. It was a large water course in 1843, deep and nearly a quarter of a mile wide. See Louisiana Document No. 43, R. p. 1047 f. The same surveys of 1843, '44, and '45, show Three Mile bayou with the prominence it has on the latest maps. See R. p. 1047 b. In fact, counsel for Louisiana have offered opinions of witnesses to prove subsidence and particular changes, and at the same time have offered reliable facts which prove conclusively that there have been no material changes. Hugh C. Smith prepared his map of St. Bernard parish in 1896 and used data collected by Powell and Richardson 50 years before. He made no new surveys. He had at that time no such information as to great changes due to storms or subsidence as, in his judgment, called for a new survey or rendered the map of 1846 inaccurate and unreliable. The police jury of St. Bernard took the same view of it. They knew of no phenomena at work among the marsh islands which likely had changed the face of the country. They accepted Smith's map based upon surveys and topographical maps made 50 years

before. And this court needs only to compare the township plats prepared by Richardson and Powell in 1843, '44, and '45, with the latest maps of this territory to be convinced that within the last 60 years there have been no noticeable changes in the topography of this disputed area. Mr. Baylor said that the information collected in 1855 by the Coast and Geodetic Survey could be had and that from this information it could be determined in detail and to a certainty what changes have taken place. This information was not furnished. This witness made surveys and established lines in 1903 along the southern line of Mississippi sound, and he says he is certain there had been no material change within the previous 50 years. This testimony is definite and reliable, as are also the township plats prepared by the Land Office of the United States in 1846. This, too, although great storms have visited this section within the last 50 or 60 years, especially in 1893.

The theory of subsidence as bearing upon the question we are here considering is wholly unreasonable. It is the opinion of geologists that the Mississippi river is responsible for the formation of all this island territory west of Cat Island; that all of said land area was formed from deposits made by the waters of the said river; that the said land territory was built up by the bayous that ran from the River and especially Bayou Terre Boeuf, which divided as it extended eastward and formed Bayou la Loutre and Bayou Terre Boeuf. It is their theory that these marsh islands were formed from deposits made by these two bayous. R. p. 334. But their waters left the River *at a point 50 miles or more southwest of this area in dispute.* R. p. 337. The point at which these bayous enter the Gulf is represented now as it has been during the entire period covered by the history of the country. It is perhaps 25 miles from Isle a'Pitre to either of these bayous at the nearest point. To influence the formation of land in the neighborhood of Grand Pass these bayous would, of necessity, have flowed northeast for 20 or 25 miles. But their course as they approach the sea is southward, and their general course is southward. The truth is, in applying their theory to the conditions, these bayous are the only streams counsel can make use of, these being the nearest ones to the territory for whose existence they desire to account. And the attempt to use these bayous 25 miles southwest to reconcile the theory with the facts

only demonstrates, not the unsoundness of the general theory, but the futility of any effort to point out and give a name to the very agency employed by the Mississippi River in making the deposits in the vicinity of Three Mile bayou, Nine Mile Bayou and Grand Pass. These deposits were made by a prehistoric stream. It did its work and disappeared. No trace of it is left. This was evidently before the country south of New Orleans was constructed. The river builds south, east and west; it does not build north. The general tendency of the water in that section is southward. This territory in dispute is on the same parallel with the city of New Orleans, which is about 100 miles from the mouth of the river. It is older than the territory southwest through which Bayou la Loutre runs. We are certainly safe in saying that it is 1000 years old. Since it was formed and the River passed on in its encroachment upon the Gulf, no deposits have been made and no agency has been at work to supply what has been lost by subsidence. If it has subsided four feet a century it must of necessity have stood up originally some 40 feet above the sea level.

We respectfully submit that the proof of subsidence in theory cannot stand when viewed in the light of the facts themselves. The subsidence is going on at the mouth of the river, in the books, and in the minds of witnesses. The enormous height to which the oldest territory in that section must have been constructed *by deposits* to enable it to hold its head above the water after the subsidence of centuries—this suggestion kills the theory. If the people of Louisiana believed in it, lands would decrease in value and inhabitants would flee for their lives. The country would all sink except that about the mouth of the River. *In the course of time the mouth of the River would be an island far out in the Gulf.* The only way to save the Delta country would be to tear down the levees and permit the deposits to continue. No such catastrophe is contemplated. The theorists do not fear their theories. Their experience reassures them. The theory may be correct, the figures only may be wrong. The change may be going on, but it is too slow to be taken into consideration in deciding issues between modern states. In order to reach the conclusion that the said islands have been formed within the last hundred years, it will be necessary therefore for the court to decide that much more powerful agencies were at work prior to

1845 than have been operating since that date. For it distinctly appears, independently of theories and speculations, that since 1845 there have been no such changes as to require at this time any material corrections in a map made on the former date. We think the testimony as to storms is to be given no consideration. There have always been storms on the high seas. They are not phenomena peculiar to the last century. They were operating in this territory when it was being built up and when it was easy to break through and tear down, and they very likely reserved the paths for their winds and waves when they yielded up the original ocean domain, as suggested by Maj. B. M. Harrod. R. p. 135. It has not been attempted to prove any change as having occurred prior to 1845. And since we had a survey in that year and another in 1903 by disinterested and competent men, no uncertain testimony need be considered. The results of the two surveys will be depended upon. The fact remains that this territory was broken up into islands when the first survey was made 60 years ago, and nothing has happened to call for a change of the maps made from the said first survey.

Numerous witnesses were produced by Mississippi to prove that there have been no changes among these marsh islands within the life of men now living, except those prominent ones described by witnesses for Louisiana. B. R. Clements said there has been a great change at Grand Pass since he first saw it in the 50's. He went all through the marshes in the 50's with a boat drawing from 2 to 3 feet of water. R. p. 1228. William Gorenflo has been acquainted with this territory since 1858; went through Grand Pass in 1869 with vessel drawing 5 feet; has observed no material changes in coast line from Malheureux Point to Isle a'Pitre. R. p. 1235. He says it is more than nine miles from Nine Mile bayou westward to the habitable part of the mainland of Louisiana. R. p. 1246. I. C. Morrison has known the marsh since 1868. The bayous are about the same now as they were then. R. p. 1284. John Walker went from Chandeleur Sound through Three Mile bayou in 1868 with boat drawing 4 feet and found no less than 7 feet anywhere. Has noted no changes along line from Malheureux Point to Isle a'Pitre. R. p. 1272. James Tapper saw Grand Pass in 1867, and again in 1903. Noted no material difference. R. p. 1323. John Goodier says there have

been no great changes since he first knew the territory in 1876. R. p. 1360. To the same effect is the testimony of Richard Lanus. R. p. 1371. Mr. Martinez, 60 years old, lived 25 years in St. Bernard parish, says he has noticed no changes since 1867, only bayous widened a little at the mouths. R. p. 1387. See also testimony of Charles Williams, R. p. 1398; J. S. Wentzell, R. p. 1407; J. M. Ritch, R. p. 1412; Peter Anglada, R. p. 1421; Clement Cox, R. p. 1429; Wilmer Mathieu, R. p. 1436; T. R. Friar, R. p. 1462; A. Beaugez, R. p. 1470; E. Ladnier, R. p. 1475; S. R. Thompson, R. p. 1526; Mike Lanius, R. p. 1564; Pascal Luzzi, R. p. 1650. These witnesses offered by Mississippi and those for Louisiana have observed the same prominent changes. There has evidently been no revolution in this territory within the memory of men now living. Instead of establishing the contention that there have been subsidence and washing away to such an extent as to break up a solid peninsula into islands since the two States were formed, the evidence for both sides only serves to prove beyond cavil that during the last 60 years the general outline of the territory and of its parts has remained the same.

But in their effort to prove that when these States were erected there was a solid penisula embracing all these marsh islands, counsel for Louisiana produce a great many maps which picture continuous marsh land from the island of New Orleans extending across the territory now occupied by numerous islands.

We now proceed to consider these maps in their character as hearsay, the character in which, as evidence, they were condemned by this court in Missouri vs. Kentucky, 78 U. S. 395, 20 L. ed. 116, 121. And they will be examined at this time not as proof of the boundary line between these States as shown by the coloring of islands as belonging to the one State or the other, but to discover their value as proof of change. If mapmakers, from 1800 to 1845, represented this territory as part of a peninsula extending northeastwardly between Lake Borgne and the Gulf, what weight is to be given to their representations in passing upon the question as to whether, in 1812, this disputed area was composed of marsh islands and water?

In the first place, it will be remembered that no survey was ever made of this disputed area or of any of the territory west of it and north of Bayou Terre Boeuf prior to 1843. Darby

writes on his map of 1816 that this territory is little known, and Darby lived in Louisiana, it appears. His unknown land covered the entire area north and east of the said bayou. See Louisiana map No. 20. It follows that the maps of this section as evidence, hardly rise to the dignity of hearsay. They do not tell the story of witnesses who, themselves, knew the truth, but they represent the guesses made by their respective authors, or the guesses of others adopted by their respective authors.

Bellin's map, 1764, (No. 8), shows solid land or a large island immediately southwest from Cat Island, cut off by a large water course from Lake Borgne to the Gulf. He does not pretend to have had first hand information.

Tirion's map, 1766, (No. 9), like Bellin's is a creature of the imagination, and is so grotesquely inaccurate as to furnish no basis for any conclusion. One cannot tell whether the peninsula is the one we now know as forming the east shore of Lake Borne or was intended to cover the space now occupied by these islands.

Jeffry's map, 1775, (No. 10), is not hearsay. It only represents his idea of the shape of the territory. The same is true of that prepared by Lieutenant Ross, map No. 11. No. 12 is a copy of No. 9, made in 1766.

The earliest map offered in evidence which comes near to presenting, in general outline, the contention of opposing counsel, is that made by Maj. Pussin, 1830, (map No. 13). William Beer says (R. p. 218), that Pussin came to America to report to the French government upon internal improvements. It does not appear that he was ever in this locality. He represents continuous solid land as covering part of the marsh island area, but the incorrectness of his representation is shown by the township plats of Powell and Richardson based on surveys made 13 years later. And it will be observed that the records show but one storm (1837) which appears to have reached this territory between 1830 and 1843. R. p. 1038.

The superficiality of maps and the unreliability of map-makers are forcibly demonstrated by a comparison of map No. 15, made in 1854, published in Lange's Atlas of North America. with the topographical maps made by the Land Office in 1846, The said map No. 15 shows this peninsula as continuous

solid land nine years after actual surveys had been made and published showing it broken up into islands.

Lafon's map of 1806, (No. 19), presents this territory as forming a solid peninsula, but the glaring imperfections of it show that he knew nothing of the details. He has a bayou, Guillemard, running northeast through his peninsula from Lake Borgne. Darby's map, however, of ten years later shows no trace of this bayou; nor does that of Melish of 1816-1818, map No. 57.

It will be noted that these men knew of Lake Borgne and had to give it an eastern shore, and this shore had to be a peninsula. As they broaden that lake at its northern end they swing the said peninsula to the east out of the way. It is really the peninsula we now know as extending northward between Lake Borgne and Nine Mile bayou. This criticism may be made especially of the maps just mentioned and of Melish's map of 1820 (No. 22), Mitchell's map of 1834 (No. 24), Graham and Tanner's, 1834, (No. 25), H. S. Tanner's, 1837, (No. 26), and La Tourrette's of 1839 (No. 27). All these maps are in hopeless conflict with the facts as disclosed by Powell and Richardson in 1843, '44, and '45. It is impossible to believe that the long peninsula shown on these maps was suddenly broken up into islands immediately before the survey in the 40's. And if we find that the map-makers of the years immediately prior to the said survey were altogether wrong, why should we be compelled to accept what the earlier ones say? Is it more likely that Lafon, Darby and Melish were right in 1806 and 1816 than that Melish, Tanner, La Tourrette and Mitchell were right from 1820 to 1843?

The truth is, land was plentiful in those days. Grants were made extending from ocean to ocean. It was only the best that was carefully explored. There was more of the best than could be claimed or settled. This waste country received no special attention. Andrew Ellicott is the only map-maker who, we are certain, was ever in the territory itself. He showed the continuous land of the Island of New Orleans as ending about Nine Mile bayou, or nearly due south from Pearl river, as Bowen had in 1764, and as Cary's Atlas presented it in 1814.

This peninsula forming the east shore of Lake Borgne is a marsh now just as it was a century ago. There is not a planta-

tion on it. The plantations extend but about fifteen miles from the river. R. p. 679. Nearly all the old maps show a prominent bayou running through it and connecting with Lake Borgne and Black bay. It is called by some of them Bayou Chersonese and by others Bayou Guillemard; and those that call it Bayou Chersonese name the connection with Lake Borgne Guillemard. No definite trace of this bayou remains on modern maps. If the peninsula through which these old maps extend this bayou were only pulled westward nearer to the mouth of the Pearl it would fairly represent the continuous land as it now appears.

But the fact remains that as far back as our definite information extends this area consists of islands and water. If these maps were approximately correct when published then the change was revolutionary in its nature. On the other hand, if we assume that there has been no revolution, no unusual disturbance, and that geological changes have been permitted to pursue their usual plodding way, then these maps made prior to 1843 were wrong when published; because if the progress of the waters in reclaiming what was lost ages ago was no more rapid prior to 1843 than it has been since that date then it has been centuries since there was continuous land from the Mississippi to a point three miles southwest from Cat Island. If the slow advancement of the water upon the land scarcely has made itself perceptible since 1843, may we not measure back another 60 years and conclude that the difference between a modern map and a correct one of 1783 would be barely observable? The court is asked to believe that this was continuous land prior to 1843, because map-makers who personally knew nothing of the country took it upon themselves to picture it that way. This, too, in the face of the positive proof as to the rapidity with which changes are in progress in this same territory.

And our conclusion that since no such changes as need to be noted on maps have occurred within the last 60 years, therefore no great change in the relative extent and locations of land and water occurred during the 60 years immediately prior to 1843, is further strengthened by the consideration that the encroachment of the water upon the land was necessarily much more rapid after it was well begun than before. After a channel has once been made across the land it rapidly widens and deepens The difficulty is in making the beginning. It is illustrated by

the rapid widening of Creole gap after the passage was cut through. Now, the surveys begun in 1843 show the water-ways then well established throughout this area. The islands and waters have retained their relative shapes and sizes, for the purposes of map-making since that date. It is the veriest speculation to name any period of time within which there were no islands nor bayous in this territory.

IV.

If our conclusions should be accepted by the court there will then remain no difficulties. The islands within six leagues of every part of the shore line of Mississippi will be given her, those "immediately south and in front of her mainland;" and Louisiana will receive those immediately south and in front of her mainland. The two Acts will stand side by side; the intention of the lawmakers will be executed. Such construction of the statutes will allow the presumption that the authors of the 1817 Act took into consideration the 1812 Act, and will avoid the absurd conclusion that the Congress gave to Mississippi territory which had been formerly given to Louisiana, and the unjust conclusion that it was intended to give to Louisiana an unequal and unjust share of the advantages of a seashore. Both conclusions will be avoided if possible. "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion." Lau Ow Bew vs. United States, 144 U. S., 47, 36 L. ed., 340.

It will be observed, too, that the question of jurisdiction over this disputed area is of much greater consequence to Mississippi than to Louisiana. It is from 20 to 40 miles from the settled portion of Louisiana, and inconvenient to reach from that State. It is immediately in front of Mississippi's front door. The whole coast of the latter State is habitable, and has had settlements on it since 1701. Almost the entire coast is divided up into residence lots like city property, and, in fact, it will be a city from the one extremity to the other within a very few years. R. p. 1744. The territory is almost in sight of the Mississippi shore and can be reached by sailing directly across the sound. If the deep water channel should be declared by the court the dividing line, this thickly settled, richest portion

of Mississippi would, for a great part of its length, lose all the advantages of a sea front. This loss would be added to Louisiana's extensive coast line and Mississippi would be cut down to perhaps 50 miles.

In fact, as far as Louisiana is concerned, the question involved is one of property and not of jurisdiction. Her interests would be promoted by the establishment of the line for which she is contending only to the extent of the value of the territory as property. Her inhabitants are far away from it. It is not necessary that she have jurisdiction over it for the protection of their health and peace and enterprises. The record shows that Mississippi has exercised civil jurisdiction over it all these years, embraced it in her counties in 1857, and that it was never noticed by Louisiana except to ask for it as property at the hands of the Land Office of the United States, and, when its *property value* was enhanced by the development of the oyster industry to undertake to have her claim confirmed by this court. The proceedings leading up to the institution of this suit indicate that it is the *property in*, and not the *jurisdiction over* this territory which is really the aim of this litigation.

On the other hand, the convenience and welfare of a great and prosperous part of Mississippi are placed in jeopardy. It is an attack upon the sovereignty of this State. It seeks to take away her jurisdiction over the waters close up to her mainland and take it out of her power to protect the health and quiet of her people without great and unusual expense. The property question is of relatively small importance to Mississippi. It is the question of sovereignty with which we are mainly concerned.

As shown by the township plats of 1846, Nine Mile bayou was, 60 years ago, a very deep channel and at least a quarter of a mile wide. This was large enough to be used as a boundary between great states. It flowed south into a large bay, and from there to the 6-league limit the waters were broad. R. p. 1047f. This is the line for which we contend. It coincides with the historical and traditional line running south out of Pearl river; it is the eastern limit of the old Island of New Orleans. And we respectfully submit that its adoption by this court will completely reconcile the two enactments, will declare the truth of history, and ac-

complish the success of the large plan intended to be executed by the Congress of 1812. History, tradition, convenience and right ask for this consummation.

Respectfully submitted,

Joe Williams
Attorney General of Mississippi

J. H. Howard
Assistant Attorney General of Mississippi

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JAMES H. McKENNEY, Clerk.

No. 11, ORIGINAL.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1905.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant*,

vs.

THE STATE OF MISSISSIPPI, *Defendant*.

SUPPLEMENTAL BRIEF FOR THE DEFENDANT.

HANNIS TAYLOR,
MONROE McCLURG,
Of Counsel.

WILLIAM WILLIAMS,
Attorney-General of Miss.
JAMES N. FLOWERS,
Assistant Attorney-General.

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SUPPLEMENTAL BRIEF FOR THE DEFENDANT.

I.

THE DEEP WATER CHANNEL THEORY.

Counsel for Louisiana earnestly and correctly insist that Lake Borgne is the open sea, and was so regarded by Congress in the Act of 1812, admitting that State. Their words are: "As a matter of fact the waters of Mississippi sound were considered as the sea or as forming part of the sea and gulf of Mexico at that time. We have already shown that Mississippi sound and Lake Borgne are salt water bodies of water *and true parts of the sea or gulf.*" First brief, p. 150. See also p. 69, where that contention is supported by unanswerable authorities. Our opponents miss the mark because they refuse to understand

the meaning of the term "an arm of the sea," as contra-distinguished from the open sea itself. Lake Pontchartrain is an "arm of the sea," because it is within the jaws of the land. That part of the open sea or Gulf of Mexico, known as Lake Borgne is not an "arm of the sea," because it is outside of the jaws of the land. The one and only ground upon which our opponents claim that the doctrine of the thalweg can be applied to the waters in question is that, while it is not applicable to the open sea, it is applicable to an "arm of the sea." When cast in the form of a syllogism their argument is this: Apart from rivers, the doctrine of the thalweg is applicable only to an "arm of the sea"; the waters to which Louisiana wishes to apply it are not an "arm of the sea," but the open sea, "true parts of the sea or gulf"; therefore the Court should apply the doctrine to the open sea. Such a pitiful *non sequitur* is not to be wondered at in view of the fact that no case has ever occurred in the international law of the world wherein the doctrine of the thalweg, *which dies at the point where a river or its estuaries join the open sea*, has ever been extended beyond that point. This fanciful and impossible theory of a channel without banks or current in the open sea as a boundary between maritime states was the invention of W. C. Hodgkins, a civil engineer, who first stated it in his report of January 30, 1901 (see Record, pp. 999–1003), *as a surveyor's expedient* for solving a practical difficulty, regardless of the fact that such expedient is entirely beyond the pale of legality. Manifestly this invention of Hodgkins was put forth here simply as a *ballon d'essai*, as it embodied the only theory upon which

the Complainant could undertake to claim the *entire territory* in dispute. That claim constitutes the first and leading aspect upon which her bill is based. Anticipating its collapse, she stated her case in the alternative as to *a part* of the territory, thus claiming that, in any event, Louisiana must recover those islands which are within nine miles of her eastern coast. The alternative prayer is: "but if your honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, *then as islands they are within the nine mile limit of distance from the* SHORE LINE *of the State of* Louisiana [an admission that she has a shore line], and therefore belong to and form part of the State of Louisiana by that second provision of the act of Congress, giving Louisiana all islands *within three leagues of its* SHORE LINE." Since the collapse of the deep water channel theory only the alternative case as to *a part* of the territory remains for consideration; and that cannot prevail, if this Court applies to the conflicting statutes the *in pari materia* rule as heretofore defined and applied here.

II

The Doctrine of in pari materia.

That doctrine is just as applicable in a case of *conflict and repugnancy* as it is in a case of *doubt and uncertainty*. These two substantive grounds for its application are of equal dignity. When it is applied because of conflict and repugnancy, *it is not of the slightest legal importance*, that one or both of the conflicting statutes should be plain and unambiguous upon its face for the simple and conclusive

reason that it is the repugnancy and not the obscurity that then justifies the application of the rule. Such is the settled law as stated in the Am. and Eng. Enc. of Law, Vol. 26, p. 623, 2d ed. "It has been said that the doctrine that statutes *in pari materia* are to be taken together and construed as one act is resorted to only in cases of doubt and that it is never applicable *where a statute is plain and unambiguous;* but clearly this statement is too sweeping, for a resort to other statutes may be necessary to determine the legislative intent *in case of repugnancy between the statutes*, or may be used to strengthen conclusions on the language of the statute." A striking illustration occurs in the case of *McFarland* v. *State Bank*, 4 Ark., 416, wherein the court was called upon to construe a general statute, fixing a rate of interest which conflicted, in the absence of construction, with a special statute fixing a rate of interest in certain cases, *each statute being entirely unambiguous upon its face.* The court applied the *in pari materia* rule and removed the conflict, by holding that one act should have a general application outside of the special domain to which the other was applied, the course which we contend should be followed here. In *Robinson* v. *Tuttle*, 37 N. H., 248, it was held that "It is also proper to consider the whole of a statute, the provisions of the old law, *other laws relating to the same subject-matter*, and the probable purpose of the legislature, in order to ascertain the meaning of any particular section, *even when the words are unambiguous.*" It is not of the slightest legal importance that the statute of 1812 is plain and unambiguous upon its face, if it is "repugnant" to that of 1817,

when parts of both must of necessity be applied to the same subject-matter. Complainant avers in her bill that the repugnancy exists when she says that the elimination of her deep water channel theory (Record, p. 15), "would cause the limits of the two States to conflict and overlap." That admission is amplified in her brief (p. 65), by the following explanation as to the drafting of the act of 1817: "the oversight consists not 'in framing the respective acts' for the admission of the two States, but in the drafting of the Mississippi act, more than five years after the Louisiana act, *and embracing in the Mississippi act, islands which had already been granted to Louisiana.*" It is thus twice confessed that Congress in the act of 1817, *attempted to convey the islands in question to Mississippi.* The defense is that the will of Congress as thus expressed cannot be executed for the reason that, by the prior act of 1812, the identical islands embraced in the second act were conveyed to Louisiana. The acts thus conflict and interpenetrate when applied *to identically the same subject-matter.* "Statutes are *in pari materia* which relate to the same person or thing or to the same class of persons or things, *and the phrase is applicable to public statutes or general laws made at different times and in reference to the same subject.*" Enc. of Law, Vol. 26, p. 621, 2d ed. How is it possible to deny that the conflicting statutes are *in pari materia*,—"laws made at different times and in reference to the same subject"; how is it possible to deny that they are repugnant to each other, *when Complainant twice avers that fact?* In our humble judgment no more urgent or ideal case for the application of the rule has ever been presented here. The

rule is simply a means to an end. It is the means by which the court is enabled to extract the *entire intention* of Congress, and not a *part of it*, from a series of acts upon the same subject. Not until the last word of the last act in the series has been examined can a court be in a position to make an intelligent exposition of the legislative will in its entirety. When thus armed with the larger knowledge the court should strive to work out two results.

In the first place, as stated in *Knowlton* v. *Moore*, 178 U. S., p. 77, "where a particular construction of a statute will occasion inconvenience *or produce inequality and injustice*, that view is to be avoided if another and more reasonable interpretation is present in the statute." What is the actual situation presented here. Alabama is in possession of all the islands on her southern and only sea-front. Louisiana is possessed of two distinct sea-fronts. First of her southern sea-front, extending east and west about 360 miles from the mouth of the Sabine river to that of the Mississippi; second of her eastern sea-front, extending about 263 miles north and south from the mouth of the river last named to that of the Pearl river. Under those conditions the proposition is to take away from Mississippi a group of islands extending half-way across her narrow *southern* sea-front, in order that they may be annexed to the *eastern coast* of Louisiana. Can it be for a moment denied that such a result would be a gross injustice, so far as Mississippi is concerned, when the fact is remembered *that she would then stand forth as the only State on the Gulf of Mexico with her southern sea-front obstructed by islands belonging to a sister State?* It is admitted that Congress

did what it could in the a[illegible] of 1817, to prevent such an injustice. Should not this Court assert its full judicial power to sustain Congress in that effort? Louisiana admits in her original brief (p. 162), that "It is not to be presumed that the Congress of the United States intended to make a conflict of boundaries when there is a possible construction of the acts of Congress which would reconcile the apparent inconsistencies." Thus it is admitted that the entire solution properly depends upon the right of this Court to *construe* the conflicting statutes. What is its paramount duty in such a case? In *Handly* v. *Anthony*, 5 Wheat., 374, this Court speaking through Marshall, C. J., said: "In great questions which concern the boundaries of states, where great natural boundaries are established *in general terms*, with a view to public convenience, and the avoidance of controversy, we think *the great object*, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals." Can any fair mind doubt that "the great object" of Congress in defining the sea-fronts of the States bordering on the Gulf of Mexico was to give to each the islands directly in front of it on the south? *Will it be even suggested that Congress ever intended to obstruct one-half of the narrow southern sea-front of Mississippi, by giving a string of islands there situated 36 miles long to a sister State possessed of a sea-board more than eight times as long?* Upon the contrary Complainant admits that by the act of 1817, Congress did all it could to give the islands in front of the sea-coast of Mississippi to that State. Will this court by its decree scar the map

of the Union for all time by defeating the just will of Congress as thus expressed? If *Handly* v. *Anthony* is to be regarded, "the great object" should not be defeated by "technical perplexities." The Court should not be asked by Complainant to quibble over the contention that the terms of the second act are as general as those of the first. No matter whether they are or not under the rule of *in pari materia*, the Court has a perfect right (as heretofore pointed out in our original brief, pp. 66–70), to hold before its eyes "the great object," and then accomplish it by limiting the general terms of the first act by the particular terms of the second, *if Congress so intended when the two acts are taken as a whole.* The "technical perplexities" in such a case should not be permitted to defeat "the great object."

In the second place, the court cannot ignore the rule which provides that "Statutes are to be interpreted so as to give effect to all the words therein, if such interpretation be reasonable; and be neither repugnant to the provisions, nor inconsistent with the object of the statute. *U. S.* v. *Bassett*, 2 Story R., 389. * * * It is not to be presumed, *that the legislature intended that any part of a statute should be without its proper meaning, force,* or effect." Potter's Dwarris on Statutes, p. 188, note 8. In *Pollard* v. *Kibbe*, 14 Pet., 366, where the issue was identical,—one party striving to defeat a grant made by Congress on the ground that that body had conveyed the same land by a prior grant,—it was held that "*It is not to be presumed that Congress would grant or even simply release the right of the United States to land confessedly before granted. This*

would only be holding out inducements to litigation." The Court must presume that the United States possessed the title at the date of the last grant, and the burden is upon the party who sets up the contrary. If this Court declines to give effect to that part of the act of 1817, which grants to Mississippi "all islands within six leagues of the shore to the most southern junction of Pearl river with Lake Borgne," she will be deprived of Isle à Pitre, Petit Pass Island, Racoon Island, Crooked Island, Mud-cross Island, Pirate Point Island, Nigger Island, Dead Man's Island, Shell Island, Brush Island, Mink Island, Wild Goose Island, Elephant Point Island, Sundown Island, Door Point Island, Martin Island, and Mitchell Islands; in a word, of all islands within eighteen miles of her coast except a very few within a comparatively short distance thereof, such as Cat Island, Ship Island, and Horn Island. Excepting these three or four, a decree in favor of Louisiana will sweep the board and vest in her a chain of islands extending for 36 miles across the face of the narrow sea-front of Mississippi. *So far as we can ascertain the sea-front of no State in the entire Union is obstructed by islands belonging to a sister State.* Why should Mississippi alone wear such a badge of servitude to a neighbor who possesses a sea-front more than eight times as long as her own? Is this court prepared to decree that Congress intended to make such a grossly unjust award in favor of one State as against another, while dividing the common heritage? What the clearly expressed will of Congress was in the act of 1817, even Complainant admits. Against its enforcement she only contends that the *general terms* of the act of 1812 should be *so construed here* as to

include the islands embraced in the second grant. If, in the light of the legislative declaration of intention in the second act, the court ascertains that Congress *did not intend to commit this gross injustice when the first act was passed*, the entire difficulty vanishes,—the grant claimed by Louisiana under the first act was never made.

III.

Those Who Claim Under Grants from Louisiana not in the Category of Bona Fide Purchasers.

The only plea which, as a matter of equity and good conscience, could be set up against the application of the foregoing rules of construction is that those who hold under grants from Louisiana are entitled to the protection due to *bona fide* purchasers. "*Purchasers under quit claim deed.* As a general rule the grantee in a quit claim deed is not accorded the favored position of a *bona fide* purchaser, for the reason that the deed purports to convey only whatever title the grantor may have, *and thus the terms of the deed itself afford constructive notice of any defects or equities by which the title may be impaired.*' * * * '*Grantee in quit claim deed not protected.* The rule and its qualifications will be fully discussed in another part of this title." *Am. and Eng. Enc. of Law*, Vol. 23, p. 477, and note 4. It is well settled that grants made by the legislature of a State are not warranties; and if the thing granted was not in the grantor at the time of the grant, no estate passes to the grantee. *Rice* v. *Minn. & N. W. R. R. Co.*, 1 Black, 358; *Polk* v. *Wendal*, 9 Cranch, 87. With a full knowledge of the infirmities of her title, *and of the approaching*

litigation in this matter, Louisiana was careful that her agent, the Lake Borgne Basin Levee District, should not involve her in liability through sales, at nominal prices, of this land. That board therefore inscribed the following upon the face of its quit claim deeds: "It is distinctly understood by the parties hereto that the Board of Commissioners for the Lake Borgne Basin Levee District, through their said president, transfer, assign, and set over, only those rights and interests which the said Board now have in and to the aforesaid lands, giving thereby simply a quit claim, and making and giving no warranty whatsoever; *and further, that should the said title be subsequently declared void, the said Board shall not reimburse to the purchaser any sum whatever.*" Record, p. 1088. Of course, the illegal attempt to cut out that solemn and significant declaration against the title of Complainant from the body of her quit claim deeds by the parol explanation of one of the counsel in the case will be ignored. If such a result could be accomplished by verbal explanations given under such circumstances written instruments would be worthless indeed. The testimony shows that not a single grantee—all for nominal sums—under these quit claim deeds has ever made an improvement on the land. Not a house, nor a barn, nor a fence has ever been constructed. No settlements have been made on the land for the reason that fishing privileges alone were the objects of the purchase. Thus neither injustice nor hardship would come to any private individual through a recognition of the title of Mississippi.

IV.

No Basis Whatever for the Contention That the Islands in Question Were Ever a Part of the Mainland of Louisiana.

We do not understand Complainant's counsel to contend that the islands in question do not constitute a well defined archipelago distinct from the mainland, *at the present time*. All the rest of the world so considers and describes them. The only accurate maps ever made of the region are those of the Coast Survey, upon every one of which the archipelago is as clearly defined as any other in the world. The people who live in the vicinity have always considered them as such, giving to each its own name as an island. Isle à Pitre and Racoon Island are as well known as islands in that part of the world, as Cat Island or Ship Island. Complainant's witnesses have described them as bodies of firm land standing "about a foot and a half to two feet" (Monier) "above the water," along whose shores a buggy can be driven, or a traveler pass dryshod "at any time during the year." It is not questioned that the waters surrounding them are navigable for steamboats. From the Report of the Fish Commission, upon the cruise of the "Fish Hawk," it appears that "the depth of water is generally from 3 to 6 feet, although in some of the bays, particularly those to the eastward, there are channels through which a considerably greater depth can be carried." Record, p. 2037. It never occurred to the scientific men who made that report to doubt that the islands are such. They say in their description of

the physiography of the region: "The land constitutes *a low-lying archipelago of irregular islands*, separated from one another by shallow bays, muddy lagoons, and tortuous bayous, *the area of water being somewhat greater than that of the land*,"—a statement sharply at variance with the idea that the region is occupied by a peninsula. Admitting as they must that the archipelago now exists entirely distinct from the mainland, counsel for Complainant have taken up the burden that admission puts upon them to prove *that the archipelago did not exist as such in* 1812. A crushing blow was given to that contention when they offered in evidence the map of Saint Bernard (No. 52), made by H. C. Smith. In 1843–'44–'45 the first government survey of this region was made by Powell and Richardson, and the results recorded in the township plats which appear in the record, pp. 1047*a* to 1047*m*, inclusive. An examination of those plats will show conclusively to the Court that at those dates, but little more than 30 years after the admission of Louisiana, the islands composing the archipelago existed just as at the present time, with the contour or shore line of the mainland defined as at the present time. H. C. Smith, the maker of the Saint Bernard map (No. 52), admits in his testimony that he accepted the surveys made by Powell and Richardson as the correct data, despite the fact that more than fifty years had elapsed since it was gathered. To quote his own words: "Q. The township plats, or maps, you refer to, are taken from this map No. 52? A. No, sir. Q. Are they not parts of this map? A. Yes, sir; but this map No. 52 was taken from the township plats. Q. Those plats show, purport to show,

exactly what this map No. 52 shows? A. Yes, sir." Record, p. 736. In connection with this testimony we beg the court to read the testimony of J. B. Baylor, quoted in our original brief (pp. 40–42), from which it appears that the surveys made by the Coast Survey "by trigonometrical methods" demonstrate that no material changes have taken place on that coast in fifty years. Mr. Baylor's summing up was in these words: "As a general proposition, my work showed conclusively to my mind, that there has been no marked change in regard to the washing away of that coast in 50 years. We have accurate work on trigonometrical methods running back to about 1848." It having thus been demonstrated beyond all question by Complainant's own witnesses, speaking from the most reliable scientific data available, that there has been no material change in the geography of the region in question since 1843—a period of 62 years to the present time,—it remains for them to prove if they can, *upon a theoretical basis*, that the marvellous transformation they dream of took place during the 31 years that intervened between 1812 and 1843. The causes to which such a transformation is attributed are threefold—subsidence, storms and musk-rats! The two scientific experts upon whom Complainant relied for the demonstration are Major B. M. Harrod, of the Panama Canal Commission, an eminent civil engineer, and Dr. Stubbs, eminent as a geologist specially familiar with the Gulf Coast region. Both concur in the conclusion that the islands were formed as such in the waters of a shallow sea. As Major Harrod expressed it they were "formed by the river deposits being placed out in a shallow

sea, that had tidal movements and *instead of forming a solid peninsula* it left these open areas through it for the tidal movement in and out of Lake Borgne and Lake Pontchartrain, and that those lakes or spaces of water have been enlarged since their formation, by subsidence. That is my opinion about the formation of that peninsula; that water areas were left *when it was originally formed* and have since been enlarged by subsidence. Q. How long do you think this process has been going on; how many years? A. *For centuries* I have no doubt." When the effort was made to pin him down to modern times he said: "*I could not give any answer about the time, since* 1817 *or* 1819." Record, p. 135. The essence of Major Harrod's scientific opinion when stripped of awkward verbiage, is that as the river deposits were placed in a shallow sea with tidal movements, such movements prevented the formation of a "solid peninsula," and insured instead the formation *from the beginning* of the islands with water areas between them. It is not pretended that Major Harrod said one thing while he was trying to say another. That compliment was reserved for Dr. Stubbs who gave the *coup de grace* to that part of Complainant's case when he said: "These [islands] on the coast of Louisiana have not been *cut off*, they have been formed by the waves and winds of the Gulf." Record, pp. 344–345. Just a moment before, his cross-examination had begun with this question: "You are familiar, are you not, with the geography of this archipelago of islands lying off the east coast of Saint Bernard parish and the southeast coast of Mississippi? A. Yes, sir." On page 3 of their last brief counsel for

Louisiana have made this ill-tempered and entirely unfounded statement: "Associate counsel for the State of Mississippi, in their brief, have extracted from the testimony of Dr. William C. Stubbs, State Geologist of the State of Louisiana, on the subject of the geological origin of the peninsula of Saint Bernard and the Louisiana marshes, and have attempted by *garbling* that testimony, to now make it appear that Dr. Stubbs said that the territory composing the disputed area in the parish of Saint Bernard was made up of islands, which had been built up by the winds and waves of the sea, instead of by alluvium deposited by the Mississippi river, through Bayous Terre aux Bœufs and La Loutre, and that the insular formation of certain portions of the Louisiana marshes (or islands, so-called by Mississippi), has never formed part of the peninsula of Saint Bernard, but were distinct creations formed by the winds and waves of the sea, and not by alluvium." The very contrary is the fact, as counsel for Mississippi claim, and have always claimed that Dr. Stubbs intended to say that the islands in question were formed "by the waves and winds of the Gulf," *out of the* alluvium deposited by the Mississippi river, thus agreeing in substance with Major Harrod who says they were "formed by the river deposits being placed out in a shallow sea, that had tidal movements." There is no difference between us as to the *material* out of which the islands were formed; the difference is as to the *process* of formation, Complainant claiming that the alluvium was first consolidated as a part of the mainland, and then broken up or "cut off" by subsidence and storm-action, Defendant claiming that the alluvium as it was

deposited in the shallow sea was formed by the winds and waves into islands *from the beginning*, according to the view of Major Harrod. The mortal blow given by Dr. Stubbs to this part of Complainant's case was by his declaration that the islands were formed *according to the theory of Defendant*, and that they were not "cut off" from the mainland as claimed by Complainant. Under such trying circumstances our opponents are striving to save themselves by showing that Dr. Stubbs was not responding to the question with which his cross-examination had just opened ["Q. You are familiar, are you not, with the geography of this archipelago of islands lying off the east coast of Saint Bernard Parish and the south coast of Mississippi? A. Yes, sir"], but that he was really speaking of some other islands not involved in the case, on the south coast of Louisiana, as to which he had been fully questioned some time before. It is strange, indeed, if such a mistake was made as to this, the most vital question of fact in the case, by Complainant's most important witness, with her learned and acute counsel present, that no attempt was made to correct it at the time when the witness was accessible. The charge that Defendant's counsel are "*garbling* that testimony," because they read it as it appears in the record, must be pardoned as an outcry of pain suffered by our friends on the other side, when their main prop, Dr. Stubbs, extinguished their pet theory by inflicting upon it "the unkindest cut of all." But it is unnecessary for us to depend upon the testimony or admission of any one witness in a mass of evidence which demonstrates beyond any possibility of doubt that the

archipelago in question existed in 1812, just as it exists to-day. Dr. Stubbs positively declined to admit that any of the changes to which he had alluded had taken place in historic times. Speaking of the sample of mud taken from Isle à Pitre he said: "We won't state any length of time. But the geological time in which that was deposited is to-day, it is the present age. Q. But that present age, as I understand, may embrace a period of five million years? A. We don't know. Q. It may be five million years? A. Yes, sir. Q. That was in the process of formation? A. Yes, sir. * * * Q. You know of no reason to suppose there has been any general change of appearance in the physical aspect of the region I have indicated from 1812 down to this date? A. *That is right.*" Record, pp. 346, 349. The assumption that a radical transformation took place in the geography of this region between 1812 and 1843, *through the slow and imperceptible processes of nature* is a pure chimera, as untenable from a geological point of view as the so-called deep water channel theory is from the standpoint of international law.

V.

An Imaginary Coast Line.

On a par with the foregoing is the assumption that in 1812, the chain of islands that extends from Nine Mile Bayou to Isle à Pitre constituted a part of the mainland of Louisiana, with a well defined coast line. The witness upon whom Complainant mainly relied to uphold that theory is J. B. Baylor, the Coast Survey expert who, upon cross-examination, admitted the present existence of every

island in the chain. His examination on that subject thus began: "Q. What is the usual definition given by geographers to an island? What is an island from the standpoint of physical geography? A. An island is a body of land surrounded by water. Q. Well, now, let us begin from Nine Mile Bayou and take the piece of land that is bounded on the west by Nine Mile Bayou and on the east by Three Mile Bayou and on the north by Mississippi Sound and on the south by Nine Mile Bay. Under the ordinary definition of physical geography, isn't that an island, a piece of land surrounded by water? A. Yes, sir; that is an island." And so he described one after the other in the entire chain, concluding as to all, with this statement: "*They are certainly bodies of land around which vessels of moderate draft can sail.*" Record, pp. 421, 422. In his testimony heretofore quoted he says that, after an examination of the whole coast "by trigonometrical methods," and upon the data of the Coast Survey, extending back to 1848, he can aver "that there has been no marked change in regard to the washing away of that coast in 50 years." It is, therefore, positively settled that the islands existed as far back as 1848, just as they exist to-day. The burden then is upon Complainant to prove the marvellous transformation claimed during the 36 years intervening between 1812 and 1848. There is not a particle of evidence in the record even tending to prove such a grotesque assumption. Complainant has nothing whatever to rely upon in this regard, except the theory that silent and imperceptible changes have been going on in this region during, as Dr. Stubbs says, the last

five million years. *There is absolutely no proof in the record that any material changes have taken place in historic times, much less since* 1812. If Harrod and Stubbs are to be believed the islands in question existed as such from the beginning, and were never a part of the mainland. These particular islands are directly in the track of "the tidal movement in and out of Lake Borgne and Lake Pontchartrain," which Harrod says prevented the formation of a peninsula. An unbroken coast line at the point claimed would have obstructed that tidal movement.

VI.

Claim of Title Under the Swamp Land Act of 1849.

No part of Complainant's case is so easily disposed of as the claim resting on certain proceedings taken before the Secretary of the Interior in 1852, under the act of 1849, entitled, "An act to aid the State of Louisiana in draining the swamp lands *therein*." The act declares upon its face that it relates only to certain lands within the boundaries of that State. As one of the Justices remarked during the argument, swamp lands situated in one State could not possibly be given to another. If Mississippi has any case here at all, it is by virtue of the grant made to her of certain islands by the act of 1817. If that act ever had any operation at all, if it ever vested in Mississippi the whole or any part of the territory in dispute, such whole or part was at once included within her boundaries. It is therefore axiomatic that proceedings taken before a ministerial officer in 1852, under an act which did not attempt to dispose of lands beyond the

boundaries of Louisiana, could not divest Mississippi of title to lands which had been included in her boundaries since 1817. As to such lands the action of the Secretary was of course *coram non judice*. In *Stone* v. *United States*, 2 Wall., 525, involving the validity of acts of the Secretary of the Interior under like circumstances, it was held that where lands claimed *were never within the limits of a reservation* legally made by the President for military purposes, the patents issued therefor were void because the Secretary exceeded his authority. If an appeal be made to the doctrine that decisions of the Secretary of the Interior upon matters of fact are conclusive, the short answer is that that doctrine only applies to matters of fact *within his jurisdiction*. "The decisions of the Land Department upon matters of fact *within its jurisdiction* are in the absence of fraud or imposition, conclusive and binding on the courts of the country." Head note to *Heath* v. *Wallace*, 138 U. S., 573, Co-op. ed., 1064. It will not be pretended that the Secretary had jurisdiction over lands within the boundaries of Mississippi since 1817, under an act passed in 1849, granting certain lands within the boundaries of Louisiana, at that date, to that State. The moment that Mississippi makes good her claim of title to the whole or a part of the disputed territory, under the grant made to her in the act of 1817, all proceedings as to the whole or part embraced within her boundaries, taken by the Secretary of the Interior under an act that limited his jurisdiction to lands within the boundaries of Louisiana, fall to the ground. With a clear knowledge of that fact before it, and with this litigation approaching,

the Lake Borgne Basin Levee District did well to write upon the face of its quit claim deeds, "and further, that should the said title be subsequently declared void, the said Board shall not reimburse to the purchaser any sum whatever."

VII.

The Question of Acquiescence.

It is folly to contend that upon the facts in this record there is any proof even tending to show any acquiescence upon the part of Mississippi in the possession of the disputed territory by Louisiana, or in her exercise of dominion and sovereignty over it, that will give title to the latter, by acquiescence, under the principles of international law. Mississippi emphatically denies that she has ever for one moment acquiesced in any claim asserted by Louisiana either of sovereignty or jurisdiction; that the proof shows that her exercise of sovereignty and jurisdiction over the disputed area—*a "wild and unsettled country"*—has been much more marked and continuous than that of her opponent. There is no excuse for the statement contained in the original brief for Complainant, p. 98, that Mississippi has acquiesced "for nearly one hundred years in Louisiana's ownership of the disputed territory." The record bears abundant testimony to the fact that, from time immemorial up to about the year 1900, the people of either State enjoyed the unmolested privilege of taking fish and oysters in the disputed territory, its only product. The State of Louisiana cannot claim to have exercised exclusive dominion because of the full proof of the long common use. The enabling act passed

by the Congress on the 20th of February, 1811, required as a condition precedent to her admission.

> "That said convention shall provide by ordinance, irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare, that they forever disclaim all right or title to the waste and unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States."

This condition was accepted by Louisiana. Before 1852, a trespass upon these lands or any question involving the title thereto would have been cognizable in the United States courts only. During the forty years that the State claimed these waste lands, to April 2d, 1895, when she attempted to transfer them to the Lake Borgne Basin Levee Board, she made only 30 sales, or upon an average of less than one a year, the principal ones being of Isle à Pitre. From said transfer in 1895 to the bringing of this suit, only *four* sales are shown by said Board, and these to oyster canners at 12½ cents per acre, wholly without warranty of title or promise of the return of the purchase money if the title failed. So, there is nothing shown which would have put Mississippi on notice of necessity to assert her rights or confess them to Louisiana. The sales have been of the *waters*, rather than of *land*, to secure oyster grounds.

The acquiescence contended for by Complainant is not to be established by those rules which determine *public policy*, as the argument of counsel seems to indicate. Statutes, court decisions, and the lawful acts of public

officers fix the public policy of the State or federal government with reference to any particular subject, but the only way to deprive a State of her territory is prescribed by the Constitution—the consent of the legislatures of the States and of the Congress. If the General Land Office, the Geological Department, the Coast and Geodetic Survey, and the Fish Commission of the Federal Government, combined with the Oyster Commission of the litigant States, had solemnly agreed by express words that the disputed territory was in the one State or the other, it would be folly to urge here that by reason thereof the question was thus settled. The acquiescence contemplated must come within the rules indicated in *Rhode Island* v. *Massachusetts; Virginia* v. *Tennessee*. We insist generally, and especially upon the subject of acquiescence, that the approval of these lands by the Secretary of the Interior in 1852, was a mere ministerial act and void because these marsh lands could not be drained or levied and were not within the contemplation of the act of 1849, special to Louisiana, nor the "Arkansas Act," of 1852; and because the lands in dispute had previously (1817), been expressly granted to the State of Mississippi. It is shown that the proceeds of sale were to be applied to the levees of the Mississippi river and not to the levying or draining of these islands on the eastern coast of Louisiana.

When a request was made by the Coast and Geodetic Survey for "records" bearing upon the State boundary, the answer was a legal opinion from Assistant Hodgkin, not a lawyer, but a civil engineer. However much counsel insist, this court will not be misled as to this or as to the

report from the "Fish Hawk" deputation that followed the suggestion of Louisiana gentlemen as to what was the parish of St. Bernard.

The statement in the brief, p. 122, that Mississippi "*though her State Land Commissioner admitted that she had no title to the lands,*" is incorrect. The record discloses no such statement, and if it did, it would be demurrable. Mr. Nall said that these lands were not shown upon his books. It cannot possibly escape the attention of the Court that the only material value of the territory is, as it has always been, in water products and that Mississippi has since 1843, protected her interests by legislation, and latterly she has collected her revenues therefrom by licenses from boats and tong-men, instead of assessments upon the worthless lands.

Judicial jurisdiction on the part of Mississippi is shown by authentic records from 1821, when the Legislature made the award to John Quavre, and the Kennedy inquest of 1886, and the arrest made by officer Lizanna near Sundown Island, while that shown by Louisiana is of the vaguest hearsay. The absolute assertion of right by legislative action on the part of Mississippi is shown in the cross-bill, and by documents exhibited with the testimony.

VIII.

The State of Louisiana Embraces But One Island East of the River.

We here expressly direct the Court's attention to the fact that counsel for Louisiana in their oral argument and in their supplemental brief, have cautiously declined to

meet the proposition that the present State of Louisiana includes nothing east of the Mississippi river except "the city of New Orleans and the island on which it stands." Congress had this information fresh in mind. See abridgment of Debates of Congress, vol. III, p. 9 *et seq.;* if vol. IV, pp. 253-264. The acts of 1812 fixing Louisiana's boundaries and that adding West Florida to the Mississippi Territory were framed while the discussion between the United States on the one side and France and Spain on the other was at its height. The Congress knew the boundaries of the real *Louisiana* of 1803. The authors of the acts of 1812 knew that the conceded boundary line of Louisiana east of the Mississippi was that which was adopted in the 1811 enabling act and in the act of April 6, 1812. They knew this line had always been expressly explained as cutting off one island, the Island of New Orleans. They knew all the remaining islands were left on the east bank and that all such remaining islands were available for territory-making. They added them to the Mississippi territory at the same sitting of Congress. This information which the authors of the laws possessed told them that the three-league limit provision in the Louisiana act could not operate to the eastward,—that under other provisions *in the same act* it could not begin to operate until the Island of New Orleans was passed; that the islands upon which the three-league limit provision was to operate were those off the 400 miles of southern mainland coast line of the new State, and not those along the coast of the Island of New Orleans.

Counsel for Louisiana have, in fact, admitted the correctness of our statement of facts just made herein. We ask the Court to note the following:

On page 53 of their original brief counsel for Louisiana say:

> "The adoption by the Congress of the United States, in the creation of the State of Louisiana, of the line extending down the Mississippi river to the river Iberville and thence through the middle of Lakes Maurepas and Pontchartrain to the sea, as one of the boundaries of that State, was not a new line established for the first time, but was in fact an affirmation and recognition of an ancient line long since established."

It is true they add that this ancient line "in its extension to the open sea must follow the deep-water channel that we have been discussing." But in making this additional statement they overlook the fact which they have conceded on page 150 of their brief that, for the purposes of this historical description used by Congress, Lake Borgne was the "sea" or the "Gulf of Mexico"; and they also ignore the explanation of this historical description made when the said line was first established in 1763. That explanation is found in section VII of the Treaty of Paris of 1763. R., p. 1864. See also instructions given by the French King to M. d'Abbadie. R., p. 1980.

It will be noted that the territory here directed to be turned over to Spain was that which was declared by the Treaty of 1763, to be separated from the English possessions east of the river by the line described as running along the Iberville river, from the Lakes Maurepas and Pontchartrain to the sea. This line cut off this one island east of the Mississippi.

Counsel for Louisiana say that the ancient description was not itself complete and that it needed to be defined from the mouth of the Pontchartrain to the open sea, and that the only way for it to go was and is by the deep-water sailing channel. But, as above shown, this contention ignores the explanation of the description. It cut off the one island, the one on which the city stands. Why not look for the limits of this one island reserved to save the city? Is there no way to bound an island except by following a deep-water channel? Is not Nine Mile Bayou more than a quarter of a mile wide and from 5 to 35 feet deep, large enough to form the boundary of an island which has been reserved to carry a city?

And again, on page 57 of said original brief, counsel for Louisiana say:

> "Congress regarded the lands to the east, that were south of the Mississippi territory and which form the disputed area of to-day, as part of the original island of New Orleans referred to in the original treaties and included in its treaty with France of April 30, 1803, and these were given to the Territory of Orleans, and *her southeastern boundary was the original southeastern boundary of the island of Orleans.*"

And the Court will recall that Attorney-General Guion, in his oral argument, stated in answer to a question from the bench, that the present State of Louisiana embraces only what was contained in the old territory of Orleans.

Then counsel for the two States are agreed upon the following propositions:

1. The description of the line from the Mississippi eastward used in the act of April 6, 1812, must be given its historical meaning.

2. The present State of Louisiana embraces only what was contained in the Territory of Orleans.

3. The Territory of Orleans embraced nothing on the east side of the river except the island of New Orleans, the southeastern boundary of the said Territory of Orleans being the original southeastern boundary of the Island of New Orleans.

Since we are agreed that the historical description was used and that it cut off only one island east of the river and that the southeastern boundary of this *one island* was the boundary of the Orleans Territory and necessarily of the present State of Louisiana, why not make up the issue here and determine the boundaries of this one island? Why go on a hunt for a deep-water channel? What has that to do with the boundaries of this one island? How can counsel for Louisiana contend for the islands within three leagues of the eastern shore of this one island while they are admitting that they get but this one island under their historical description?

In their supplemental brief counsel do say that it has been attempted to show "that the Louisiana purchase did not convey any land or territory east of the Mississippi other than the Island of Orleans." But we have made no such contention. This statement is only an evasion. We have never contended that the Louisiana purchase included nothing east of the river except the Island of New Orleans, but that the real conceded bounda-

ries of the Louisiana purchase in 1803, embraced nothing but this one island. There was other doubtful territory which this Court held, in deference to the construction placed upon the 1803 treaty by other departments of the government, to have been ceded to the United States by that same treaty. And counsel agree with us when they say on page 57 of their original brief that the "Congress intended to include in the Territory of Orleans not only what had constituted the Island of Orleans on the left or east bank of the Mississippi river, and referred to in the original treaties, but also further additional lands *west* of said river"; and again on the same page they say the southeastern boundary of the Territory of Orleans "was the original southeastern boundary of the Island of Orleans."

After thus stating our proposition on page 38 of the supplemental brief, counsel say "there are four distinct reasons why this theory of the Louisiana purchase not including any territory east of the Island of New Orleans cannot prevail." We will examine the four reasons offered by counsel for Louisiana to see whether they show unsoundness in our proposition that *the territory of New Orleans and the present State of Louisiana included and now embraces nothing except part of the territory admitted by France to have been ceded to the United States under the name of Louisiana, that is, nothing east of the river except the Island of New Orleans.*

They say:

> "1st. If it be true, that the Mississippi line extends to the Lake of the Mounds,

> as the six-league limit, that part of Saint Bernard parish lying south of that point, would belong to no State at all." Page 38 of supplemental brief.

It is difficult to see the alleged conclusiveness of this reason. If the statutes were not written so as to embrace all the territory owned by the United States such other territory still belongs to the Federal Government. The Chandeleur Islands furnish an instance. They do not belong to Mississippi nor to Louisiana. Certain map-makers of recent years have attempted by the use of coloring material to give them to Louisiana. But they are not claimed to have ever been part of the mainland of Louisiana or of the Island of New Orleans, nor are they within three leagues of the most eastern coast line claimed by Louisiana. They belong to the United States, as, strictly speaking, do all islands off the coast of the Island of New Orleans not within six leagues of the Mississippi coast. There may be a deep-water channel running north of them, but this does not give them to Louisiana. Congress mentioned no deep-water channel, and it was never heard of, prior to the report made by W. C. Hodgkins. Louisiana is endeavoring to have a line declared which will not only take from Mississippi the islands given her by the Congress, but will also take in the other outlying islands which were embraced within the limits of neither State, but which are still the territory of the United States.

The next reason given on the same page is:

> "2d. If it be true, then Louisiana would have no boundary on the Gulf of Mexico to the northeast as the act of Congress provides,

> but its boundary here would be a land boundary adjoining Mississippi's line at the Lake of the Mounds."

But does this water area in dispute lose its character as part of the Gulf of Mexico because of the presence of the islands? If Lake Borgne is part of the Gulf is not Bay Boudreau a part of it too? The line we ask this Court to declare and establish as the eastern boundary of the Island of New Orleans runs through Nine Mile Bayou a short distance till it reaches the broad waters of Bay Boudreau or False Mouth Bay, and from there to the six-league limit there is a broad, prominent, natural boundary. It is all the Gulf. The tide ebbs and flows through it. Louisiana would still have her water boundary, her Gulf boundary, all the way. There may be islands which the line would cross in running eastward, but this would be for a short distance only. Besides, it is left to this Court to dispose of islands which may be crossed by the line.

Another reason offered is:

> "3d. It would utterly negative Mr. Jefferson's memoranda, on which Congress is presumed to have acted, that Saint Bernard extended 18 leagues, or 54 miles to the eastward from the Mississippi river."

Mr. Jefferson's memoranda referred to is that quoted on page 41 of the original brief for Louisiana in which the settlement of the Poblacion de St. Bernardo is described. Counsel are fully aware that the old St. Bernard settlement of 1804, *did not extend as far eastward as Nine Mile Bayou*, and that the peninsula between Nine Mile Bayou and Lake

Borgne was a part of the parish of Plaquemine before it was made a part of St. Bernard. It also appears that Mr. Jefferson measured the sinuous line of Bayou Terre aux Bœuf, or he was plainly mistaken in the distance, for it will be noted that he says it travels eastward 18 leagues and then, afterwards, falls into Lake Borgne and the sea. Now it is not 18 leagues from the Mississippi to the point where this Bayou divides, nor is it 18 leagues to the point where it falls into Lake Borgne. It is not 18 leagues to the point where one division of it falls into the sea. *We know the very points referred to by Mr. Jefferson, and know he was mistaken in his estimates of the distances.* He said it was 18 leagues from the Mississippi to the point where Bayou Terre aux Bœuf divides itself into two branches. *We know the precise point* where it divides and know it to be not 18 leagues nor one-half that distance. See other quotations from this same document of Mr. Jefferson on page 15 of the brief by the Attorney-General and Assistant Attorney-General of Mississippi.

And the Court is here again referred to the historical diagrams appearing on pages 1032 and 1033, of the record, the same having been offered in evidence by Louisiana, and that on page 1032, having been reproduced on page 36 of original brief for Louisiana. And especially is the attention of the Court asked to Ellicott's map, since his is the one most likely used by the authors of the laws. The feature common to Ellicott's map and these historical diagrams is that they show the eastern boundary of the Island of New Orleans precisely where we find it to-day, in perfect consonance with the Congressional idea as

manifested by the legislation involved herein, and in perfect accord with tradition.

The final reason offered is:

> "4th. That his theory would negative the American claim that the Louisiana purchase extended along the coast as far as Mobile and the Perdido river, which claim is supported in 2d Peters, 253, in an able opinion by Marshall, C. J., which repudiates the present theory of the Attorney-General of Mississippi."

This also is an answer to an argument which we have never dreamed of making. In that same opinion Chief Justice Marshall recognized the historical meaning attached to the description of the line from the Mississippi eastward through Iberville river and Lakes Maurepas and Pontchartrain to the sea. R., p. 1880. This line was the boundary, on the east side of the river, of the province of Louisiana, which France admitted to have sold to the United States in 1803. It marked the boundary of the province whose title in the United States was perfect. We claimed West Florida, but our title was not quieted until 1819. This line cut off only the one island east of the river. Our title was perfect to this island only. No territory was organized into the State of Louisiana by the original act of April 6, except that to which we had a perfect title. In their original brief, on page 57, counsel concur in this statement when they say that the Territory of Orleans embraced the one island east of the river, and that the southeastern boundary of the Territory of Orleans was the southeastern boundary of the Island of New Orleans.

The limits of the Island of New Orleans.

1. We have referred the Court to Mr. Jefferson's statement that it was a narrow strip along the east bank of the river.

2. We have called attention to Ellicott's map, which shows the eastern boundary of this island as being on a north and south line with the eastern branch of Pearl river. And Ellicott's map, we have shown, is the one to which reference was made for information respecting this territory.

3. We have shown by overwhelming proof that tradition tells but one story about the location of the line and that story is that it runs south out of the eastern branch of the Pearl 18 miles.

4. This tradition has been preserved along the Mississippi coast only. There is no Louisiana tradition respecting it.

5. This tradition has been shown mainly by fishermen and boatmen, they being the only people who have ever had occasion to inquire or to learn.

6. The diagrams picturing the historical idea of this island have been offered by Louisiana and indorsed by her counsel. These diagrams are in perfect harmony with tradition, with Mr. Jefferson's statement, with Ellicott's presentation, *and with the facts as they now exist.*

7. History demonstrates the fact that this island was thought to begin about the mouth of Pontchartrain, that being understood to coincide with the mouth of the Pearl. West Florida embraced all the islands within six leagues of the shore westward *to the mouth of Pontchartrain.* This

gave that province every island east of the Mississippi and within six leagues of the shore, excepting the island of New Orleans. West Florida embraced islands close up to the Island of New Orleans. If they were in West Florida they are now in Mississippi.

8. The Island of New Orleans was added to the west bank of the river only because the city stood on it. The city was the principal object aimed at. The island was carried with it only because it was the location of the city. It will be observed that the explanation of the description in the Treaty of 1763, is "the town of New Orleans and the island whereon it stands." The town is mentioned as the principal item of the stipulation; the island is carried because it holds the city.

9. We find to-day that this island extends only to Nine Mile Bayou, and this eastern boundary is almost directly on the line extended from the mouth of Pearl river south. We find here a large natural boundary coinciding with the historical line, with Ellicott's line shown on his map, and with the line of tradition.

10. We find too that this great natural boundary existed in 1843, as it is seen to-day. We compare a map of 1903 with one of 1843, and find no change in the face of the country. We have this positive proof of the rapidity with which changes are in progress in that section. We find that it has been severely tried during this 60 years by storms, but no perceptible change has occurred.

11. Since our large natural boundary Nine Mile Bayou existed in 1843 as it does to-day, as an extension of the Pearl river line south, we may with perfect safety

assume that it so existed in 1812, in 1803, in 1763. If no perceptible change has occurred in 60 years, who can say how long the alleged process at work in this section would require to show results?

12. And, more powerful still, the line for which we contend as the eastern boundary of the Island of New Orleans, the Pearl river line extended, is the one intended by the Congress. The framers of the Act of 1817 treated West Florida and the Mississippi Territory as including everything immediately south of the coast line extending eastward from the most eastern branch of the Pearl. They knew that Louisiana extended across the Mississippi only to take in one island, and that all the rest of the islands were still available. The description found in the Act of 1817 would never have been used if the Island of New Orleans had been regarded as extending around in front of the Mississippi Territory, or if it had been considered that Louisiana embraced the islands eastward and within three leagues of the mainland of her island on the east bank of the Mississippi. To say the authors of the 1817 law regarded the Louisiana act as having the meaning which Complainant is now attempting to give it is to charge them with ignorance and criminal carelessness.

13. The adoption of this line, the extension of the Pearl river line south through Nine Mile Bayou, as the eastern boundary of the Island of New Orleans, removes the conflict by precluding the operation, in the same territory, of the six-league limit provision of the Mississippi act, and of the three-league limit provision of the Louisiana law.

14. The adoption of this side line will give full effect to the six-league limit provision in the Mississippi act, which calls for measurements from a well-defined shore line, thus permitting that which is certain to prevail.

15. Convenience and expediency ask for the same line. See the memorial of the people of West Florida to be added to the Mississippi territory, on page 2003 of the record. This disputed area is foreign to Louisiana. It is from 15 to 35 miles from the settled portion of St. Bernard parish, and perhaps 45 miles from the courthouse of that parish—and it has never been embraced within the limits of that parish by any act of the Legislature. It is in front of and within a few miles of the most thickly settled and prosperous part of Mississippi.

16. Nothing shown by this record can reasonably be urged against the adoption of the Pearl river line extended through Nine Mile Bayou, as the eastern boundary of the Island of New Orleans, except the various maps which have pictured this disputed area as a solid peninsula. Will map-makers be permitted, for the purposes of this litigation, to obliterate the broad bodies of water which these islands surround, and weld the entire territory together and form a solid peninsula? The change has not been in the physical conditions, but in the information concerning these conditions.

17. This Court is now called upon to define for the first time the eastern boundary of the Island of New Orleans The necessity has just arisen. The disputed area is *wild land*. There can be no actual *occupancy of it*. It has been open to the world except during the last four years. The

conflict has occurred within that time. As soon as it was known that Louisiana claimed it a protest arose from Mississippi and a dispute between the citizens of the two States. At the meeting of the citizens of the two States in New Orleans in 1901, at the instance of the two governors, when the Representatives of Louisiana suggested their deep-water channel line, the spontaneous expression of the Representatives of Mississippi was "this is a novel contention." R., p. 25. They had never heard of it before.

18. And we submit that since it is *wild land;* since the occasion has just arisen to mark the boundary; since there has been no pretence of a line marked on the earth, up to which the two States have claimed; since no property rights of any consequence have existed; since the Pearl river line extended will restore perfect order and attribute to the Congress full information as to the history of the section; and since Louisiana has made no sufficient proof of change in the face of the said area, *therefore this Court will pass upon the issues involved and construe the two laws with reference to the physical conditions and the truth of history just as if the original bill herein had been filed in* 1818 *instead of in* 1902, *and apply them without reference to anything which has occurred since* 1817.

IX.

Summary.

During the argument one of the Justices propounded this question: Suppose (1) that Louisiana fails to maintain her contention as to the deep-water channel theory; and

(2) that Mississippi fails to maintain her contention as to the application of the doctrine of *in pari materia*, how will the case then stand before the Court. Assuming that the archipelago existed in 1812, as it does to-day, the deep-water channel theory is the only basis of the first aspect of Complainant's bill, the only basis upon which she can claim *the entire territory* in dispute. As stated heretofore, in anticipation of the collapse of the deep-water channel theory, she drafted her bill in the alternative, the alternative prayer reading as follows: "But if your honors should feel that any part of this disputed area was *islands* by reason of the presence of shallow water, then *as islands* they are within the nine-mile limit of distance *from the shore line of the State of Louisiana*, and therefore belong to and form part of the State of Louisiana by that second provision of the act of Congress giving Louisiana *all islands within three leagues of its shore line.*" With the collapse of the deep-water channel theory, and with the failure of Complainant to prove, *the burden being upon her*, that the archipelago did not exist in 1812 as it does to-day, nothing remains except the second aspect of her bill in which she prays that if the Court finds that the islands do exist she shall be given such of them as "are within the nine-mile limit of distance from the shore line of Louisiana." If we are correct in assuming that only the second aspect of the bill now remains for consideration, this Court could not go beyond its prayer, *even if Mississippi withdrew all defense in order that a decree pro confeesso might be entered against her.* The second aspect of the bill is based upon an admission that all the islands outside of the nine-

mile limit belong to Mississippi. On the other hand, Mississippi claims the entire territory in dispute upon two clearly defined bases: First, by virtue of the doctrine of *in pari materia* which, if applied as we contend it should be, removes all obstacles to the execution of the grant contained in the act of 1817 whereby Congress conveyed to Defendant "all islands within *six leagues of the shore* to the most southern junction of Pearl river with Lake Borgne"; second, by virtue of the contention that, regardless of the doctrine of *in pari materia*, no obstacle stands in the way of the execution of that grant, because it does not take away from Louisiana any territory vested in her by the act of 1812,—that act never having attempted to convey to her anything east of the Mississippi except the Island of New Orleans. The essence of the second contention is that Congress never intended to convey to Louisiana any islands east of the Island of New Orleans, all such islands being embraced within the boundaries of West Florida. As both contentions have been fully presented heretofore, they need not be restated here. Mississippi contends with respectful and confident earnestness that no application of the law can be made to the facts of this case, either upon a practical or scientific basis, which will take from her any of the islands situated within the eighteen-mile limit from her shore, so clearly and distinctly defined in the act of 1817. It should never be for a moment forgotten (1) that Louisiana frankly admits that Congress attempted to convey to Mississippi the islands in question by that act; (2) that the intention of Congress thus admitted should not be defeated by a construction holding that that

body intended in the act of 1812 to vest in Louisiana a long chain of islands extending half way across the sea-front of Mississippi, when the Court knows judicially that such an injustice has never been inflicted by Congress upon any other State in the entire Union. But if the Court in its wisdom shall reject that contention, then we assume it to be certain that it will not decree to Louisiana more of the islands in dispute than are prayed for in the second and only remaining aspect of her bill. To repeat the language of that prayer, the islands "*within the nine-mile limit of distance from the shore line of the State of Louisiana.*" The last phrase removes all excuse for the idea that Louisiana has not a "shore line" like any other State. Congress said she had when it gave her "all islands within three leagues of the *coast.*" "In a statute which requires measurement from *the coast* the coast is the point of contact of the *mainland* with the sea; and when a bay intervenes the point of contact of the bay with the *mainland* is to be considered coast." Farnham on Waters and Water Rights, Vol. II, p. 1463, citing *Hamilton* v. *Manieff*, 11 Texas, 718. Unless Louisiana has *a mainland coast* how could islands lie within three leagues of it? The point of contact of the sea with the edges of outlying islands is not the "coast" as known either to municipal or international law, except when the marine league is to be measured; it is never so considered when domestic boundaries are involved. The red line on the map No. 59, herewith submitted for the convenience of the Court, defines the coast or shore line from which Louisiana prays that the nine-mile limit shall be measured. It states the

matter in as favorable a light as it can be put for her. The undisputed proof is that the waters are navigable from Nine Mile Bayou at one end of that shore line to the Lake of the Mound at the other. Charles Sanger says: "We went in through Nine Mile Bayou, then we went through— Q. Bay Bordeaux, then into Treasure Bay, then where did you go? A. I think somewhere up in here, that is where we stopped. (Witness here pointed out on the map before him the Lake of the Mound.) By Mr. Zacharie: Q. Do you mean to say you went into the Lake of the Mound? A. Somewhere up in here. Q. Somewhere near Lake of the Mound? A. Yes, sir. Q. Did you go out there with your boat? A. Yes, sir. Q. Did you come out the same route? A. Yes, sir." Record, pp. 264–265. This uncontested proof as to the navigable character of the water along the shore line from Nine Mile Bayou to the Lake of the Mound is confirmed by the report of the cruise of the "Fish Hawk" which states as to all these interior waters: "The depth of water is generally from 3 to 6 feet, although in some of the bays, particularly those to the eastward, there are channels through which a considerably greater depth can be carried." With its judicial knowledge of the geography of the entire coast, even of the position of the islands near to it (*State* v. *Wager*, 61 Me., 178), supplemented by the uncontested parol proof as to the navigable character of the water, the Court should, with the aid of the maps, find no difficulty whatever in adjudicating that the red line marked on map No. 59 herewith submitted is the eastern shore line of Louisiana in the region where it is important to define it.

The Coast Survey expert, W. C. Hodgkins, upon whose skill Complainant so confidently relies, has traced the mainland coast line of Louisiana at this point in substantial accordance with the red line on map No. 59. In Record, p. 481, he says: "As requested by counsel for the State of Mississippi I have indicated on a copy of map No. 7, by a red line from the point marked *B* on the shore of Lake Borgne to the point marked *C* northwest of Point Chico, what appears to be the physical coast line on this portion." There is no conflicting testimony on that point.

All of which is respectfully submitted.

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Of Counsel.

WILLIAM WILLIAMS,
Attorney-General of Mississippi.
JAMES N. FLOWERS,
Assistant Attorney-General.

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Supreme Court of the United States,

OCTOBER TERM, 1905.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant*,

vs.

THE STATE OF MISSISSIPPI, *Defendant*.

PETITION FOR REHEARING.

HANNIS TAYLOR,
MONROE McCLURG,
Of Counsel.

WILLIAM WILLIAMS,
Attorney-General of Miss.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

IN EQUITY.

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THE STATE OF LOUISIANA, *Complainant,*

v.

THE STATE OF MISSISSIPPI, *Defendant.*

PETITION FOR REHEARING.

The said Defendant comes now and respectfully petitions this Honorable Court for a rehearing of said cause for the following reasons, to wit:

I.

Because the Court erred in holding that the Defendant has lost her constitutional right to assert what she claims to be the true boundary in question by reason of a supposed *acquiescence* upon her part *during a long period of years* in a particular boundary supposed to have been defined and asserted during that period by Complainant. With the greatest respect we will undertake to demonstrate that no question of acquiescence, as that doctrine is defined by law, is presented in this case either by the pleadings

or proof. The specific and only declared purpose of the bill as defined in its prayer is the "practical location" of a boundary line running its entire length through certain waters, and "commencing at the most southern junction of the eastern mouth of Pearl River with Lake Borgne, thence by a deep water channel through Lake Borgne, north of Half Moon Island through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat Island, through Chandeleur Island sound, northeast of the Chandeleur Islands, to the Gulf of Mexico, as is indicated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Commission and now made part of this bill, marked Exhibit E." There is no pretense in the bill that such a line has ever had a "*practical location*"; the primary purpose of the bill is to give it a "practical location" by having it "permanently buoyed at the joint expense of both States." Complainant does not claim that any one ever heard of such a line until it was first suggested as a practical expedient for settling the controversy between the States by a civil engineer, Mr. W. C. Hodgkins, in a report made by him on the subject January 30, 1901. See Record, pp. 999–1003. The Court will there find the following: "Department of Commerce and Labor, Washington, D. C., March 18, 1904. I hereby certify that the annexed is a true copy of the original report of January 30, 1901, and the accompanying sketches, submitted by Mr. W. C. Hodgkins, assistant, Coast and Geodetic Survey, on the boundary line between the States of Mississippi and Louisiana in the waters bordering upon

the Gulf of Mexico. Andrew Braid, assistant in charge of office of Coast and Geodetic Survey." Then follows four printed pages in which Mr. Hodgkins, after demonstrating that it is practically impossible for anybody to say where the boundary in question is located, concludes as follows: "From all the information at hand, therefore, *it would appear* that the boundary between the States *probably takes the course indicated on the final tracing*, i. e., north of the Malheureux Islands, and thence through the Cat Island channel to the Gulf of Mexico." The Court is mistaken in supposing (p. 29) that Hodgkins ever pretended to know where the boundary actually is; he only undertook to make a guarded statement as to *a probability*. Never until his report was made in January, 1901, did any one ever hear of this line, the invention of Mr. Hodgkins, *in which the State of Mississippi is now supposed to have acquiesced during a very long period of years*. The line as thus invented and proposed by Mr. Hodgkins was at once seized upon by the Louisiana Boundary Commission, which submitted it, at a conference held in the city of New Orleans, March 26, 1901, to the Mississippi Boundary Commission *as Louisiana's claim* as to what the boundary line between the States should be. As the record shows, p. 25, that claim was defined at the conference in question upon the identical map, Exhibit E, now annexed to the bill of complaint. From the minutes of the conference the following appears: "This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Commission admitted that the view was *a novel*

one to them, they being unable to pass upon it at the moment and requesting further time." After reflection the Mississippi Boundary Commission replied to the Louisiana Boundary Commission as follows: "The difference between the line marked by your honorable body [that is, the Hodgkins line] and that which we conceive is the true boundary is so great that we have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition. The Mississippi Commission considers as islands considerable territory which the Louisiana Commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling." See Record, pp. 24–26. It thus appears *from documents exhibited by Complainant* that on the first and only occasion that the proposed boundary line, *and the only boundary line in question in this case*, was ever submitted to the State of Mississippi or to any of her citizens, it was received as "a novel" thing of which they had never heard, and rejected as a proposition not debateable. It is therefore certain that if there has ever been any acquiescence upon the part of either State in a boundary line it has taken place since January 30, 1901 (the bill was filed in October, 1902), when Mr. Hodgkins attempted to indicate what it "probably" should be. There is no pretense in the pleadings or evidence that prior to his tracings any one had ever attempted to indicate even upon a map the position of said line, much less to give it "practical location." It is elementary and fundamental that the doctrine of acquiescence can never be applied for the purpose of estab-

lishing a boundary that has never had "practical location" by being actually marked and established by some kind of visible physical monuments, because, in the language of the books, there must be "an acquiescence *in such a line* for a time long enough to bar a right of entry under the statute of limitations." See Am. and Eng. Enc. of Law, Vol. 4, pp. 863–64, and authorities cited. That great array of cases recognizes throughout that there must be *an actual marking or designation of the line on the territory over which it extends by visible physical means*, before either party can be held to have accepted it by acquiescence, because acquiescence implies an *active assent* to a known and visible line. In drawing the distinction between laches and acquiescence a distinguished author says: "While the words laches and acquiescence are often used as similar in meaning the distinction in their import is both great and important. Laches imports a merely *passive*, while acquiescence implies *active assent*." Wood on Limitations, § 62. It is impossible for men or States to accept or acquiesce in a given line as a boundary without knowing where it is. Unless it has had, as all the authorities assert, a "practical location," a "marking upon the ground," the doctrine of acquiescence can not be employed as a means of confirming it. That universally accepted principle is the basis of the judgment of this Court in *Indiana* v. *Kentucky*, 136 U. S. 479, in which the claim of Kentucky was sustained because Indiana had acquiesced, during a long period of time, in a boundary line asserted by Kentucky and definitely marked on the earth. In the words of the Court: "Our conclusion

is, that the waters of the Ohio River, when Kentucky became a State, flowed in a channel north of the track known as Green River Island, and that the jurisdiction of Kentucky at that time extended, and ever since has extended, to what was then low-water mark on the north side of that channel, *and the boundary between Kentucky and Indiana must run on that line, as nearly as it can now be ascertained, after the channel has been filled.*" The conclusion thus reached was that for seventy years Indiana had acquiesced *in a definite line marked upon the earth* by natural monuments which all the world could see and understand, and "the boundary between Kentucky and Indiana must run on that line," etc. In *Virginia* v. *Tennessee*, 148 U. S. 503, 528, in which the foregoing case is quoted, this Court has said: "Independently of any effect due to the compact as such, a boundary line between states or provinces, as between private persons, *which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years*, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant, and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary. Lord Hardwick, in *Penn* v. *Lord Baltimore*, 1 Ves. Sr. 444, 448; *Boyd* v. *Graves*, 4 Wheat. 513; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 734; *United States* v. *Stone*, 2 Wall. 525, 537; *Kellogg* v. *Smith*, 7 Cush. 375, 382; *Chenery* v. *Waltham*, 8 Cush. 327; Hunt, Boundaries (3d ed.) 306." *Boyd's Lessee* v. *Graves* was the case of an agreement, by parol, between two proprietors

of adjoining lands to employ a surveyor to run the dividing line between them, and that it should be thus ascertained and settled, which was executed *and the line accordingly run and marked on a plat by the surveyor, in their presence, as the boundary.* On that state of facts this Court declared that "*The possession subsequently held,* and the acts of the parties evidenced by their respective sales of parcels of the land held by each, under his patent, *bounding on the agreed line,* amount to a full and complete recognition of it." In *Rhode Island* v. *Massachusetts,* p. 733, this Court thus stated the precise issue: "One asking us to annul, the other to enforce the agreements; one averring continual claim, the other setting up the quiet, unmolested possession for more than a century, *in strict conformity to, and by the line in the agreements.* * * * *The locality of that line is matter of fact,* and, when ascertained, separates the territory of one from the other, for neither State can have any right beyond its territorial boundary." In applying the doctrine of acquiescence in *Stone* v. *United States,* this Court said: "This survey was made in the presence of the agent of the Delawares. It marked the usual quantity of about three miles square, as appurtenant to the post and necessary for its use and subsistence, making the lines thereof the boundary of the grant to the Delawares, with the concurrence and consent of the agent of the nation. *It was made in the year 1830, and since that time both parties have held possession and claimed up to the lines then established by the survey.*" No case can be found in which this Court has ever applied the doctrine of acquiescence to a boundary controversy between States or in-

dividuals unless it clearly appeared that *a definite boundary line* had first "been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years." For that reason it is impossible to apply the doctrine to the settlement of the boundary in question here. *The affirmative case* made upon the face of the bill precludes the possibility of such a thing because it appears from the bill that the line in question was never invented until January 30, 1901, and that when it was presented for the first and only time to the representatives of Mississippi they received it as "a novel" thing of which they had never heard before, and rejected it as unworthy of discussion. The bill does not claim that prior to the Hodgkins invention anybody had ever attempted to define the line in question and Mr. Hodgkins himself admits that the subject was so difficult that he could only attempt to say that the line "probably takes the course indicated." Because the line has never had "practical location" the bill was filed with that end in view. In the face of the facts as thus presented by Complainant's pleadings and proof how can it be held *that Mississippi acquiesced during a long period of time in a line never proposed until 1901*, never given "practical location" at any time, and rejected by her as a novel thing unworthy of consideration on the only occasion upon which it was ever presented for her assent. We respectfully submit that the application to the facts of this case of the doctrine of acquiescence in the face of the admissions by Complainant that she has never asserted any definite boundary line through the land and water area in question, that she

never even claimed *such a line on paper* until March, 1901; that such a line has never been given "practical location" by being marked on the earth or buoyed on the water,—overturns every previous definition of the doctrine of acquiescence heretofore made by this Court. Our contention is that this part of the judgment is abstract because neither the pleadings nor proof present conditions to which the doctrine in question can possibly be applied.

It is true that the record contains a mass of conflicting testimony offered by each State to prove the assertion upon its part of sovereignty and jurisdiction over portions of the area in dispute during a long period of time. If that mass of conflicting testimony is to have any legal effect at all it must be considered simply as proof of *prescription*, a doctrine which can not be confused with the doctrine of acquiescence, as they rest upon entirely distinct foundations. As we have demonstrated already the doctrine of acquiescence can never be invoked except as a means of confirming a boundary definitely marked off and defined by physical monuments, *prior to the beginning of the acts of acquiescence.* As that doctrine can not be applied here, the only remaining question is this: Has Louisiana established a title to this vast area, occupied in the main by water, through prescription, as that doctrine is defined in the law of nations, which has never attempted to say how long the quiet and adverse possession must continue in order to vest title? This Court has never indicated that it is possible for any State of this Union to gain territory from another State upon any such basis. Even if such a principle existed there never was a case in which there

could be less justification for its application, as there is no proof of the exercise of any visible and actual possession upon the part of either State over a domain without a single human habitation. We confidently contend that so far as constructive possession is concerned the weight of the testimony is decidedly in favor of Mississippi. So far as the water territory is concerned, through which the bill proposes to run the Hodgkins line, the proof clearly shows that it has been in the unmolested enjoyment of thousands of Mississippi fishermen for more than fifty years. It may be stated with certainty that at least sixty out of the seventy-seven witnesses called by Mississippi sustain that statement, including governors, judges, district attorneys, sheriffs, clerks, mayors, justices of the peace, and all classes of citizens along the coast from capitalists down to the poorest tong-men. We do not know how seriously to discuss the proposition that, upon the vague and conflicting proof as to constructive possession of the territory in question, Louisiana has title by prescription. We do not believe the Court intends even to consider such a proposition. In its opinion it has made no intimation that it intends to apply *the doctrine of prescription.* It is evident, however, that the result of the proof as to *prescription* has induced it erroneously to conclude that there has been *acquiescence* upon the part of Mississippi. As an illustration.—The Court says (p. 30): "The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana." Even if that is granted such proof can only be considered as proof of *prescription* for the

simple and conclusive reason that as no definite boundary was ever defined or marked the doctrine of acquiescence is not involved. In reaching the conclusion that Mississippi has, during a long period of years, actually and affirmatively acquiesced in a definite boundary clearly marked and asserted by Louisiana *before the supposed acts of acquiescence began*, the actual condition of the record has evidently been lost sight of, the bill failing to allege or the proof to show that Louisiana ever claimed or asserted a definite line through the region in question prior to 1901. It is therefore impossible that Mississippi could have acquiesced during a long period of time in a line never even traced on a map, much less given a "practical location." We pray that the Court will re-hear us so that we may remove the manifest misapprehension as to the facts involved in this branch of the case.

II.

Because that part of the judgment which applies the doctrine of the thalweg or mid-channel to the waters of Mississippi sound upon the theory that such waters are *territorial waters*, and not the open sea as declared by the Department of State, whose rule on that subject the Court must follow, is based largely upon *an erroneous conclusion of law as to the character of such waters*, contained in the cross-bill of Defendant, and quoted by the Court in its opinion at p. 26. The erroneous conclusion of law thus embodied in the cross-bill early in the litigation was not subsequently removed by amendment because as the legal character and situation of the waters of Mississippi sound, a prominent feature in the geography of the country, are

a part of the Court's judicial knowledge, such knowledge is so conclusive as to be entirely unaffected by any contrary averment of the pleader or by any conflicting evidence that might be offered on the subject. Am. Enc. of Law, Vol. 17, pp. 902–3, and authorities cited. And even if the matter in question were not a subject of judicial knowledge, certainly no erroneous conclusion of a pleader as to a well-settled rule of international law can convert a part of the open sea into that kind of territorial water technically known as "an arm of the sea." It is an elementary rule of pleading, at law and in equity, that "A party is not concluded by an erroneous averment of law in his pleadings. The rule of estoppel by averment of a fact has no force as to a statement of the law to be applied to a certain state of facts. *A mistaken assumption of what the law is* will not be presumed to have misled the opposite party." 39 Am. Dig. Cent. ed. 1203; *Union Bk.* v. *Bush*, 36 N. Y. 631; Bac. Abr. "Pleas," 322. We therefore respectfully contend that the Court must settle upon its merits, and in the light of its judicial knowledge, the vital question involved in this case, which is this: Are the waters to which the Court proposes to apply the doctrine of the thalweg or mid-channel as now defined by it *territorial waters of the United States* or a part of the open sea? We bow to the judgment of the Court that the doctrine of the mid-channel may be lawfully extended beyond rivers to "an arm of the sea" dividing States from each other. It is axiomatic and elementary that "an arm of the sea" is necessarily *territorial water*, water so inclosed between headlands or promontories as to fence or mark it off from the open sea. The moment such

a body of water ceases to be *territorial* that moment it ceases to be what is technically known as "an arm of the sea." No publicist, no theorist, no advocate, either here or elsewhere, has ever ventured to claim that the doctrine of the thalweg can be applied to the waters of the open sea as contradistinguished from the territorial waters embraced in what is known as "an arm of the sea."

Our respectful and earnest contention now is, (1) that only the political department of this Government can determine what are the territorial waters of the United States; (2) that the judicial department must follow the rule of the executive in that respect; (3) that the waters of Mississippi sound to which the Court now proposes to apply the doctrine of the thalweg, *and which it recognizes as territorial waters*, are declared by the Department of State to be the open sea and as such beyond the territorial limits of the United States. If we are correct in that contention, now presented for the first time in that aspect, it is a contradiction in terms to speak of the Court defining a boundary beyond the limits of territorial waters, for the simple and conclusive reason that the jurisdiction of the Court ends at the point where the open sea begins. In order to present this view of the case more vividly to the Court we will quote from the prayer of the bill: "And after due proceedings may it please your honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth of Pearl River

with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon Island through Mississippi sound, north of Isle à Pitre, through Cat Island Pass channel, southwest of Cat Island, through Chandeleur Island sound, *northeast of the Chandeleur Islands to the Gulf of Mexico*, as is delineated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Commission and now made part of this bill marked Exhibit E; that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States; *that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line.*" If the Court will examine the red line on said map marked Exhibit E (printed in the record opposite page 8) which defines exactly the area of territorial water claimed by Louisiana, and which she prays the Court to decree to her by virtue of the so-called deep water channel theory, it will see that her claim is extended to a point southeast of Breton Island, which point is located in the open waters of the Gulf of Mexico, certainly *eighty miles from the southern coast of Mississippi and about forty-five miles from the mainland coast of Louisiana.* The prayer is "that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana *in the said land and water territory south and west of said boundary line.*" Thus the startling claim is made by Louisiana to the entire group of the Chandeleur Islands, now owned and occupied by the United States and situated nearly if not quite twenty-five miles from her

eastern coast as defined by this Court, with all the vast expanse of waters embraced within a line sweeping around to the east of said group. If the prayer of the bill is granted the result will be that an area of the open waters of the Gulf of Mexico, *at least fourteen hundred square miles in extent*, which, under the settled rule of our Department of State constitutes the ocean, the property of all mankind, will be fenced off and inclosed as a part of the territory of Louisiana. There can be no possible mistake as to the extent of the claim as the specific prayer of the bill is that "the said *land and water territory* south and west of said boundary line" be decreed to the State of Louisiana. If the Court will follow the proposed boundary as defined by the red line marked on the map in question, it will see that it sweeps to the east of the Chandeleur group and Breton Island, thence around the mouths of the Mississippi and along the southern coast of the State to the mouth of the Sabine River. A State boundary must of necessity be *continuous;* it can not break off in mid-ocean and disappear. The bill does not attempt to avoid that issue; the continuous line is boldly drawn to the east of the Chandeleur group, and this Court is asked to decree that all of the waters west of that line up to the eastern shore of Louisiana be decreed to that State *as territorial waters*, including of course the Chandeleur Islands and Breton Island. If the deep-water channel theory is to prevail Louisiana can claim no less because only in that way can she set up a continuous boundary. If the Court sustains this claim and decrees that all waters to the south and west of the red line as defined on the map in question are the territorial waters of

Louisiana what will be the effect on the territorial limits of the United States? The answer is easy. According to the elementary rule of international law the outer edge of the territorial waters of Louisiana must be fringed by the marine league, whose outer edge marks the beginning of the open sea. Thus the southern maritime boundary of the United States in those waters will, *by a decree of this Court*, be extended into the open waters of the Gulf of Mexico many miles to the south and east of the national boundary line as now fixed and recognized by the political department. In a word a vast expanse of water which that department now recognizes as the open sea, upon which hostile fleets may encounter outside of our national boundaries, will be converted into territorial waters of Louisiana. We respectfully urge that there should be further discussion and consideration of this vitally important aspect of the case, for two reasons: first, because of the inevitable conflict that must arise between the judicial and political departments of the Government as to the national boundaries in the waters in question if the draft of the final decree now offered is enrolled; second, because the question of the exclusive right of the political department to determine what are and what are not the territorial waters of the United States has not heretofore been discussed in any form by counsel on either side of this case. Our excuse, if one be needed, for a failure to go into that subject heretofore is that we confidently believed that the Court would hold that the doctrine of the thalweg could not be extended beyond rivers to that kind of territorial water technically designated as "an arm of the sea." After the intimations made on that subject during

the oral argument we did not suppose that the doctrine of the mid-channel would receive serious consideration.

The right to fix national boundaries necessarily carries with it the right to define what are and what are not territorial waters. The political department possesses the exclusive right to make such definitions, which must be accepted as final by the judiciary. Peaceful intercourse between nations requires that each State should define its boundaries by land and sea. Under our Constitution national boundaries are defined by political and not by judicial action, and the courts follow the decision of that department of government which makes the definition. Hence the formula that the "Judiciary takes executive view as to national boundaries." Wharton, Int. Law. Dig. Vol. I, § 22, citing *Foster* v. *Neilson*, 2 Pet. 253; *Garcia* v. *Lee*, 12 *id.* 511; *Williams* v. *Suffolk Ins. Co.* 13 *id.* 415; *U. S.* v. *Reynes*, 9 How. 127. No State can possibly define its boundaries without determining what are its territorial waters as contradistinguished from the waters of the open sea, because only in that way can the place of the marine league be fixed. International law therefore concedes to each State the right to define within certain limits its territorial waters. In the exercise of that right our Department of State has followed two distinct policies. The earlier policy has been thus defined by Kent: "Considering the great extent of the line of the American coasts, we have a right to claim for fiscal and defensive regulations a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume for domestic purposes connected with our safety and welfare the control of waters on our coasts, though included within

lines stretching from quite distant headlands,—as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the South Cape of Florida to the Mississippi." Comm. I, 30. As such extravagant claims were in conflict with the principles of modern international law they were abandoned at an early day in favor of the generally accepted rule as thus stated by Hall: "In any case the custom of regarding a line three miles from land as defining the boundary of marginal territorial waters is so far fixed that a State must be supposed to accept it in the absence of express notice that a larger extent is claimed." p. 160. We have only claimed "a larger extent" in the case of certain land-locked bays inclosed within headlands. The following is an accurate and complete statement of the rule of our Department of State as recognized for more than half a century: "The position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. *This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely at a distance of three miles, the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign.*" Mr. Bayard, Sec. of State, to Mr. Manning, Sec. of Treasury, May 28, 1886; Wharton, Int. Law Dig. Vol. I, § 32. Under that rule it is impossible to run any

line from headland to headland so as to make the open waters of Mississippi sound to which the mid-channel doctrine has been applied *territorial water.* If the extremity of the Isle à Pitre should be taken as one headland it would be necessary to reach over the vast expanse of water between that point and Alabama port at the mouth of Mobile Bay before anything even resembling another headland could be found. Such a rule, as once stated by Kent, has been a dead and repudiated doctrine for more than sixty years. *The United States now claims no indentations of its coast such as Mississippi sound as territorial waters.* The fact that a few islands miles from the shore are situated in front of such an indentation can not possibly convert it into an arm of the sea. *No such principle is recognized either by our Department of State or by international law.* A territorial character is given only to such *interior waters* as Delaware and Chesapeake Bays, Mobile Bay and Lake Ponchartrain, which are really "included by promontories or headlands within its territories." See Moore, Int. Arb. Vol. I, 744; Lawrence's Wheaton, 2d ed. p. 320. It was so manifest, so uncontrovertible, under the existing rule of our State Department, that such an indentation in the coast as Mississippi sound (uninclosed by anything that can by possibility be called "promontories or headlands") is *the open sea*, and not territorial water, that counsel for Louisiana urgently insisted upon that fact, until they perceived its crushing effect upon the thalweg theory. In their original brief they say: "As a matter of fact the waters of Mississippi sound were considered as the sea or as forming part of the sea and Gulf of Mexico at that time. We have already

shown (p. 69) that Mississippi sound and Lake Borgne are salt-water bodies of water *and true parts of the sea or gulf.* Congress in its description so regarded these bodies of water, for in its boundary description it carried its line from the middle of Lakes Maurepas and Pontchartrain *immediately* [the italics are theirs] to the Gulf of Mexico, thus indicating that it considered that to be the next body of water to be reached in the extension of the southern boundary of Louisiana around to the westward until it reached the Texas line." An amplification of that sound and unanswerable statement of the law as laid down by our State Department is to be found on p. 69, where the following occurs: "The meaning of the word 'sea' in the treaty of peace of 1783, between the United States and Great Britain defining the boundaries of the United States, was given by the American claim, and acquiesced in by the British as follows: 'The term "sea" in its general sense embraced the whole body of salt waters. Its great subdivisions were designated by the names Atlantic Ocean, Pacific Ocean, etc. *Each of them generically embraced all the bays, gulfs and inlets formed by the indentures of its shores or by adjacent islands.*' (Moore's International Arbitration, Vol. 1, p. 102); and the Bay of Fundy, the Gulf of St. Lawrence and the Bay of Chaleurs were considered parts of the sea (*ibid.* pp. 114, 158, and note 3)." No criticism can be sharp enough to destroy that definition of the open sea as contradistinguished from territorial waters, a definition through which counsel for Complainant triumphantly declare "that Mississippi sound and Lake Borgne are salt-water bodies of water, *and true parts of the sea or gulf.*" And yet in the face of that admission, deliberately made

by Complainant's counsel and supported by unanswerable authorities, the Court says (p. 24): "Mississippi's mainland borders on Mississippi sound. This is an enclosed arm of the sea, wholly within the United States, and formed by a chain of large islands, extending westward from Mobile, Alabama, to Cat Island." We earnestly insist that that view is a manifest error because it conflicts sharply with the rule of our State Department which declares Mississippi sound *and all like indentations of the coast* to be open sea and not territorial water. If the Court holds to the view it has expressed in this regard the result must be a clearly defined conflict between the judicial and political departments as to a subject *within the exclusive domain of the latter.* The State Department can not bow to the new rule as thus announced by the Court without an abandonment of the entire basis upon which the character of the territorial waters of the United States is now determined. If, as counsel for Louisiana contend, and as we contend, Mississippi sound is a part of the open sea, then it follows as the night the day that the doctrine of the thalweg can not be extended to the waters of Mississippi sound, because no publicist, no theorist, no advocate ever has ventured to suggest that *that doctrine can be applied to the waters of the open sea.* The extreme claim is that it may be extended beyond rivers to "an arm of the sea," that is to a body of *territorial water* so cut off from the main body of the sea as to be within the limits of one or more States, a body of water with banks like a river. It is axiomatic that "an arm of the sea" must be territorial water for the conclusive reason that the moment it ceases to be such it becomes a part of the open sea

itself. Counsel for Louisiana have only asked the Court so to enlarge the doctrine of the thalweg as to permit its application to that kind of *territorial water* between two States which is known as "an arm of the sea." And in this they have been perfectly consistent because their bill alleges and its prayer states *that every portion of the water through which the Court is asked to extend the mid-channel is territorial water.* The prayer is that Louisiana be decreed "the said land and *water territory* south and west of said boundary line." Her counsel perfectly understand that even in the enlarged form in which this Court has accepted the mid-channel doctrine it dies the moment it passes the limits of territorial waters ; it can not be applied to the open sea. Therefore the solution of this part of the case is perfectly simple the moment that the fact is accepted that the only territorial waters in the United States are those recognized by the political department of the government as such, *and that Mississippi sound is not so recognized.* There are no mysteries in this problem susceptible as it of exact demonstration. If the Court will fix its eyes upon that *long undulating indentation* in the coast of the Gulf of Mexico known as Mississippi sound, it will see the only waters with which we have to deal in this case because that part of the Gulf known as Lake Borgne ends just at the point where the so-called mid-channel begins. Even if that were not so we have the solemn declaration of Complainant's counsel, never retracted, "that Mississippi sound and Lake Borgne are salt-water bodies of water and true parts of the sea or gulf." But the inquiry need not be extended beyond that section of the Gulf known as Mississippi sound. If that sound is not "an arm of the

sea," if it is not fenced off from the main body of the Gulf by headlands or promontories, if its waters are not territorial waters, then it is the open sea to which, even under the widest possible definition, the doctrine of the mid-channel can not be extended. That is true for a very simple reason. A mid-channel is a channel midway between the banks of a river or the banks or shores of an arm of the sea. The moment banks of every kind disappear, as they do when an attempt is made to apply the doctrine to the open sea, the phrase "mid-channel" loses all meaning, it becomes a mere solecism. No possible ingenuity can construct an argument upon the theory that Mississippi sound is cut off from the main body of the Gulf by promontories or headlands because nothing in their likeness exists. The sound is simply a long indentation of the coast such as our Department of State declares to be the open sea and not territorial water. The only territorial water here is that within the three-mile zone which follows: "closely at a distance of three miles the boundary of the shore of the continent or of adjacent islands belonging to the continental sovereign," as Secretary Bayard has so clearly stated it. If the Court will follow on the map the line of the proposed mid-channel it will see that the moment it crosses the three-mile zone annexed to the shore at the mouth of Pearl River, it passes at once beyond the limits of the United States into waters which our Department of State declares to be the open sea, a domain into which the writs of this Court can not run. As an object-lesson let us take the so-called mid-channel at the point at which the bill proposes to extend it "*northeast of the Chandeleur Islands to the Gulf of Mexico, as*

is delineated on the original map," etc. At that point it is distant at least twenty-two miles from the southern coast of Mississippi and at least twenty miles east of the eastern coast of Louisiana as now fixed by this Court, *and last and most of all it is at least seventeen miles beyond the territorial limits of the United States as defined by our Department of State.* Certainly it will be admitted that that part of the waters of the Gulf of Mexico is miles beyond the water area which the Court has called "an enclosed arm of the sea." Even if that view were sound it would not help the matter, *because the proposed mid-channel must run for many miles beyond the limits which the Court gives to Mississippi sound as territorial water.* And yet this Court is seriously asked to run its writs out to that point in the open sea in order "that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line." The enormity of this claim will become still more startling if the Court will fix its eyes upon that great body of water, upon which the navies of the world could assemble, bounded on the west by the eastern coast of Louisiana and on the east by that crescent shaped chain of islands known as the Chandeleur and Errol Islands. Despite the fact that the political department proclaims to all nations that hostile fleets may there encounter outside of the three-mile zone fringing the coast, Louisiana prays that that entire expanse of water be withdrawn from the common use of mankind; that it be made a closed sea within her territorial limits; and "that the State of Mississippi and its citizens be perpetually enjoined

from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line." If the Court will estimate on the map the superficial area of water "south and west of said boundary line," which Louisiana proposes to appropriate, it will find that such area embraces *at least fourteen hundred square miles of open sea* beyond the national limits of the United States as defined by the political department. If the Court doubts the reality of what seems to be impossible, it has only to read the clear and explicit provisions of the draft of the proposed final decree which Complainant's counsel have already presented for enrollment. Through the terms of that proposed decree Louisiana is asking this Court to confirm to her, *as territorial waters*, every foot south and west of a line to be extended "through the northeast corner of Lake Borgne, north of Half Moon or Grand Island, thence east and south through Mississippi sound, through South pass between Cat Island and Isle à Pitre, through Chandeleur sound, *northeast of the Chandeleur Islands into the Gulf of Mexico, all as shown on the map Exhibit E made part of Complainant's bill of complaint.*" On that map the proposed line which is to define the territorial limits of Louisiana is boldly drawn around the entire group known as Chandeleur and Errol Islands, the acknowledged property of the United States, and now in its use and occupation as such. When counsel for Complainant presented to us the proposed draft of a final decree for approval we asked him what would become of the title of the United States to the Chandeleur group after its enrollment. His reply was that the group would

still belong to the United States, *but would be inclosed within the limits of Louisiana.* Within this vast area of open sea which is to be thus inclosed for the exclusive benefit of a single State this Court is asked, by the terms of the proposed draft, perpetually to enjoin the State of Mississippi, "its officers and citizens from disputing the sovereignty and ownership of Louisiana in the said land and water territory." Such a startling and unprecedented claim, which would project the limits of Louisiana out into the ocean many miles beyond the limits of the United States as now fixed, is the necessary corollary of the proposed mid-channel or rather mid-ocean theory. Its reckless extravagance will we believe, in the end, destroy it. Nothing can more pointedly illustrate that extravagance than the proposal to inclose within the territorial limits of Louisiana the Chandeleur Islands, the undisputed property of the United States, now in its use and occupation as a reservation. That group standing apart from the continent in the ocean, and surrounded of course by a three-mile zone of its own, was acquired from France, through the Louisiana Purchase, by the United States, which never pretended to convey it to Louisiana under the act of 1812 admitting her into the Union. On the contrary the Government of the United States expressly reserved the group for its own purposes. And yet without this grotesque contention that the territorial limits of Louisiana shall be so enlarged as to inclose this group, it is impossible to maintain the deep-water channel theory, which can not exist unless such a channel can be extended in its entire course, *through territorial waters*, "northeast of the Chandeleur Islands to the Gulf of Mexico."

In the light of such a proposal who can fail to see that the dominant and ultimate motive of this suit upon the part of Louisiana, is the appropriation, by the aid of the process of this Court, of a section of the open waters of the Gulf of Mexico one-third larger than the State of Rhode Island, in order that a vast trust or monopoly may be established therein for the exclusive benefit of the individuals and corporations engaged, with millions of capital, in her great and growing fish and oyster industry. As this Court has held in *Smith* v. *Maryland*, 18 How. 71, that a State can grant to its own citizens exclusive use of lands covered by water, for raising oysters, and may prohibit, under a penalty, their use for such purpose by citizens of other States, Louisiana can quickly complete this vast and unlawful design by legislation of her own, if by the aid of this Court she can succeed in inclosing within her territorial limits the part of the open sea in question. The taking away from Mississippi of the comparatively unimportant islands for which we are now battling is but a small matter to the real promoters of the scheme now laid bare by the presentation of the draft of the proposed final decree. The backbone of course of this unlawful enterprise in the interest of a giant monopoly is the mid-channel theory, without which it can not for a moment exist, as the act of 1812 defining the boundaries of Louisiana contains nothing that can give even color to such a claim. When this Court sternly rebukes as it surely will this unprecedented attempt to pervert its powers to a grossly illegal purpose, *the specific case* as made by the bill will fall to the ground. We earnestly suggest

that when that point is reached, the Court should not proceed in a case of this magnitude to consider what other measure of relief may be granted under the general prayer, without rehearing counsel as to the new questions which will then arise. If the Court adheres to its conclusion (p. 30) "that Complainant is entitled to the relief sought," then it must grant the special prayer of the bill as embodied in the draft of the final decree which proposes to inclose at least fourteen hundred square miles of open sea, including the Chandeleur and Errol Islands, within the territorial limits of Louisiana. In that new aspect of the case the question whether or no Mississippi sound is an arm of the sea becomes comparatively unimportant. The larger question thus presented is this: Can this Court undertake to decree to a single State that vast area of open sea, lying between the Chandeleur and Errol groups and the eastern coast of Louisiana, *as territorial water?* Upon so grave and far-reaching a question, involving the interests of all the Gulf States, as well as large political and property interests of the United States, it would seem that there should be some argument. The Court can neither accept nor reject the proposed draft of a final decree without passing upon that larger question which has not, as yet, been argued at all.

III.

A VITAL PRINCIPLE OVERLOOKED.

If the Court shall graciously grant to us a rehearing upon certain questions in this case we will not attempt

to renew the contention that those parts of the acts of 1812 and 1817 which define the southern and eastern boundaries of the States in question should be construed *in pari materia*. We accept as final that part of the judgment which declares that as the act defining the boundaries of Louisiana is prior in point of time to her must pass every foot of territory which a fair and lawful construction of that act conveys. It can not be claimed that that act is not in the usual form or that it is in any respect incomplete. It is unambiguous on its face and it employs the technical terms by which land and sea boundaries are usually defined. In the light of those facts we renew the vitally important contention, *which seems to have been entirely overlooked by the court*, that *a general rule* of international law, such as that involved in the doctrine of the mid-channel, can never be applied when the subject matter is regulated by *a special* or *conventional rule*. As will appear from the following authorities that rule of international law is fundamental: Grotius, De Jure Belli ac Pacis, II, C. 3; Bluntschli, XV, 2; Marteus, *Precis*, Sec. 119, p. 320; Calvo, *Droit Int.* I, Sec. 19, p. 109; Phillimore, Int. Law, I, pp. 44–45 (2d ed. London); Twiss, Law of Nations, I, pp. 130–131; Lawrence's Wheat. p. 28; Halleck, Int. Law, I (Baker ed.), p. 50; Lorimer, Ins. of Int. Law, I, p. 43. The obvious reason of the rule is embodied by Grotius in an illustration directly in point. He says that while in a doubtful case the ownership of territories on either side of a river is determined by the middle of the channel, it may be that the sole right to the entire river may belong to the terri-

tory on one side when for instance "*this sole right may have been so settled by treaty.*" That is to say, when the parcies themselves have established a special and conventional rule to regulate the particular case, that special rule can not be abrogated by the general rule of international law that would be applied if the special rule did not exist. When the States entered into the Union it was through a constitutional compact which authorizes Congress to define by special or conventional rules their boundaries. Therefore when such a conventional rule embodied in an act of Congress regulates the particular subject matter, it is impossible to annul it and put it aside by the suggestion that there is a general rule of international law that must supplant it. By invoking the doctrine of the mid-channel in this case Louisiana is simply striving to interpolate into the act defining her boundaries a general rule whose application will entirely change her boundary on the sea *as Congress has defined it.* From the junction of the Rigolets with Lake Borgne to the mouth of the Sabine River the boundary of Louisiana is the "*coast.*" The vital words of the act are: "including all islands within three leagues of the *coast.*" Congress thus used a technical term perfectly understood in international law which establishes a definite *land boundary* for that State and not a shadowy and uncertain water boundary to be worked out through the application of the general rule embodied in the doctrine of the thalweg. If that general rule is applied it simply annihilates the special rule Congress has established by fixing the eastern boundary of Louisiana miles away from the *coast* which Congress declared should be the boundary.

We respectfully submit that the Court falls into a manifest error when it says (p. 20): "The eastern boundary thus described is *a water boundary*, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep water sailing channel line to get around to the eastward." Upon the contrary the act expressly declares the eastern boundary to be *a land boundary* which is the "*coast.*" There is no allusion in the act to a "sailing channel line"; *there are no words from which it can possibly be inferred.* If the rights of Louisiana rest upon the terms of the act admitting her how can those terms be varied by the injection into the act of a general rule of international law in direct conflict with them? If we can only succeed in drawing the attention of the court to this simple yet vital principle, not adequately presented, we admit, in the original brief, we feel confident that the vexing, unnecessary and uncertain doctrine of the thalweg will be entirely eliminated for two reasons: In settling boundaries between States the court must apply international law, which rejects the doctrine of the thalweg, in this case, first, because, *as a general rule*, it can not annul and set aside *the special rule* which the common sovereign of both States has laid down as to the boundary in question; second, because the waters to which Complainant is striving to apply the doctrine are not territorial waters, international law recognizing its application only to waters of that character. The court should therefore entirely reject this abstraction, invoked for a dangerous and unlawful purpose, and settle the boundaries of Louisiana by a construction of the act of

Congress upon which her prior rights alone depend, an act whose clear, scientific and comprehensive terms only become difficult of application when the attempt is made to change them by the interpolation of an unsettled international rule in direct conflict with them. We say in direct conflict with them because the eastern boundary of Louisiana is fixed by the special terms of the act of 1812 in one place, while by the mid-channel theory it is fixed in quite another. The moment the Court resolves entirely to reject this mid-channel theory as inapplicable, that moment it will clear the ground for a simple solution of the real questions involved in the case, and at the same time break the back of the audacious attempt now being made to inclose *upon the medieval plan* 1,400 square miles of open sea, beyond the national limits, as a private preserve for the exclusive use of a giant trust or monopoly.

IV.

Boundaries of Louisiana as defined by the act of April 6th, 1812.

If the Court concludes to reject the thalweg theory as inapplicable to this case we will pass at once beyond the conflicting theories of publicists as to an unsettled international rule to the firm and settled ground of statute law. Is it likely that Congress in enacting the law of 1812 intended to make the definition of the eastern boundary of Louisiana depend, not upon the terms of the statute, but upon an unsettled rule of international law more in dispute then than now. If Congress intended that the terms of the acts admitting the States in question should govern, the Court has only to deal with two technical

terms, "coast" and "shore," which are, by an array of unassailable authority, declared to be synonymous. In the act admitting Louisiana the word "coast" is used; in the acts admitting Mississippi and Alabama the word "shore" is used. We repeat the authorities cited on pp. 26–30 of our original brief, which demonstrate that "coast" and "shore" are convertible technical terms and as such entirely synonymous. It is settled that "*In a statute which requires measurement from the coast* the coast is the point of contact of the *mainland* with the sea; and when a bay intervenes the point of contact of *the bay with the mainland* is to be considered the coast." Farnham on Waters and Water Rights, Vol. II, p. 1463, citing *Hamilton v. Manieff*, 11 Texas, 718. In our humble judgment there are but two pertinent and legitimate inquiries to be made in this case: (1) What is the point of contact of the mainland of Louisiana with the sea, on the east, and what islands are within *nine miles* of that point of contact; (2) What is the point of contact of the mainland of Mississippi with the sea, on the south, and what islands are within *eighteen miles* of that point of contact. If there is a conflict the terms of the grant to Louisiana must first be satisfied, the remainder of the islands passing to Mississippi under the subsequent grant. By our relinquishment of the *in pari materia* doctrine all claim to the entire territory in dispute is given up. The only contention now is that the islands outside of the nine-mile limit measured from *the true mainland* of Louisiana belong to Mississippi under the terms of the act of 1817. Our earnest prayer is that the Court will listen to us with patience, and with its mental sensibilities

unruffled, while we attempt to demonstrate, with the greatest possible respect, that it has made a grave mistake in determining what is the point of contact of the real mainland of Louisiana with the sea. In other words that the Court has erroneously held that a certain archipelago of islands off the east coast of the peninsula of St. Bernard is a part of the mainland of that peninsula. Certain it is that Louisiana has a mainland coast in the usual acceptation of that term. Her bill is framed upon the theory that, if the mid-channel doctrine fails, she may recover the islands within nine miles of her eastern mainland coast. Her alternative case is this: "But if your honors should feel that any part of this disputed area *was islands* by reason of the presence of shallow water, then *as islands* they are within the nine-mile limit of distance from the shore line of the State of Louisiana and therefore belong to and form a part of the State of Louisiana by that second provision of the act of Congress giving Louisiana *all islands within three leagues of its shore line.*" Whether or no a certain piece of land is an island *is a legal conclusion* which should be drawn through the scientific application of certain recognized rules to a given condition of fact. Physical geography as a science has certain rules by which it determines whether or no a given piece of land is an island; the law as a science has certain rules by which it determines whether or no a given piece of land is an island. When the separate application of each set of rules to the facts of a given case results in the conclusion that the piece of land in question is an island, why should there be further controversy?

Let us first apply to the facts of this case which, in this regard, are not seriously disputed by either side, the rules of physical geography, beginning with the trite definition of an island as "a tract of land surrounded by water." After the geographer has gathered his data, he expresses his conclusion upon the face of his map whether or no a given piece of land is an island or mainland. The testimony shows that no maps of this region, worthy of the name, were ever made until the necessary data was first gathered by our Coast and Geodetic Survey. Nearly all of the early maps indicating the archipelago of islands in question as mainland declare upon their faces that the region was then unexplored; that there was then no data available from which the cartographer could determine whether the region was occupied by islands or not. Not until our Coast Survey explored the region and gathered the necessary data were any maps ever made which are of any value as to the point in question here. The fact should certainly be persuasive, if not convincing, that every map, every chart ever issued by our Coast Survey, clearly describes the archipelago of islands in question as such; and the same may be said of every other map of the region, with anything like complete details, issued since the materials gathered by the Coast Survey have been available. Such maps may differ in assigning the islands to one State or the other, *but upon all the islands are described as such.* When Mr. Baylor, the Coast Survey expert, who has devoted much time to a survey of this region, was asked whether, according to the standards of physical geography, the area in question was occupied by islands,

he answered yes, adding, "*They are certainly bodies of land around which vessels of moderate draft can sail.*" What kind of testimony could be more conclusive on this point than that of an experienced civil engineer and map maker who says he surveyed the entire coast "by trigonometrical methods." From another branch of the Federal Government whose duty it became to examine the region in question in order to ascertain, among other things, its geography, the expert testimony is equally explicit and convincing. In 1898 the General Assembly of Louisiana, by a concurrent resolution, requested the United States Fish Commission to make a careful exploration of the entire oyster region and industry, in order that an exhaustive report might be made upon the subject. With that end in view an expedition was sent out in the *Fish Hawk* composed of scientific men whose report was drawn by Dr. H. F. Moore, as printed in the record. See Vol. II, pp. 2033–2054. A survey of the territory was a part of the work because Dr. Moore says: "Contrary to expectations, it was found that the topography in general had not undergone many important changes since the survey upon which the Coast Survey charts were based, and the several points could be identified and located with sufficient accuracy to suit the purposes of *the reconnaissance.*" After that had been completed the report was made which begins with a "General description of the region." Upon that subject its words are: "*The land constitutes a low-lying archipelago of irregular islands separated from one another by shallow bays, muddy lagoons, and tortuous bayous, the area of the water being somewhat greater than that of the land.* The bayous are of two classes, rather broad, short, deep passes, like

Nine-mile Bayou, Three-mile Bayou, and Deep pass, which serve as the main avenues of tidal flow to and from the interior bays, and long narrow water courses which characteristically run lengthwise of the islands, as is seen in the cases of Door Point Bayou, Dead Man Bayou, etc. The bayous of the first class have generally a depth of from 18 to 42 feet, those of the second class from 5 to 12 feet, and all are more or less obstructed by bars across their mouths." Here we have the concurrence of two expert geographers, representing different branches of the Government, who, after minute surveys of the region by scientific methods, conclude that what we call islands are such in the full geographical sense. In making his report Dr. Moore expressly declares that "The land constitutes a low-lying archipelago of irregular islands separated from one another by shallow bays, muddy lagoons and tortuous bays, the area of the water being somewhat greater than the land." Fortifying and confirming this expert testimony from scientific men is the immemorial voice of the people of the community who for generations have been navigating the waters of this archipelago by sail and steam. Is it likely that the inhabitants of the region have been deceived while sailing and steaming around bodies of land surrounded by water which they have named Isle à Pitre, Petit Pass Island, Crooked Island, Mud-cross Island, Pirate Point Island, Nigger Island, Dead Man's Island, Shell Island, Brush Island, Mink Island, Wild Goose Island, Elephant Point Island, Sundown Island, Door Point Island, Martin Island and Mitchell Islands. Through these names, each one of which embodies a local tradition, the people of the com-

munity have been declaring to the world for generations that the islands in question which they have named as such, circumnavigated as such, are indeed islands. The bed-rock of English law is the voice of the local community; it is that and only that the jury system embodies. Why should the Court be inclined to set it aside in this case, confirmed as it is by the uncontradicted testimony of the experts who have so carefully explored the topography of the region.

Let us next apply the more exact and technical standards by which the law determines whether or no a piece of land surrounded by water is an island. From that standpoint the land must be of a particular character; a submerged fen, a body of land continually covered by water is not an island. The authorities heretofore cited (original brief, pp. 43–44), prove however that an island does not lose its character as such, although "at high tide it is almost covered by water," neither does it lose its character through erosion or submergence. That the lands composing the islands in question are firm lands standing at all seasons above water, upon which a traveler can at all seasons walk dry shod, is put beyond controversy by Complainant's own witnesses, Monier and Thiel, who were sent on a special mission to ascertain the facts in this regard. Monier says that he had no difficulty in walking along the shores of these islands; that "the shore line was hard," and high above the water. When asked, "About how much above water was the shore line?" he answered, "About a foot and a half to two feet." When asked, "Could you have driven a buggy to any part of that shore line?" he answered, "Yes, sir." When asked, "Do you undertake to tell the commissioner

that that sort of a trip could be made at any time during the year?" he answered, "Yes, sir. Q. And that there is no difficulty about it all? A. No, sir; there is not." Thiel, the companion of Monier, who confirms him in every particular, when asked "was that a trembling prairie?" answered, "No, sir; it was perfectly solid, there was no trembling prairie about that." Thus it appears from the uncontradicted testimony of complainant's own witnesses that the firm character of the land composing these islands, and its elevation above the water at all seasons, satisfy every legal requirement in that regard. As to the character of the water surrounding these islands it may be said that the law requires that a strip, it may be a very narrow strip, of *navigable water*, must separate an island from the mainland. An island must be surrounded not only by water but by navigable water. "All tide water is *prima facie* public and navigable, the burden is on the person alleging the contrary." Farnham on Waters, Vol. I, p. 125, citing *Sullivan* v. *Spotswood*, 82 Ala. 163. While there is no negative proof that the tide waters in question are not navigable, there is affirmative proof that the waters surrounding these islands are easily navigable for a steamer drawing four feet. See original brief, p. 55. According to the report of the Fish Commission "the depth of water is generally from 3 to 6 feet although in some of the bays, particularly those to the eastward, there are channels through which a considerably greater depth can be carried." Thus it appears that when the character of the islands in question is tested not only by the standards of physical geography but by the more exacting rules of strict law they are found to be such in the full

legal as well as geographical sense. No importance can be attached to the fact that the material composing the islands is alluvium, and that they were formed as a part of the same general geological process by which the mainland was formed. It can not be said that what the Fish Commission calls "a low-lying archipelago of irregular islands" is not such because its geological origin is the same as that of the mainland. Certainly from the standpoint of physical geography that position is entirely untenable. In the classification of land forms it is a fundamental principle with geographers to determine the character of an island solely by reference to its form, regardless of its geological origin. Such is the conclusion of the highest authority perhaps, on the subject. "From the geographical point of view land forms are best considered, in their larger aspects at least, from the point of view of form alone *without reference to their geological history.*" The International Geography, p. 62. When the matter is tested by legal standards it is difficult to understand how the geological origin of an island can be material, as the law deals with the form alone. For instance the archipelago of islands lying off the coast of Alaska represents, as the geologists tell us, the result of the disintegration of the mainland through glacial action. Will any one contend that that fact makes them any less islands in the geographical and legal sense of that term? But if the geological origin of the islands is to be taken into account the Court should certainly give due weight to the testimony of Complainant's witnesses, Stubbs and Harrod, both of whom admit that they were *formed as islands* in the waters of a shallow sea; that they were not cut off

from the mainland. Against the irresistible conclusion that the islands in question are such,—a conclusion supported by all the tests which the rules of law, of geography, of geology recognize,—the Court in its opinion has opposed this, *and only this:* "Certainly there are in the body of the Louisiana marches or St. Bernard peninsula portions of sea marsh which might technically be called islands, because they are land entirely surrounded by water, *but they are not true islands.* They are rather, as the Commissioner of the General Land Office wrote the Mississippi Land Commissioner in 1904, 'in fact, hummocks of land surrounded by the marsh and swamp in said township'" (p. 22). There is nothing to show that this Land Commissioner ever saw the region in question, and if his description of it was ever intended to apply to the "low-lying archipelago of irregular islands" surveyed and mapped by the Fish Commission, it is simply a caricature in conflict with all the evidence in the record. Contrast for instance his description of the soil with that given by *Complainant's witnesses*, Monier and Thiel, who swear that it stands "about a foot and a half to two feet" above the water, and that it is possible to drive a buggy on any part of the shore line at any season of the year. Then contrast his statement as to "hummocks of land *surrounded by the marsh and swamp*," with the uncontested fact, of which the Court has judicial knowledge, that the pieces of land in question are *surrounded by navigable tide water from 4 to 24 feet in depth.* But why should there be controversy as to the character of these islands when "Louisiana admits that there are some islands in the disputed area, *namely Grassy, Half Moon or Grand, Le Petit pass, an unnamed island and Isle à*

Pitre, all of which are between the deep-water channel on the north and the main coast line of the St. Bernard peninsula on the south; and contends *that these islands* were previously given to her, Louisiana, by the act of Congress creating her a State, April 6, 1812, nearly six years prior to Mississippi's creation as a State, and that her title thereto is better than that of the State of Mississippi." See Louisiana's original brief, making this admission, at p. 140. If Isle à Pitre and Petit Pass islands are such, *in the true legal sense*, as Complainant's counsel, with an intimate personal knowledge of them, declare them to be, we respectfully ask upon what basis can the Court declare that "they are not true islands." If the islands named are such, then the remainder are, as the proof is that they are all identical in character. Complainant's counsel admit and claim that Isle à Pitre, Petit Pass Island, Grassy Island and Grand Island *were regarded by Congress as true islands and conveyed as such to Louisiana.* We have demonstrated that they are true islands by every test which the law of the land recognizes. The conclusion of law thus involved in the character of the islands is the most vital question in Mississippi's case. We therefore respectfully invoke for her the right to have that vital question settled by the application of the only rules which the law of the land recognizes. Only in that way can she be guaranteed due process of law in the plainest sense of that term. We earnestly pray to be reheard on this branch of case.

There is, however, another reason more potent still why the Court should accept the fact that the islands in question are such in the legal sense. *They have been declared to be such by the Congress of the United States.* The rule is elementary

that "Statutes are to be interpreted so as to give effect to all the words therein. * * * It is not to be presumed that the legislature intended that any part of a statute should be *without its proper meaning, force or effect.*" Potter's Dwarris on Stat. and Const. p. 188, note 8. It is not to be presumed that Congress attempted to grant to Mississippi "all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne," *if there are no islands within that zone upon which the grant can operate.* The Court must find, if it can, a subject-matter upon which the grant can operate. The whole problem is solved, so far as a subject-matter is concerned, the moment the Court accepts the "low-lying archipelago of irregular islands" as such because they are in exactly the right place, almost exactly opposite the junction of Pearl River with Lake Borgne. That Congress regarded these islands as such and attempted to grant them as such to Mississippi has been frankly admitted by counsel for Complainant in their original brief, p. 65. In explaining the circumstances attending the drafting of the act of 1817 they say: "This calls attention to the error, if error it be, of Congress, and the oversight consists not 'in framing the respective acts' for the admission of the two States, but in the drafting of the Mississippi act, more than five years after the Louisiana act, and embracing in the Mississippi act, *islands which had already been granted to Louisiana.*" Here is a *second* admission that Congress regarded these islands as such, and attempted to grant them as such to Mississippi. Because that view is so plain the alternative prayer of the bill is that, in the event the mid-channel theory fails, the Court will confirm to Louisiana the islands

within three leagues of her eastern shore line. Her counsel correctly state that the only mistake made by Congress was in attempting to give to Mississippi islands which had been previously granted to Louisiana. *If that be true then Congress certainly dealt with the islands as such.* In that event the Court will hold that all such islands as are within nine miles of the eastern mainland coast of Louisiana passed to her under her prior grant, while the remainder east of that limit should pass to Mississippi as Congress intended. If the Court shall recognize the archipelago of islands as such there can be no difficulty as to what is the eastern mainland coast of Louisiana, because the Coast Survey expert, W. C. Hodgkins, one of Complainant's most trusted witnesses, has traced the eastern mainland coast line of Louisiana in substantial accord with the red line indicating the same on map No. 59 submitted with our original brief. We earnestly suggest that the highest principles of equity should prompt the Court to reach the conclusion just indicated, as the islands that would thus pass to Mississippi *are of the greatest value to her because they lie at her very threshold*, directly across her narrow sea front, while they *are comparatively valueless to Louisiana*, because so far removed from her centres of population as to be almost entirely severed from the main body of the State. In *Knowlton* v. *Moore*, 178 U. S. p. 77, this Court has said: "That, where a particular construction of a statute will occasion great inconvenience *or produce inequality and injustice*, that view is to be avoided if another and more reasonable interpretation is present in the statute." In *Handly* v. *Anthony*, 5 Wheat. 374, this Court speaking through Marshall, C. J., has said: "In great questions

which concern the boundaries of States, where great natural boundaries are established in general terms, *with a view to public convenience, and the avoidance of controversy*, we think *the great object*, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals." Under that large enunciation the Court has the right and it is its duty to shape its judgment in such a case "with a view to public convenience and the avoidance of controversy," after it has ascertained "*the great object*" to be attained. Will any one deny that the great object to be attained was such a just and equitable distribution of the Gulf coast line between these States as would give to each a fair and convenient proportion of it? Can the Court lose sight of the fact that of that coast line Louisiana possesses about 623 statute miles while Mississippi possesses only about 71? And here we respectfully suggest that it is neither reasonable nor logical for the Court to assume that Congress had no intention of diminishing that inequality when it gave to Mississippi "all islands within *six* leagues of the shore to the most southern junction of Pearl River with Lake Borgne," instead of within *three* leagues. It can not be assumed that Congress spoke without thought, or that it did vain and meaningless things, or that it had no understanding as to future conditions. Why should the Court be inclined to believe that Congress intended in this case to grant to Louisiana islands lying across the sea front of Mississippi when the map of the Union, of which the Court has judicial knowledge, proves to it *that no such injustice has ever been done in the case of any other*

State? If the Court, in the light of these high considerations of equality which is equity, would recognize the "low-lying archipelago of irregular islands" to be what all modern cartographers declare them to be, and would then confirm all that lie within nine miles of the true mainland coast of Louisiana to that State and the remainder to Mississippi, it could erect upon the boundary ever to divide these States a monument to that kind of large-minded justice which ever imparts moral dignity to the exercise of supreme authority. Thus bitter strife would be hushed and a genuine and cordial understanding reestablished through such a construction of the acts of 1812 and 1817 as would give to each a subject-matter upon which all of their respective provisions could operate. Will not the possibility of attaining such a result induce the Court to rehear us, however briefly, *upon the particular questions indicated herein?*

We, the undersigned members of the bar of this Court, humbly conceive that by reason of the matters herein indicated, it is proper that this cause should be reheard by this Court if it shall see fit so to order, and they therefore respectfully certify accordingly.

HANNIS TAYLOR,
MONROE MCCLURG,
Of Counsel.

WILLIAM WILLIAMS,
Attorney-General of Mississippi.

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SUPREME COURT U.S.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

IN EQUITY.

No. 11 *Original.*

THE STATE OF LOUISIANA, *Complainant.*

v.

THE STATE OF MISSISSIPPI, *Defendant.*

Supplement to Petition for Rehearing.

We pray the Court to accept the following as a supplement to the Petition for Rehearing heretofore filed. In that petition we have cited the cases in which this Court has held, almost from its organization, that it is the exclusive province of the political department to define the national boundaries of the United States, and that the judiciary must accept the determination of the political department in that regard. As the right to determine what are and what are not territorial waters is an integral and necessary part of the right to define natural boundaries, the political department has from the beginning exercised the right to declare what are the territorial waters of the United States. We therefore respectfully

submit that this Court has no jurisdiction to determine, as an original question, whether or no Mississippi Sound is territorial water. The only real inquiry is this: Has it that character under the rules and definitions of the political department? We therefore beg leave to lay before the Court as a part of our petition the views on that subject of two distinguished jurists better qualified perhaps by experience than any other persons to declare what is the rule on this subject as recognized by the political department. We refer to the Hon. William L. Penfield, for so many years the trusted legal adviser of our Department of State, and General George B. Davis, the eminent writer upon international law, now a delegate to the Hague Conference, and the chief law adviser of the War Department, in which he holds the office of Judge-Advocate General. The following explains itself:

"WASHINGTON, D. C., *March* 31, 1906.

"Gen. GEORGE B. DAVIS,

"*Judge-Advocate General,*

"*Washington, D. C.*

"DEAR GENERAL: In the case of Louisiana against Mississippi, now pending in the Supreme Court of the United States, the defendant contends that the long indentation in the coast of the Gulf of Mexico known as Mississippi Sound is the open sea and not that kind of territorial water technically known in international law as 'an arm of the sea.' Familiar as you are with the rules by which the political department of the Government

determines the character of such territorial water, will you be good enough to say whether, under those rules as you understand them, Mississippi Sound is the open sea or that kind of territorial water generally known as an arm of the sea. Under the rule of the political department as you understand it, can the fact that certain islands, such as Cat Island, Ship Island and Horn Island are situated in the sea in front of the indentation known as Mississippi Sound, convert it into 'an enclosed arm of the sea.' Under the rule of the political department, where does the three mile zone run along the shore of what is known as Mississippi Sound?

"With great respect.

"Yours very truly,

"HANNIS TAYLOR,

"*Of Counsel for Mississippi.*"

"WAR DEPARTMENT,

"OFFICE OF THE JUDGE-ADVOCATE GENERAL,

"WASHINGTON, *March* 31, 1906.

"MY DEAR SIR: I beg to acknowledge the receipt of your favor of the 31st instant, in which you say that in the case of Louisiana *vs.* Mississippi, which is now in the Supreme Court of the United States, the defendant contends that the long indentation of the coast of the Gulf of Mexico, known as Mississippi Sound, is an open sea, and is not that kind of territorial water which is technically known in international law as 'an arm of the sea.'

"An expression of opinion is desired as to whether,

under the rules of international law as I understand them, Mississippi Sound is a part of the open sea, or that kind of territorial water which is generally known as an arm of the sea. In other words, can the fact that certain islands, such as Cat Island, Ship Island, and Horn Island, which are situated in the Gulf in front of the indentation known as Mississippi Sound, convert it into an enclosed arm of the sea?

"Mississippi Sound is a body of water lying between Mobile Bay to the east, and Lakes Borgne and Ponchartrain to the west. Mobile Bay and Lakes Borgne and Ponchartrain seem to be bodies of water falling clearly within the definition of arms of the sea, but I am not aware of any rule of international law under which the strip of water running east and west that lies between them can be regarded as, in any sense, an enclosed arm of the sea. It is not an enclosed, or nearly enclosed body of water like the Chesapeake, Delaware and Mobile Bays, or Lakes Borgne and Ponchartrain, but is clearly a portion of the large body of water known as the Gulf of Mexico, which constitutes a portion of the high seas.

"As the islands which you mention *lie considerably beyond a marine league in distance from the coast*, they could not, in my opinion, operate to so include the water lying between them and the mainland within the designation of an arm of the sea as that term is understood in international law.

"Under the rule established by the political departments of the Government, it is my opinion that the strip

of marginal sea extends along the shore of Mississippi Sound for a distance of three miles from the mainland; and I remain,

"Very respectfully,

"GEO. B. DAVIS,

"*Judge-Advocate General.*

"Hon. HANNIS TAYLOR,

"*Washington, D. C.*"

"I concur in the view of Gen. Davis on the facts stated.

"W. L. PENFIELD."

In the light of the foregoing we desire to call the attention of the court, with special emphasis, to the distances between the mainland coast of Mississippi and the four large islands—Cat Island, Ship Island, Horn Island and Petit Bois Island, the only islands lying in front of the indentation of the coast known as Mississippi Sound. The first is distant about nine miles, the second about twelve, the third and fourth, about nine. It thus appears that each is far beyond the three-mile zone which is appendant, as the jurists quoted above insist, *to the mainland coast*. We confidently insist that no island can be said to be adjacent or appendant to the coast when it is miles beyond the limits of the three-mile zone which fringes such coast. In the case of the Anna, 5 Robinson, Admiralty 373, there is nothing to indicate that the mud islands at the mouth of the Mississippi were outside of the three-mile limit. On the contrary the language of Lord Stowell clearly indicates that they *were within it*. He speaks of "little mud islands composed of earth and trees drifted down the river, *which form a kind of portico to the mainland*. * * * They are the natural *appendages of*

the coast on which they border, and from which, indeed, they are formed. Their elements are derived immediately from the territory and on the principle of alluvium and increment." In referring to this case Hall, p. 626, speaks of the "capture which took place *within the mouths of the Mississippi*." It is impossible to establish a parallel between these little mud islands, which were a part of the shore and formed out of it, and such large and distinct islands as Cat, Ship, Horn and Petit Bois, which stand out in the sea from nine to twelve miles from the shore. How can the court regard these islands, so far beyond the three mile zone, as "appendages of the coast."

It thus appears that these eminent and experienced jurists, practically familiar with the rules of the political department in this regard, concur with each other, and with the counsel for Louisiana in the conclusion "that Mississippi Sound and Lake Borgne are salt water bodies of water *and true parts of the sea or gulf*." In view of that fact and the further fact that this Court *has so far heard no argument whatever as to the contention that the rule on this subject as defined by the political department is binding upon the Court*, we pray that your honors will give us a hearing upon this, the most vital point in the case. We respectfully repeat the certificate of counsel annexed to the original petition.

WILLIAM WILLIAMS,
Attorney-General of Mississippi.

HANNIS TAYLOR,
MONROE MCCLURG,
Of Counsel.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
MAY 14 1906
JAMES H. MCKENNEY,

IN EQUITY.

No. 11, *Original.*

THE STATE OF LOUISIANA, COMPLAINANT,

v.

THE STATE OF MISSISSIPPI, DEFENDANT.

MOTION TO AMEND THE FINAL DECREE AS TO COSTS.

Comes now the defendant and shows to the court: That by the final decree made in this case, and dated April 23, 1906, it was decreed, among other things, "that the costs of this suit be borne by the State of Mississippi." The defendant now moves the Court that said provision in the final decree be so amended as to read "that the costs of this suit be borne equally by the complainant and defendant," for the following reasons:

First, because the bill shows upon its face that it was filed to carry out an agreement to prosecute a friendly suit in this Court for the settlement of the boundary in question. Such a proceeding was suggested by complainant to the defendant in the following language: "It is apparent that the only hope of settlement is a friendly

suit in the Supreme Court of the United States and we respectfully suggest this course.'' Record, p. 15.

The court in its opinion has recognized the fact that the suit is a friendly suit for the settlement of a boundary. See p. 14. As the suit has been thus prosecuted, as a friendly suit, for the equal benefit of both parties, we submit that the costs should be equally divided according to the general rule of the English Court of Chancery in boundary cases. See Daniell's Ch., Pl. and Pr., vol. II, p. 1165

Second, because it is the firmly settled rule of this Court that, in boundary cases between States, the costs are to be equally divided. See Iowa *v.* Missouri, 7 How., 661; Nebraska *v.* Iowa, 143 U. S., 359; Indiana *v.* Kentucky, 163 U. S., 520; Missouri *v.* Iowa, 165 U. S., 270; Tennessee *v.* Virginia, 190 U. S., 64. In Nebraska *v.* Iowa, this Court said: "The costs of this suit will be divided between the two States, because the matter involved is one of those governmental questions in which each party has a real and vital, and yet not a litigeous interest.''

Third, because the Court has decreed to complainant only a fractional portion of the relief prayed. The final decree denies to complainant an area of water territory, claimed many times larger than the land area unsuccessfully claimed by the defendant.

Respectfully submitted.

WILLIAM WILLIAMS,
Attorney-General of Mississippi.

HANNIS TAYLOR,
MONROE MCCLURG,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1905.

IN EQUITY.

No. 11, Original.

THE STATE OF LOUISIANA, COMPLAINANT.

v.

THE STATE OF MISSISSIPPI, DEFENDANT.

GENTLEMEN: Please take notice that the defendant in this case will, on the 14th day of May, 1906, at twelve o'clock, noon, on said day, at the opening of said court, or as soon thereafter as counsel can be heard, at the Supreme Court Room, in the city of Washington, District of Columbia, in open court, move this Court to amend the final decree rendered herein as will more particularly appear in the motion hereto annexed.

WILLIAM WILLIAMS,
Attorney-General of the State of Mississippi.

HANNIS TAYLOR,
MONROE MCCLURG,
Of Counsel.

To Walter Guion, Attorney General of the State of Louisiana, Baton Rouge; John Dymond, Jr., Francis C. Zacharie, New Orleans, La.

Supreme Court of the United States.

No. 11, Original.—October Term, 1905.

State of Louisiana, Complainant,
vs.
State of Mississippi. } In Equity.

[March 5, 1906.]

The State of Louisiana by leave of court filed her bill against the State of Mississippi, October 27, 1902, to obtain a decree determining a boundary line between the two States and requiring the State of Mississippi to recognize and observe the line so determined.

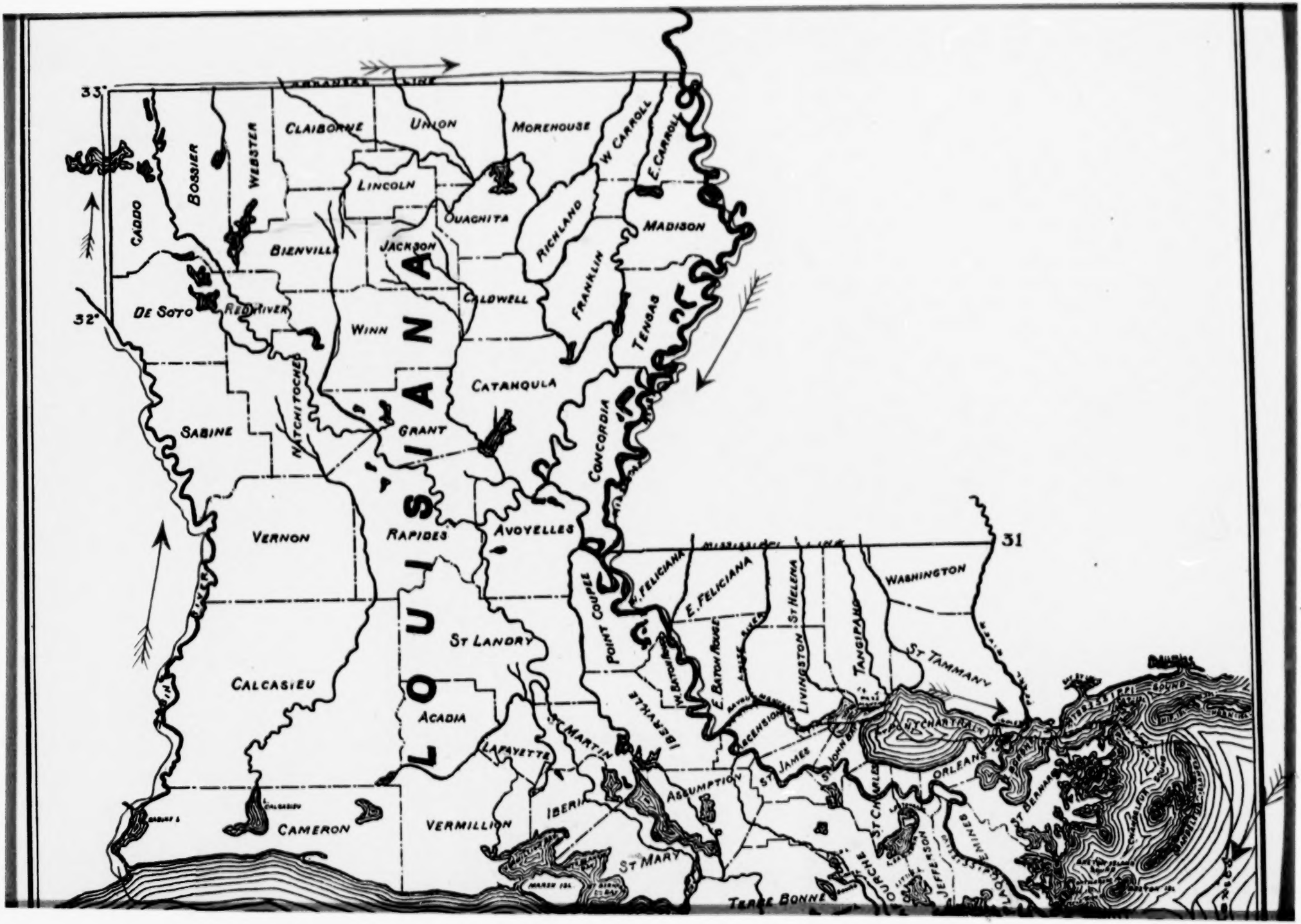
The bill alleged:

"1st. That the State of Louisiana was admitted into the Union of the United States of America by the act of Congress, found in chapter 50 of the United States Statutes at Large, volume 2, page 701, approved April 6th, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said act, were described as follows:—

'Whereas, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said river, including all islands to the 32d degree of latitude; thence due north to the northernmost part of the 33d degree of north latitude; thence along the said parallel of latitude to the Mississippi River; thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said gulf to the place of beginning, including all islands within three leagues of the coast,' etc.

"2nd. That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi River, beginning at the northeast corner of said State and extending south to the junction of the said river, with the River Iberville (now known as Bayou Manchac) and thence extending eastwardly through the lower end of the Amite River, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the Gulf of Mexico its only course was through the Rigolets, into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, following said channel, north of Half Moon Island, through Mississippi Sound to to the north of Isle à Pitre, through the Cat Island channel, southwest of Cat Island, into the Gulf of Mexico, which said eastern boundary of the State of Louisiana is more fully shown on diagram No. 1, made part of this bill;

[Diagram No. 1.]


33°
ARKANSAS LINE
CLAIBORNE
UNION
MOREHOUSE
W CARROLL
E CARROLL
CADDO
BOSSIER
WEBSTER
LINCOLN
OUACHITA
RICHLAND
MADISON
BIENVILLE
JACKSON
FRANKLIN
TENSAS
32°
DE SOTO
RED RIVER
CALDWELL
WINN
CATAHOULA
CONCORDIA
NATCHITOCHES
SABINE
GRANT
LOUISIANA
VERNON
RAPIDES
AVOYELLES
POINT COUPEE
W FELICIANA
E FELICIANA
31
WASHINGTON
ST HELENA
TANGIPAHOA
ST TAMMANY
LIVINGSTON
W BATON ROUGE
E BATON ROUGE
ST LANDRY
CALCASIEU
ACADIA
IBERVILLE
ST MARTIN
LAFAYETTE
ASSUMPTION
ST JAMES
ST JOHN
ORLEANS
ST CHARLES
JEFFERSON
PLAQUEMINES
ST BERNARD
CAMERON
VERMILLION
IBERIA
ST MARY
TERRE BONNE


CAMERON
VERMILLION
IBERIA
ASSUMPTION
ST JAMES
ORLEANS
ST MARY
TERRE BONNE
LAFOURCHE
JEFFERSON
PLAQUEMINES
ST BERNARD
Gulf of Mexico
Scale: 1 inch - 36 miles.

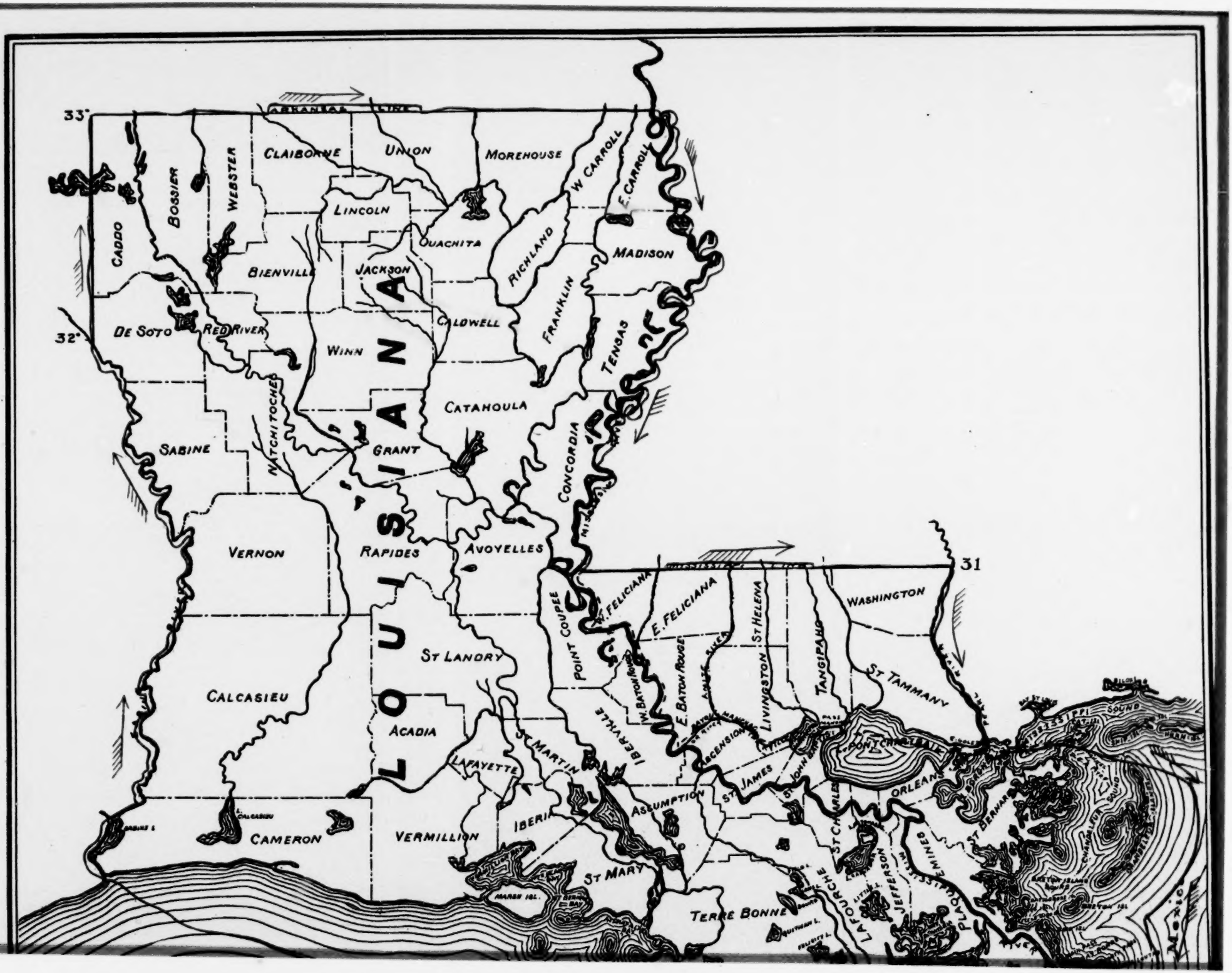
DIAGRAM NO. 1.

"3rd. That by the act of Congress, found in the United States Statutes at Large, vol. 2, p. 708, chapter 57, approved April 14th, 1812, additional territory was added to the then existing State of Louisiana, which additional territory was described in the following language:—

'Beginning at the junction of the River Iberville with the Mississippi River; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl River; thence up the eastern branch of the Pearl River to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form a part of the State of Louisiana;'

"4th. That the effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. The change then moved the eastern boundary eastward along the 31st degree of north latitude to the Pearl River, whence it then ran south down the said river, through its eastern branch, till it entered the northern corner of Lake Borgne, where the State's eastern boundary then joined and followed the boundary line originally fixed in the act of April 6th, 1812, and followed, as heretofore stated, the deep water channel through the upper corner of Lake Borgne, north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound till it reached the Cat Island channel north of Isle à Pitre, and southwest of Cat Island, whence passing through Chandeleur Sound, northeast of Chandeleur Islands, it entered the Gulf of Mexico, and ran south around the delta of the Mississippi River and then north and westward to the point where the Sabine River enters the Gulf of Mexico, as will be more fully seen from the diagram No. 2, made part of this bill;

[Diagram No. 2.]


33°
ARKANSAS LINE
CLAIBORNE
UNION
MOREHOUSE
W CARROLL
E CARROLL
CADDO
BOSSIER
WEBSTER
LINCOLN
OUACHITA
RICHLAND
MADISON
BIENVILLE
JACKSON
FRANKLIN
32°
DE SOTO
RED RIVER
CALDWELL
TENSAS
WINN
CATAHOULA
CONCORDIA
SABINE
NATCHITOCHES
GRANT
LOUISIANA
VERNON
RAPIDES
AVOYELLES
POINT COUPEE
W FELICIANA
E FELICIANA
ST HELENA
WASHINGTON
31
ST LANDRY
TANGIPAHO
ST TAMMANY
CALCASIEU
ACADIA
IBERVILLE
W BATON ROUGE
E BATON ROUGE
LIVINGSTON
LAFAYETTE
ST MARTIN
ST JAMES
ORLEANS
ASSUMPTION
IBERIA
CAMERON
VERMILLION
ST MARY
TERRE BONNE
LAFOURCHE
JEFFERSON
PLAQUEMINES
MISSISSIPPI SOUND
PONTCHARTRAIN
MARSH ISL.
CHANDELEUR SOUND

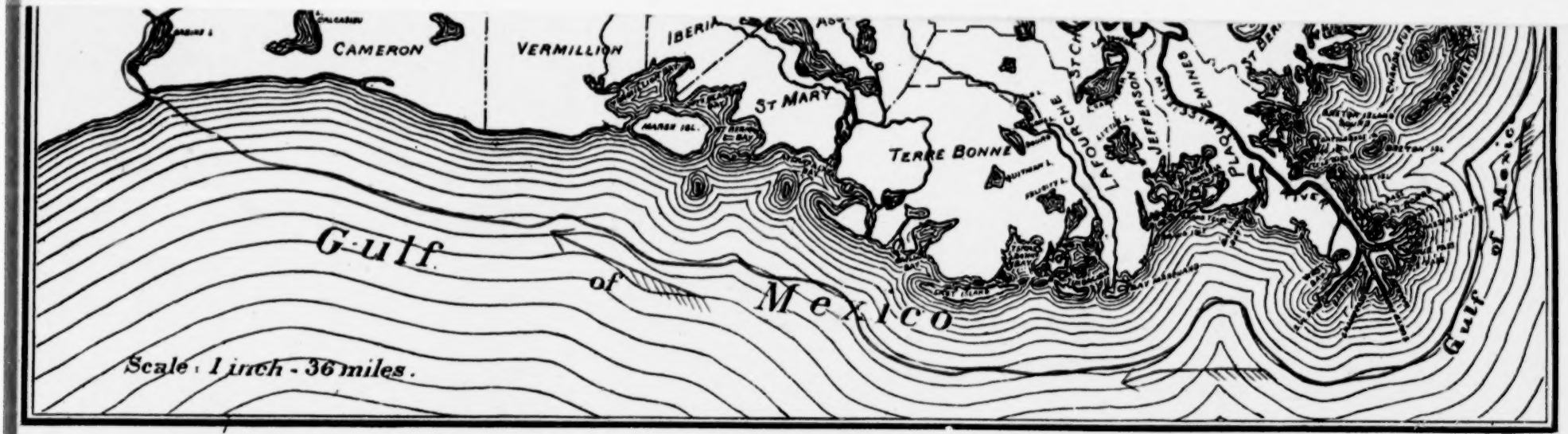

CAMERON
VERMILLION
IBERIA
ST MARY
TERRE BONNE
LAFOURCHE
JEFFERSON
PLAQUEMINES
Gulf of Mexico
Scale: 1 inch - 36 miles.

DIAGRAM NO. 2.

"5th. That the territory lying adjacent to, and to the eastward of the State of Louisiana is the State of Mississippi, which latter State was admitted into the Union of the United States of America by the act of Congress, found in the United States Statutes at Large, volume 3, chapter 23, page 348, approved March 1st, 1817, whereby the inhabitants of the western part of the then Mississippi Territory were authorized to form for themselves a State constitution and to be admitted into the Union, the boundaries of the then to be created State being described as follows:—

'Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the Gulf of Mexico; thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne; thence up said river to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi River; thence up the same to the beginning;'

"6th. That by the said act, Congress intended that the southern boundary line of the State of Mississippi, beginning at the point dividing it from the State of Alabama, should run westwardly till it joined the Louisiana eastern boundary line, and that in doing so, the said southern boundary would in effect start westward from a point eighteen miles south of the coast line, and include in its westwardly direction the western end of Petit Bois Island, all of Horn Island, Ship Island and Cat Island, and the smaller islands north of these, those islands being the ones contemplated in the act of Congress, as being within eighteen miles of the southern coast line of Mississippi, and that the said southern boundary of Mississippi, extending in its westwardly direction through the Gulf of Mexico, would gradually approach the coast line, and meet the eastern boundary line of Louisiana, just as the said eastern boundary line of Louisiana emerges from the Cat Island channel into the Gulf of Mexico, and thence follow and become the same as the Louisiana boundary line extending westwardly to the south of Cat Island, through Mississippi Sound to the north of Half Moon or Grand Island to the most southern junction of the east branch of Pearl River with Lake Borgne, being identical with the Louisiana eastern boundary, and thence extending up the channel of Pearl River;

"7th. That the islands included between the shore line and the southern boundary of the State of Mississippi are the islands heretofore described, viz: the western end of Petit Bois Island, with all of Horn Island, Ship Island and Cat Island, and the small islands north of them, those islands being large, and well known to Congress at the time of the passage of the act, all of which islands and the southern boundary of the State of Mississippi will more fully appear from the diagram No. 3, made a part of this bill;

[Diagram No. 3.]

DE SOTO
TUNICA
TATE
MARSHALL
BENTON
TIPPAH
ALCORN
TISHOMINGO
PRENTISS
UNION
PANOLA
LAFAYETTE
PONTOTOC
LEE
ITAWAMBA
COAHOMA
QUITMAN
TALLAHATCHIE
YALOBUSHA
CALHOUN
CHICKASAW
MONROE
BOLIVAR
SUNFLOWER
GRENADA
LEFLORE
CARROLL
MONTGOMERY
WEBSTER
CLAY
LOWNDES
WASHINGTON
HOLMES
CHOCTAW
OKTIBBEHA
ISSAQUENA
SHARKEY
ATTALA
WINSTON
NOXUBEE
YAZOO
MADISON
LEAKE
NESHOBA
KEMPER
RIVER
WARREN
HINDS
RANKIN
SCOTT
NEWTON
LAUDERDALE
CLAIBORNE
COPIAH
SIMPSON
SMITH
JASPER
CLARKE
JEFFERSON
WAYNE

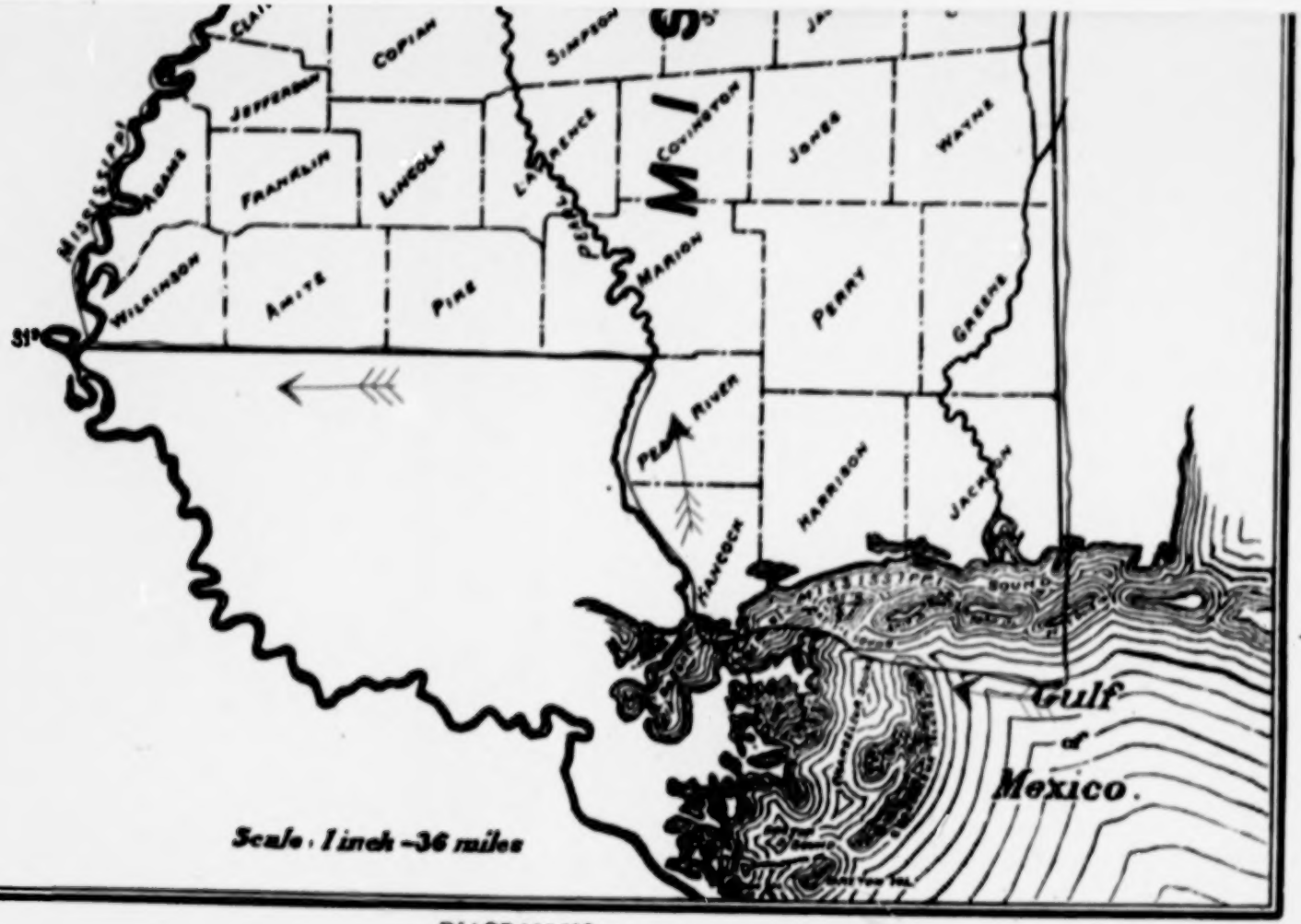

Copiah
Simpson
Jefferson
Franklin
Lincoln
Lawrence
Covington
Jones
Wayne
Adams
Amite
Pike
Marion
Perry
Greene
Wilkinson
31°
Pearl River
Hancock
Harrison
Jackson
Gulf
of
Mexico.
Scale: 1 inch -36 miles

DIAGRAM NO. 3.

"8th. That the islands contemplated in the act of Congress of 1812, creating the State of Louisiana, and intended to be embraced within the State of Louisiana, as provided by the clause, 'Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast,' were all of the other islands, except those heretofore named as going to the State of Mississippi, as all other islands, and all other mainland, are south and west of the boundary line thus passing from Pearl River through the deep water channels in Lake Borgne, and Mississippi Sound, through the deep water channel, southwest of Cat Island to the eastward of the Chandeleur Islands, and thence south, taking in the delta of the Mississippi River, and extending westward along the Gulf coast, including all islands along the coast, to the Sabine River, where the State of Louisiana is thence bounded on the westward by the State of Texas, all of which will more fully appear from diagram No. 2, heretofore referred to;

"9th. Now your orator avers that there has developed in recent years in the waters south of the State of Mississippi and east of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom;

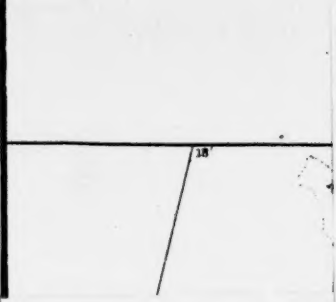
"10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and permits the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made;

"11th. That the State of Lousiana has by legislative enactments regulated the oyster industry in the said State of Louisiana, and prohibits the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made;

"12th. That the provisions of the laws of the said two States differ considerably in many other respects.

"13th. That the existence and location of the natural oyster reefs in the waters of the parish of St. Bernard in the State of Louisiana which adjoins the State of Mississippi is shown by the map made from a reconnaissance by the United States Fish Commission steamer 'Fish Hawk,' in February, 1898, as will more fully appear from diagram No. 4, now made part of this bill;

[Diagram No. 4.]



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"14th. N
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1. Now your orator avers that the boundary line dividing the two
the waters thereof has been clearly defined by the acts of Con-
eating the States of Louisiana and Mississippi, as will be seen from
ram No. 5, made up from the boundary descriptions taken from
of Congress creating the said States of Louisiana and Mississippi,
iagram is also made part of this bill;

[Diagram No. 5.]

"15th. That the said boundary line in the waters between said States has never been designated by buoys or marks of any kind by either State, nor designated in any manner, except by the United States Government in so far as it has buoyed the deep water channel, extending from the mouth of the Pearl River through the upper corner of Lake Borgne north of Half Moon Island, eastward to the Cat Island Pass, north of Isle à Pitre, and southwest of Cat Island, which buoys were placed by the Coast Survey of the United States Government;

"16th. That owing to the differences in the laws of the States of Louisiana and Mississippi, regulating the oyster industry of the respective States, the said statutes providing penalties for the violation thereof, much confusion has resulted and a great public demand has arisen in Louisiana to definitely mark the boundary line dividing the two States in the waters thereof; that citizens of the State of Mississippi, in violation of the laws of the State of Louisiana, have been fishing oysters with dredges on the natural reefs in the waters of the State of Louisiana, said fishermen claiming that they were in the waters of the State of Mississippi and consequently not violating the laws of the State of Louisiana."

The bill then set forth that "to avoid an armed conflict between the sheriff and officers of the Parish of St. Bernard in the State of Louisiana, and the sheriff and officers of the county of Harrison in the State of Mississippi," a meeting of citizens of Louisiana was called by the Governor of that State, which met in New Orleans, and resulted in the appointment by the Governor of commissioners on the part of Louisiana "to consider the determination of the water boundary line between the two States, and arrange for its easy location and identification by a proper system of buoys," and the request that the Governor of Mississippi appoint like commissioners on the part of that State, which appointment was made.

The joint commission met and considered the subject, and subsequently the Mississippi commission reported its inability to agree with the Louisiana commission, stating, among other things, "It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States, and we respectfully suggest that course."

The bill continued:

"24th. That the eastern water boundary line as claimed by your orator, viz: a line beginning at the most southern junction of the channel of the east branch of the Pearl River with Lake Borgne and thence eastward following the deep water channel to the north of Half Moon Island, through the Mississippi Sound channel, to Cat Island pass, northeast of Isle à Pitre into the Gulf of Mexico, thereby dividing the waters between the two States, agrees, and is in accord, with the acts of Congress creating respectively the State of Louisiana and the State of Mississippi as already shown by diagram No. 5; that any other boundary than the deep water channel as aforesaid would cause the limits of the two States to conflict and overlap, and that it is not to be presumed that the Congress of the United States intended to, or would establish, in its description, a boundary for the State of Mississippi, conflicting with the already existing Louisiana eastern boundary, when there is a construction of the wording of the

two acts, in fact the only construction that suggests itself, that shows a boundary readily ascertained, harmonizing with the words of the acts as they now read, and clearly defining the limits of the two States in the waters between them.

"25th. Your orator further avers that the use of the word 'westwardly' in the description of the southern boundary of the State of Mississippi, as that southern boundary line extends westwardly from the Alabama State line to the Louisiana eastern boundary line, shows that it was not the intention of Congress to have it run direct or due west throughout the whole course, and that it was evidently the intention of Congress, in giving to the State of Mississippi the islands north of that westwardly drawn line, that the eighteen-mile limit shall gradually decrease as it approached the Louisiana line on the east till it met and followed it to its source. If the Mississippi line ran parallel to the southern coast of Mississippi, at a distance of eighteen miles from such coast line following the meander of the coast, and thence joined at right angles a line emerging from the mouth of Pearl River, such line would not only include Grassy, Half Moon, Round, Le Petit Pass Islands and Isle à Pitre, already belonging to Louisiana as being within nine miles or three leagues of the Louisiana shore line, but such line would also include part of the mainland of the State of Louisiana as will be seen from the following diagram (No. 6) made a part of this bill and it certainly could not have been the intention of Congress to take away from the State of Louisiana any islands or mainland already belonging to it and to give them to the State of Mississippi, as such a proceeding, without the consent of the legislature of the State of Louisiana, would be a violation of sec. 3 of art. IV of the Constitution of the United States.

"26th. Your orator avers that the marsh lands claimed by the State of Mississippi to be islands are in truth, with the exception of the Isle à Pitre, Grassy, Half Moon, Round and Le Petit Pass Islands, low lying marsh lands forming part of the mainland of the State of Louisiana; that said swamp or marsh lands and islands have been known as and called since time immemorial 'the Louisiana marshes;' that they were approved to the State of Louisiana by the Commissioner of the General Land Office on May 6, 1852, as will appear from a certified copy of said record of approval from the United States Land Office made a part of this bill, marked Exhibit (G,) and where not since sold by the State of Louisiana to private purchasers have always stood on the books of the register of the Louisiana State land office as State lands, to be offered for sale, until recently transferred by the State of Louisiana to the board of commissioners for the Lake Borgne basin levee district by the provisions of act No. 14 of the legislature of the State of Louisiana for the year 1892, for the purpose of enabling the said levee board, by the proceeds of sale of said lands to secure the funds to aid in the building of levees in that levee district, to protect the lands from overflow.

"27th. That parts of said disputed territory claimed by the State of Mississippi to be islands within eighteen miles of its shore line are in fact part of the mainland of the State of Louisiana, and therefore belong to and form part of said State of Louisiana, but if your honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, then as islands they are within the nine mile limit of distance from the shore line of the State of Louisiana and therefore belong to

and form part of the State of Louisiana by that second provision of the act of Congress giving Louisiana all islands within three leagues of its shore line.

"28th. Your orator further avers that where contiguous States or countries are separated by water it is, and always has been, the custom to regard the channel as establishing the boundary line of such States, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own constitution adopted November, 1890, in the following words:

* * * * * *

"29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government having authority in the premises, have themselves recognized the boundary line contended for by the State of Louisiana by reason of the fact that the United States Government has confirmed to the State of Louisiana the lands composing Half Moon Island which is just south of the deep water channel," [by sections and townships as set forth,] and also "the lands forming what is commonly known as Isle à Pitre," [by sections and townships as stated,] all of them "recognized as belonging to and forming part of the State of Louisiana by the said United States Government and have always heretofore been so recognized by the people of the said two States; that the lands forming the Isle à Pitre were sold by the State of Louisiana," &c., &c.; "and said lands have been assessed on the assessment rolls of the parish of St. Bernard, State of Louisiana, and taxes thereon have been paid to the State of Louisiana for the past 35 years, and said lands have never been assessed on the rolls of, nor have any taxes ever been paid to, the State of Mississippi and that this is the case with all other lands and islands now claimed by the State of Mississippi, but which in truth and fact belong to the State of Louisiana."

"30th. Your orator therefore further avers that all constituted authorities competent to create, adopt or consider the said boundary line have declared the water boundary line claimed by the State of Louisiana, viz: the deep water channel running from the most southern junction of the eastern mouth of Pearl River, through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle à Pitre and southwest of Cat Island, through Cat Island pass, through Chandeleur Sound northeast of Chandeleur Islands, to the Gulf of Mexico, to be the true water boundary between the said States."

The bill prayed that it be adjudged and decreed "that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi and to the southeast of the State of Louisiana is the deep-water channel, commencing at the most southern junction of the eastern mouth of Pearl River with Lake Borgne, thence by the deep-water channel through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle à Pitre, through Cat Island Pass Channel, southwest of Cat Island, through Chandeleur Island Sound, northeast of the Chandeleur Islands, to the Gulf of Mexico, as is delineated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Com-

mission and now made part of this bill, marked Exhibit 'E;' that the said deep-water channel be located throughout its course and permanently buoyed at the joint expense of the two States; that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line," and for costs and general relief.

[Exhibit "E" is not reproduced in the printed record, but is to be found in the Louisiana Atlas of Maps, p. 60. It consists of Coast Survey Charts Nos. 189, 190 and 191, showing the coast from Mobile to Lakes Borgne and Pontchartrain, with boundary lines added in red ink. The maps given in this statement are sufficient to supply the lack of this particular exhibit.]

The State of Mississippi, by leave, filed a demurrer to the bill, which was by stipulation submitted to the consideration of the court on printed arguments, and was subsequently overruled.

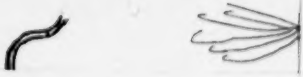
Thereupon the State of Mississippi on leave filed her answer and cross bill.

The State denied articulately nearly every material allegation of the bill and therefore the accuracy of the diagrams or maps attached thereto, and asserted the true boundary to be as set forth in her cross bill. And while she admitted "that the deep water channel out of the mouth of Pearl River through the upper course of Lake Borgne and on into the Gulf, as stated in the bill, has been marked by buoys by and under the direction of the United States Government for navigation and commercial purposes," she denied "that said marking of the deep water channel was ever intended to fix in any manner whatsoever any part of the boundary line between said States," and further denied "the correctness of complainant's statement that where contiguous States or countries are separated by water, the channel of the waters dividing said States constitutes a boundary line, and defendant specifically denies that such rule is applicable to this case."

The cross bill averred that the southern boundary line of the State of Mississippi was fixed by the act of Congress, approved March 1, 1817, 3 Stat. 348, c. 23, § 2.

That by that act Mississippi was given "all lands under the waters south of her well-defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl River with Lake Borgne, including all islands within said limit," and "all territory within said limits, not being a part of the mainland of the State of Louisiana, became, was and is a part of the territory of the State of Mississippi."

That the acts of 1812, creating the State of Louisiana, failed "to describe the water line from the most eastern mouth of Pearl River to the



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[illegible] of the matters herein set forth and because said islands and terri-

Gulf of Mexico," and hence Louisiana proposed, "without authority in law to follow the deep water channel from the mouth of Pearl River to the Gulf of Mexico, that is, as far south as that point in the sea where the waters of Chandeleur Sound merge into the waters of the Gulf of Mexico."

That the act creating the State of Mississippi was the organization of a State government in the western part of Mississippi Territory; that the southern part of the territory of Mississippi was added thereto by an act of Congress approved May 14, 1812, which provided: "That all that portion of territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory; to be governed by the laws now in force therein, or which may be hereafter enacted, and the law and ordinances of the United States, relative thereto, in like manner as if the same had originally formed a part of said Territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi Territory, shall be entitled to one representative in the General Assembly thereof." 2 Stat. 734.

That this act and the act admitting the State of Mississippi "recognized the fact that the boundary line of the State of Louisiana embraced no island in the waters to the east of said State and to the south of the Mississippi mainland, or shore, and within six leagues of the Mississippi shore; that the said Louisiana acts are not in conflict with the aforesaid Mississippi acts, the boundaries of Louisiana only embracing such islands, as clearly shown by said acts creating and admitting her, as were within the Gulf of Mexico and also within three leagues of her gulf coast, that is to say, within the Gulf of Mexico proper and to the south of said State of Louisiana as contemplated by Congress; that the said line from the mouth of Pearl River to the Gulf of Mexico dividing the Territory of Mississippi from the State of Louisiana was never defined until the passage of the act creating the State of Mississippi, when, for the first time, the southern boundary of the Mississippi Territory, the western part of which was, by said act, made the State of Mississippi, was accurately defined and established as herein stated; that the line above described and defined by the said Mississippi acts, includes no islands which are within three leagues of the Louisiana mainland and also in the Gulf of Mexico as the limits of the Gulf of Mexico are defined by the said State in her original bill herein."

That the State of Louisiana "claims title and sovereignty over some of the islands belonging to the State of Mississippi by virtue of certain alleged action of certain officers of the United States Government and local officers of the State of Louisiana," but the claim "is not well founded because of the matters herein set forth and because said islands and terri-

tory have not been susceptible to actual use and occupation and because said claim is in violation of sec. 3, art. IV, of the Constitution of the United States . . ." But if the court should adjudge said islands and territory approved by the aforesaid officials to the State of Louisiana to belong to said State, then Cross-Complainant prayed that the claim of title of Louisiana thereto "be restricted to the real lands or islands so lost to the State of Mississippi, and be in no case permitted to affect any lands under the waters, or any of the public oyster reefs thereunder."

It was then alleged that Mississippi had "exercised sovereignty and jurisdiction over said waters within eighteen miles of her shore aforesaid," and that by her statutes as codified in 1857 had asserted such jurisdiction. And that by the legislation of Congress and the State, the "'Mississippi Sound' was recognized as a body of water, six leagues wide, wholly within the State of Mississippi, from Lake Borgne to the Alabama line, separate and distinct from 'the Gulf of Mexico.'"

The cross bill further averred that Congress "in the early history of the Republic, in dealing with the Gulf coast or shore," was not perfectly familiar with the line, and by several acts "creating the Gulf States, respectively, treated the said Gulf coast or shore as a line running generally from east to west," and said States were, in the contemplation of Congress, "so formed and bounded as to give to each State jurisdiction over the waters adjacent to its shore or coast for a certain specified distance southward from its mainland line; that it was not intended to give to any State jurisdiction over waters adjacent to and immediately south and in front of any other State or Territory." But that the deep water channel line contended for by Louisiana would take nearly all of the Hancock County water front, much of that of Harrison County, and possibly some of that of Jackson County, over all which Mississippi had exercised jurisdiction since her admission.

Reference was then made to the organization of Hancock and Jackson Counties in December, 1812, and of Harrison County in 1841; and to certain sections of the Revised Code of Mississippi of 1880 and a codification of 1892, making a general reference to islands within six leagues of the Mississippi shore; and it was charged that during all this time the government of the Mississippi Territory and that of the State of Mississippi had exercised full and complete jurisdiction and sovereignty over the waters in the "Mississippi Sound" as a part of the three counties aforesaid.

The prayer was that it be decreed "that the boundary line dividing the States of Mississippi and Louisiana is the line which, beginning at a point six leagues due south of that point on the shore where the Alabama and Mississippi line enters the Gulf of Mexico, runs westwardly with the meanderings of the shore six leagues always therefrom until said line

ches and touches the real mainland of Louisiana about two miles d[illegible]
t of the 'Indian mound' and 'Lake of the Mound,' and thence in an
ost due northward direction along and on the high tide mark of the
Louisiana mainland to Mississippi Sound at or near Nine Mile Bayou,
thence further along said mainland at the high tide mark westwardly
hat point due south of the middle of the most southern, or eastern
ction of Pearl River with Lake Borgne, and thence from said point
north to the said Pearl River; that the said line be located and per-
nently buoyed at the joint expense of the two States; that the full title
sovereignty over all the islands and the land under the waters north
east of the said line so established be decreed and adjudged to be in
State of Mississippi, and that the State of Louisiana and her citizens
erpetually enjoined from disputing such title and sovereignty of the
e of Mississippi therein," and for costs and general relief.

The following "Exhibit Map" was attached:

[Map.]



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The State of Louisiana filed replication, and also an answer to the cross bill, the allegations of which were in substance denied.

As to the act of May 14, 1812, the State said that it could not and did not change the boundaries of Louisiana, and, that, in fact, the southern portion of the Mississippi Territory as claimed was not then in possession of the United States, and did not extend south of the thirty-first degree of north latitude; that February 12, 1813, an act was passed "authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi Territory and west of the river Perdido," but that this was not published until 1818; nor were the resolution of January 15 and act of March 3, 1811, on the relations of the United States to Spain, published until after April 20, 1818. 3 Stat. 471.

The cause being at issue, much evidence, documentary and otherwise, was taken, and the case was argued October 10, 11 and 12.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The demurrer was overruled because the court was of opinion that the bill presented a *prima facie* case of justiciable controversy between the State of Louisiana and the State of Mississippi as to the boundary line between them, and we are clear that the proofs establish the existence of such a controversy as to fully sustain our jurisdiction.

It is apparent that the enforcement of the oyster legislation of the two States led to a conflict between the authorities of both, which involved a dispute as to the true boundary line.

In 1886 the State of Louisiana passed an act vesting the power to control the oyster industry in the hands of the officials of the parishes of the State in their several localities, along general lines laid down in the law. Laws La. 1886, Act No. 106. This was followed by the acts of 1892 (No. 110), 1896 (No. 121), and 1900 (No. 159). By the act of 1896 non-resident oyster fishermen were prohibited from fishing oysters in Louisiana waters, and the dredging of oysters was also prohibited, in this particular differing from the laws of Mississippi, which permitted it. By a concurrent resolution of 1900 a Legislative Commission was created to investigate and report on the oyster industry of the State.

In January, 1898, the parochial authorities of the Parish of St. Bernard equipped and sent out an official expedition to exclude from the oyster waters of the parish any non-resident oyster fishermen who might be found fishing therein. Non-resident Mississippi oystermen were found fishing oysters there, and they were notified that they must stop fishing and move out of those waters. These Mississippians then complained to the Mississippi authorities and a conference ensued between representatives of the Parish of St. Bernard and the county of Hancock. In January, 1901, at the instance of the

Louisiana Legislative Commission appointed under the act of 1900, and of committees appointed from the police juries of the Louisiana parishes of St. Bernard and Plaquemines, a meeting of the State officials of Louisiana was held in New Orleans to consider the subject of the dispute with the State of Mississippi, and the invasion by non-residents of the Louisiana oyster waters. This meeting resulted in the appointment by the Governor of Louisiana of a commission of five members, and an official communication from the Governor of Louisiana addressed to the Governor of Mississippi requesting the latter to appoint a similar commission to see if it were possible to effect an amicable settlement of the dispute between the two States. This Mississippi commission was accordingly appointed, and the two commissions held a joint conference in New Orleans in March, 1901. Louisiana presented at the conference a map showing the Louisiana contention as to the boundary, which is the map attached to the bill and marked Exhibit E. The Mississippi commission reported that it was impossible to effect an amicable extrajudicial settlement of the dispute, and that the only hope of settlement was a friendly suit in the Supreme Court of the United States. This report was submitted by the Mississippi commission to the Governor of Mississippi and was transmitted to the legislature of that State. At this session the State of Mississippi passed a new law controlling her oyster waters and oyster industry. (Laws 1902, c. 58.) This act created a State oyster commission, vested with entire control of the Mississippi oyster industry. It took the control of the industry out of the hands of the coast county authorities and centralized it in this State department, which was authorized to establish a system of patrol of the Mississippi oyster waters and to maintain patrol boats to sustain the oyster laws in her territory. In July, 1902, the State of Louisiana followed the example of the State of Mississippi and adopted an act, (Acts 1902, No. 153,) creating a State oyster commission of Louisiana as a State department vested with full control of the oyster industry of Louisiana, and authorized to establish patrol boats and maintain an armed patrol on the Louisiana oyster waters to protect her rights in the oyster industry therein. In view of the danger of an armed conflict, the Oyster Commissions of both States, in September, 1902, adopted a joint resolution establishing a neutral territory between the two States "pending the final decision by the Supreme Court of the United States in the boundary suit to be instituted," to remain a common fishing ground. This *modus vivendi* did not include all of the disputed territory, but the waters of Mississippi Sound between the deep water channel and the north shore line of the Louisiana marshes were embraced by it.

In the following October this bill was filed. Louisiana appeared through her Governor and her Attorney-General, and the action of the Governor

in instituting the suit was subsequently approved, ratified and confirmed by the legislature.

The facts that the act of Congress admitting the State of Louisiana gave that State all islands within three leagues or nine miles of her coast, and that the subsequent act of Congress admitting the State of Mississippi purported to give that State all islands within six leagues or eighteen miles of her shore, and that some islands within nine miles of the Louisiana coast were also within eighteen miles of the Mississippi shore, furnished the basis for a boundary controversy, although, in our judgment, the apparent inconsistency is reconcilable, as hereinafter explained. And that controversy involved to each State pecuniary values of magnitude, as is shown by the evidence on both sides. We think that there existed between the two States, in their sovereign capacity as States, a controversy affecting the boundary line separating them in the locality in question of a character to justify the exercise of our original jurisdiction within the rules laid down in *Missouri* v. *Illinois*, *ante*, p. ; Id. 180 U. S. 208; *Pennsylvania* v. *Wheeling Bridge Company*, 13 How. 589; *Louisiana* v. *Texas*, 176 U. S. 1; *Kansas* v. *Colorado*, 185 U. S. 25.

2. The State of Louisiana was admitted into the Union by the act of Congress approved April 6, 1812, (2 Stat. 701, c. 50,) which commenced as follows:

"*Whereas*, the representatives of the people of all that part of the territory or country ceded under the name of 'Louisiana' by the treaty at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: Beginning at the mouth of the River Sabine; thence by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast; . . ."

Map or diagram No 1, given in the opening statement, shows the limits as thus defined.

By an act of Congress approved April 14, 1812, (2 Stat. 708, c. 57,) additional territory was added to the State of Louisiana, described thus:

"All that tract of country comprehended within the following bounds, to wit: Beginning at the junction of the Iberville with the River Mississippi; thence along the middle of the Iberville, the Amite River and the Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl River; thence up the said eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said river to the place of beginning, shall become and form part of the said State of Louisiana, and be subject to the

constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of the said State."

This added territory is shown on map or diagram No. 2. The eastern boundary of Louisiana was thereby moved eastward from the Mississippi to Pearl River, and Louisiana was given the country south of the thirty-first degree of north latitude, and north of the boundary formed by the River Iberville, the middle of Lakes Maurepas and Pontchartrain and the Rigolets.

The River Iberville is called on this map Bayou Manchac, and is still known by that name. The Rigolets is a gut connecting the waters of Lakes Pontchartrain and Borgne, both of which are bodies of salt water and were originally arms of the sea. In order to reach the open waters of the Gulf of Mexico from the middle of Lakes Maurepas and Pontchartrain the line ran through the Rigolets into Lake Borgne, and after the addition to the State by the act of April 14, 1812, the eastern boundary line of Louisiana entered Lake Borgne to the south by Pearl River as well as the Rigolets. To get from Lake Borgne into the open water of the Gulf of Mexico beyond Chandeleur Islands and around to the eastern boundary of Louisiana, it was necessary, as Louisiana contends, to follow the deep water channel north of Half Moon or Grand Island, through Mississippi Sound, and thence by the pass between Cat Island and Isle à Pitre, north of the Chandeleur Islands, into the open Gulf. Many maps are given in the record, some made at dates long prior to the admission of Louisiana as a State, some at that time, and some within a few years thereafter, and all show the St. Bernard peninsula to be geographically a true part of the State of Louisiana, or of an area of country that was to form the State, and that the said peninsula projected itself as a well-defined arm of land out into the waters of the Gulf, branching off as a projection from the main body of land composing the State, and forming a part of it. We observe that on many of these early maps the term "peninsula" is applied to this projection, and that designation is sufficiently accurate for the purpose of description.

November 14, 1803, President Jefferson sent a communication to Congress, in which, among other things, he said:

"The object of the following pages is to consolidate the information respecting the present State of Louisiana, furnished to the Executive by several individuals among the best informed on the subject.

"Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed probable that surveys have never been made upon so extensive a scale as to afford the means of laying down the various regions of a country which in some of its parts appears to have been but imperfectly explored. . . .

"St. Bernardo.

"On the east side of the Mississippi, about five leagues below New Orleans, and at the head of the English Bend, is a settlement known by the name of the Poblacion de St. Bernardo, or the Terre au Bœufs, extending on both sides of a creek or drain, whose head is contiguous to the Mississippi, and which flowing eastward, after a course of eighteen leagues, and dividing itself into two branches, falls into the sea and Lake Borgne. This settlement consists of two parishes, almost all the inhabitants of which are Spaniards from the Canaries, who content themselves with raising fowls, corn and garden stuff for the market at New Orleans. The lands cannot be cultivated to any great distance from the banks of the creek, on account of the vicinity of the marsh behind them, but the place is susceptible of great improvement, and of affording another communication to small craft of from eight to ten feet draught, between the sea and the Mississippi."

"Country from Plaquemines to the sea, and effect of the hurricanes:

"From Plaquemines to the sea is twelve or thirteen leagues. The country is low, swampy, chiefly covered with reeds, and having little or no timber, and no settlement whatever. It may be necessary to mention here, that the whole lower part of the country, from the English Turn downwards, is subject to overflowing in hurricanes, either by the recoiling of the river, or reflux from the sea on each side; and, on more than one occasion, it has been covered from the depth of two to ten feet, according to the descent of the river, whereby many lives were lost, horses and cattle swept away, and a scene of destruction laid. The last calamity of this kind happened in 1794, but fortunately they are not frequent. In the preceding year the engineer who superintended the erection of the fort at Plaquemines was drowned in his house near the fort, and the workmen and garrison escaped only by taking refuge on an elevated spot in the fort, on which there were notwithstanding two or three feet of water. These hurricanes have generally been felt in the month of August. Their greatest fury lasts about twelve hours. They commence in the southeast, veer about to all the points of the compass, are felt most severely below, and seldom extend more than a few leagues above New Orleans. In their whole course they are marked with ruin and desolation. Until that of 1793, there had been none felt from the year 1780."

This communication was, of course, before Congress when the act of 1812, admitting Louisiana, was approved, and the peninsula was clearly recognized as forming part of the Parish of St. Bernard, as was its marshy character and that of the adjoining parish.

By the act of Congress, approved March 1, 1817, (3 Stat. 348, c. 23,) the inhabitants of the western part of the then Mississippi Territory were authorized to form for themselves a State constitution and to be admitted into the Union with the following boundaries: "Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washing-

ton; thence due south to the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning."

The people in convention, August 15, 1817, formed a constitution and State government, (approved subsequently by popular vote,) and the State was admitted by resolution December 10, 1817. (3 Stat. 472.)

The State of Alabama was admitted by the act of March 2, 1819, (3 Stat. 489, c. 47,) which provided: "That the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido River; thence, east, to the western boundary line of the State of Georgia; thence along said line, to the southern boundary line of the State of Tennessee; thence, west, along said boundary line, to the Tennessee River; thence, up the same, to the mouth of Bear Creek; thence, by a direct line, to the northwest corner of Washington County; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all the islands within six leagues of the shore, to the Perdido River; and thence, up the same to the beginning."

The islands, marsh or otherwise, claimed by Louisiana in this case were all within three leagues of her coast. The act admitting Mississippi was passed five years after the Louisiana act, yet Mississippi claims thereunder the disputed territory, as being islands within eighteen miles of her shore. If it were true that this repugnancy between the two acts existed, it is enough to say that Congress, after the admission of Louisiana, could not take away any portion of that State and give it to the State of Mississippi. The rule, *Qui prior est tempore, potior in jure*, applied, and Section three of Article IV of the Constitution does not permit the claims of any particular State to be prejudiced by the exercise of the power of Congress therein conferred.

But it is said that the act admitting Louisiana, the act admitting Mississippi, and the act admitting Alabama must be construed as *in pari materia*; and, being so construed, that Congress must be held to have had in view in the three acts a division of the coast along the Gulf of Mexico so as to equalize the water frontage of Mississippi, Louisiana, and Alabama.

We do not regard these acts as *in pari materia* in any proper sense. They provided for the admission of three separate States, and the subject of each was not only not identical with, but not even similar to, that of the others. They did not form part of a homogeneous whole, of a common system, so as to allow a claimant under the later act to successfully contend that it changed the earlier act by construction or effected such change because declaratory of the meaning of the prior act.

And assuming for the sake of argument that the Louisiana and Mississippi acts were irreconcilably inconsistent, but remembering that when Louisiana was admitted into the Union, the territory now composing the coast counties of Mississippi, that is, below the thirty-first degree of north latitude, was not actually a part of the Mississippi Territory but was in dispute between the United States and Spain, the theory of any preconcerted design in regard to the water front of the two States is too unreasonable to be entertained.

In the treaty of peace between England, France and Spain of February 10, 1716, Article VII, on the subject of the boundary line separating the dominions of England and France in the New World, provided: "That for the future the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain to the sea." According to this treaty England retained the port of Mobile and its river and everything east of the Rigolets. The Island of Orleans, formed by the River Iberville, Lakes Maurepas and Pontchartrain, the Rigolets, the Gulf of Mexico and the Mississippi River, remained the property of France. In the treaty of February 10, 1763, practically the same language is used in describing the boundary line separating the British from the French territory, and by the twentieth article the cession to England of Florida by Spain and all that Spain possessed on the continent of North America was provided for. By the treaty of September 3, 1783, between England and Spain, England retroceded East and West Florida to Spain. By the treaty of St. Ildefonso of October 1, 1800, Spain ceded to France "the colony or province of Louisiana with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." April 30, 1803, France ceded to the United States "the colony or province of Louisiana," using the same description as used by Spain in ceding the territory to her, and stating in Article II "In the cession made in the preceding article are included the adjacent islands belonging to Louisiana . . ."

There is nothing in any of these transfers to raise a doubt that the peninsula of St. Bernard was part of the Island of Orleans and that this Island of Orleans was in fact formed by the extension to the sea of the boundary line coming down through the middle of Lakes Maurepas and Pontchartrain and so finding its way to the sea by the deep water channel.

March 26, 1804, an act of Congress was approved, dividing the country acquired as Louisiana from France into two parts, providing:

"That all that portion of the country ceded by France to the United States under the name of Louisiana, which lies south of the Mississippi Territory and of an east and west line to commence on the Mississippi River at the thirty-third degree of north latitude, and to extend west to the western boundary of said cession, shall constitute a Territory of the United States under the name of the Territory of Orleans, the government whereof shall be organized and administered as follows:

* * * * * *

"SECTION 12. The residue of the Province of Louisiana ceded to the United States, shall be called the District of Louisiana, the government whereof shall be organized and administered as follows: . . . ."

Congress manifestly regarded the lands to the east, that were south of the Mississippi Territory, and which form the disputed area of to-day, as part of the original Island of Orleans, included in the treaty of April 30, 1803; and these were given to the Territory of Orleans, whose southeastern boundary was the original southeastern boundary of the Island of Orleans. At that date the Mississippi Territory did not extend south of the thirty-first degree of north latitude and its domain did not reach the shore of Mississippi Sound, so-called.

February 20, 1811, (2 Stat. 641, c. 21,) an act of Congress was approved "to enable the people of the Territory of Orleans to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States and for other purposes." The description of the limits was as follows: "Beginning at the mouth of the River Sabine, thence, by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude, thence due north to the northernmost part of the thirty-third degree of north latitude, thence along said parallel of latitude to the River Mississippi, thence down the said river to the River Iberville, and from thence along the middle of said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico, thence, bounded by said gulf, to the place of beginning, including all islands within three leagues of the coast, etc., etc."

The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep water sailing channel line to get around to the westward. A little over one year later Louisiana was created a State by the act of Congress of April 6, 1812, with this identical eastern boundary line; and the addition of territory by the act of April 14, 1812, did not affect the deep water sailing channel line as a boundary.

April 7, 1798, (1 Stat. 549, c. 28,) an act was approved "for an amicable settlement of limits with the State of Georgia, and authorizing the organization of a government in the Mississippi Territory," which read in part: "That all that tract of country bounded on the west by the Missis

sippi; on the north by a line to be drawn due east from the mouth of the Yassous to the Chatahouchee River; on the east by the River Chatahouchee; and on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi Territory." This was in conformity with the treaty between Spain and the United States of October 27, 1795. Maps of that date, and subsequently, show that the admitted rights of the United States did not at the time extend south of the thirty-first degree of north latitude at that point.

By an act of January 15, 1811, the President of the United States was authorized, among other things, in the event that any foreign government attempted to occupy the same, to take possession of the country lying east of the River Perdido, and south of the State of Georgia and the Mississippi Territory. The River Perdido is in the State of Alabama, east of the State of Mississippi, and flows into the Gulf of Mexico between Mobile Bay in Alabama and Pensacola Bay in Florida. A few days later, and on March 3, 1811, an act of Congress was approved, providing that the act of January 15, 1811, and this act, should not be published until the end of the next session of Congress, unless with the consent of the President.

By resolution approved January 15, 1811, it was specifically declared that the United States could not without serious inquietude see any part of the territory adjoining the southern border of the United States pass into the hands of any foreign power, "and that a due regard to their own safety compels them to provide, under certain contingencies, for the temporary occupation of the said territory." 3 Stat. 471.

May 14, 1812, an act of Congress was passed, (2 Stat. 734, c. 84,) to enlarge the boundaries of the Mississippi Territory, which used the following language: "That all that portion of the territory lying east of Pearl River, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory," etc. The country described was not at the time in the possession of the United States, and on February 12, 1813, Congress passed an act "authorizing the President of the United States to take possession of the tract of country lying south of the Mississippi Territory and west of the River Perdido," which act referred to the tract as "not now in the possession of the United States." 3 Stat. 472. But it was not until the enabling act in respect of Mississippi, approved March 1, 1817, that the language was used: "Thence due south to the Gulf of Mexico; thence, westward, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River and Lake Borgne," etc.

The claim of Mississippi is that the disputed area is composed of islands, and as those islands are within eighteen miles of her shore, that they were given to her by the act of March 1, and the resolution of

December 10, 1817. It is true there are some islands in that area, such as Grassy, Half Moon, Petit Pass and Isle à Pitre, all of which are between the deep water channel on the north and the main coast line of St. Bernard peninsula on the south.

The contention of Louisiana is that these islands were previously given to her by the act of April 6, 1812, more than five years prior to the admission of Mississippi, and that her title thereto, even if the acts were in conflict, is superior to that of the State of Mississippi; and she also contends that the islands belong to her because they are south of the deep water sailing channel line, which she submits is the true boundary line between the two States. Mississippi denies that the peninsula of St. Bernard and the Louisiana Marshes constitute a peninsula in the true sense of the word, but insists that they constitute an archipelago of islands. Certainly there are in the body of the Louisiana Marshes or St. Bernard peninsula portions of sea marsh which might technically be called islands, because they are land entirely surrounded by water, but they are not true islands. They are rather, as the Commissioner of the General Land Office wrote the Mississippi land commissioner in 1904, "in fact, hummocks of land surrounded by the marsh and swamp in said townships. . . ."

And when the Louisiana act used the words: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast," the coast referred to is the whole coast of the State, and the peninsula of St. Bernard formed an integral part of it. Lake Borgne and Mississippi Sound are bodies of salt water and as such parts of the sea or gulf, and as the coast of Louisiana began along the north shore of the peninsula, it is not to be supposed that the islands referred to by Congress in the Louisiana Act were solely those islands to the south of that State.

The contention of Mississippi is based upon an assumed inconsistency between the Louisiana and the Mississippi acts, but we think upon a true interpretation, in the light of the facts, that no such inconsistency can be imputed. The maps show that there is a chain, not of alluvial but of sea sand islands running from the west shore of Mobile Bay in the State of Alabama, westward, to and inclusive of Cat Island in the State of Mississippi. This chain forms the southern boundary of Mississippi Sound and the islands are all relatively the same distance from the shore of the States of Mississippi and of Alabama. They, beginning at the eastern end, are Dauphin, Petit Bois, Horn, Ship and Cat Islands, and there are some other islands lying within this chain. If Congress referred to these islands as being thus within six leagues of the shore, when the act creating the State of Mississippi was passed, it follows that there would be no conflict with prior existing boundaries of the State of Louisiana, particularly if the deep water sailing channel line be taken

as the correct boundary between the States. And when Congress created a separate territorial government for the eastern part of Mississippi Territory and called it Alabama, by the act of March 3, 1817, it used the same language concerning the western and southern boundary of the territory: "thence due south to the Gulf of Mexico, thence eastwardly, including all islands within six leagues of the shore to the River Perdido and thence up same to the beginning." It seems obvious to us that it was to this chain of islands that Congress referred when it admitted Mississippi into the Union, and that it had no intention whatsoever of giving Mississippi any claim of ownership in the sea marsh islands, which had been previously granted to the State of Louisiana.

We are of opinion that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana Marshes at the eastern extremity thereof form part of the coast line of the State; and that the islands within nine miles of that coast are hers, except as restricted by the deep water sailing channel regarded as a boundary. Cat Island, for instance, is within the nine miles, but it is north of the deep water channel, is not alluvial, and is conceded by both States to belong to Mississippi.

3. That there is a deep water sailing channel line emerging from the mouth of Pearl River, and extending east between Lower Point Clear and Grand Island, is shown by the numerous maps, surveys and sketches in the record. It separates into two branches, one of them passing between Cat Island and Isle à Pitre.

Among the maps put in evidence by Louisiana is one prepared by George Gauld, M. A., for the British Admiralty in the year 1778, and, from the relative depths of water given, the existence of this same channel, extending out into the Gulf, southwest of Cat Island, is shown and is the same as noted on maps of subsequent years.

February 14, 1839, an act of the legislature of Mississippi was approved, providing for a survey of the Mississippi coast. The survey and report are given in full in the record, and the deep water channel above referred to is traceable in detail on the sketch. The channels indicated on this survey and on the United States Coast and Geodetic Survey map are the same channels. It may be noted, in passing, that the body of water now known as "Mississippi Sound," is not so designated on this sketch, and the first map which uses this name, to which our attention has been called, was issued in 1866.

Louisiana lies between the States of Mississippi to the east and Texas to the west. The southern portion of Louisiana is geologically of an alluvial formation, containing the delta of the Mississippi River. The peninsula of the Parish of St. Bernard is practically a part of this delta formation.

Mississippi's mainland borders on Mississippi Sound. This is an en closed arm of the sea, wholly within the United States, and formed by chain of large islands, extending westward from Mobile, Alabama, to Ca Island. The openings from this body of water into the Gulf are neithe of them six miles wide. Such openings occur between Cat Island and Isl à Pitre; between Cat and Ship Islands; between Ship and Horn Islands between Horn and Petit Bois Islands; between Petit Bois and Dauphi Islands; and between Dauphin Island and the mainland on the west coast o Mobile Bay. The maps show all this, and, among others, reference ma be made to Jeffrey's map of 1775, given in the record, and which i reduced form is reproduced from Jeffrey's Atlas of 1800 as the frontispiec of vol. II, Adams' History of the United States.

Now to repeat, the boundary of Louisiana separating her from the Stat of Mississippi to the east is the thread of the channel of the Mississipp River, and this extends south until it reaches the thirty-first degree o north latitude and then runs directly east along that degree until Pear River is reached; thence south along the channel of that river to Lak Borgne. Pearl River flows into Lake Borgne, Lake Borgne into Missis sippi Sound and Mississippi Sound into the open Gulf of Mexico through among other outlets, South Pass, separating Cat Island from Isle à Pitre

If the doctrine of the thalweg is applicable, the correct boundary lin separating Louisiana from Mississippi in these waters is the deep wate channel.

The term "thalweg" is commonly used by writers on international la in definition of water boundaries between States, meaning the middle o deepest or most navigable channel. And while often styled "fairway" o "midway" or "main channel," the word itself has been taken over int various languages. Thus in the treaty of Luneville, February 9, 1801 we find "le Thalweg de l'Adige," "le Thalweg du Rhin," and it is simi larly used in English treaties and decisions, and the books of publicists i every tongue.

In *Iowa* v. *Illinois*, 147 U. S. 1, the rule of the thalweg was stated an applied. The controversy between the States of Iowa and Illinois on th Mississippi River, which flowed between them, was as to the line whic separated "the jurisdiction of the two States for the purposes of taxatio and other purposes of government." Iowa contended that the boundar line was the middle of the main body of the river, without regard to th "steamboat channel" or deepest part of the stream. Illinois claimed tha its jurisdiction extended to the channel upon which commerce on the rive by steamboats or other vessels was usually conducted. This court hel that the true line in a navigable river between States is the middle of th main channel of the river.

Mr. Justice Field, delivering the opinion of the court, said:

"When a navigable river constitutes the boundary between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each State in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises on international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining States up to which each State will, on its side, exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term 'middle of the stream,' as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France, and Spain, concluded at Paris in 1763. By the language, 'a line drawn along the middle of the river Mississippi from its source to the river Iberville,' as there used, is meant along the middle of the channel of the river Mississippi."

This judgment related to navigable rivers. But we are of opinion that, on occasion, the principle of the thalweg is applicable, in respect of water boundaries, to sounds, bays, straits, gulfs, estuaries and other arms of the sea.

As to boundary lakes and landlocked seas, where there is no necessary track of navigation, the line of demarcation is drawn in the middle, and this is true of narrow straits separating the lands of two different States; but whenever there is a deep water sailing channel therein, it is thought by the publicists that the rule of the thalweg applies. Martens (F. de) vol. 1, (2d ed.) p. 134; Hall, § 38; Bluntschli, (5th ed.), §§ 298, 299; Oppenheim, vol. 1, pp. 254, 255.

Thus Martens writes: "What we have said in regard to rivers and lakes is equally applicable to the straits or gulfs of the sea, especially those which do not exceed the ordinary width of rivers or double the distance that a cannon can carry."

So Pradier Fodéré says (Vol. II, p. 202), that as to lakes, "in communication with or connected with the sea, they ought to be considered under the same rules as international rivers."

The same view is confirmed by decisions of this court and of many Arbitral tribunals.

In *Devoe Manufacturing Company*, 108 U. S. 401, the question at issue was in regard to the boundary line between New York and New Jersey under an agreement between the two States. The jurisdiction of the State of New Jersey was claimed "to extend down to the bay of New York, and to the channel midway of said bay," and this court sustained the claim. See *Hamburg-American Steamship Company* v. *Grube*, 196 U. S. 407.

In the San Juan Water Boundary controversy between the United States and Great Britain, Emperor William I gave the award in favor of

the United States, October 21, 1871, by deciding "that the boundary line between the territory of Her Britannic Majesty and the United States should be drawn through the Haro Channel;" and it is apparent that the decision was based on the deep channel theory as applicable to sounds and arms of the sea, such as the straits of San Juan de Fuca; indeed in a subsequent definition of the boundary, signed by the Secretary of State, the British Minister, and the British representative, the boundary line was said to be prolonged until "it reaches the center of the fairway of the Straits of San Juan de Fuca." The fairway was the equivalent of the thalweg.

Again, in fixing the boundary line of the Detroit River, under the sixth and seventh articles of the treaty of Ghent, the deep water channel was adopted, giving Belle Isle to the United States as lying north of that channel.

So in the Alaskan Boundary Case, the majority of the arbitration tribunal, made up of Baron Alverstone, Lord Chief Justice of England, Mr. Secretary Root, and Senators Lodge and Turner, held that the middle of the Portland Channel was the proper boundary line and included Wales Island, to the north of which the channel passed. This sustained the American contention in regard to the thalweg and the island lying south of it.

But counsel contend that the rule "as to the flow of the midchannel or thalweg of the River Iberville (now known as Manchac) through the east, through Lakes Maurepas and Pontchartrain expires by its own limitation when such midchannel reaches Lake Borgne, which in contemplation of the rule is the open sea, and part of the waters of the Gulf of Mexico." This contention is inconsistent, as matter of fact, with the allegation of the cross bill that "the Mississippi Sound was recognized as a body of water six leagues wide, wholly within the State of Mississippi from Lake Borgne to the Alabama line, separate and distinct from the Gulf of Mexico," and with Mississippi's Exhibit Map A presenting her claim, while the record shows that the strip of water, part of Lake Borgne and Mississippi Sound, is not an open sea but a very shallow arm of the sea, having outside of the deep water channel an inconsiderable depth.

The maritime belt is that part of the sea which, in contradistinction to the open sea, is under the sway of the riparian States, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish, or pearls, or amber, or other products of the sea. See *Manchester* v. *Massachusetts*, 139 U. S. 240; *McCready* v. *Virginia*, 94 U. S. 391.

In *Manchester* v. *Massachusetts*, the court said: "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its

coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit; and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory, free-swimming fish, or free moving fish, or fish attached to or embedded in the soil. The open sea within this limit is, of course, subject to the common right of navigation; and all governments, for the purpose of self protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit."

Questions as to the breadth of the maritime belt or the extent of the sway of the riparian States require no special consideration here. The facts render such discussion unnecessary.

Islands formed by alluvion were held by Lord Stowell, in respect of certain mud islands at the mouth of the Mississippi, to be "natural appendages of the coast on which they border, and from which, indeed, they are formed." *The Anna*, (1805) 5 C. Rob. 373.

As to these particular waters, the observations of Mr. Hall, (4th ed.) p. 129, are in point: "Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water, and either form a line more or less parallel with land or compose systems of their own, in both cases enclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water."

He then states the specific case of the Archipiélago de los Canarios on the coast of Cuba, and says: "In cases of this sort the question whether the interior waters are, or are not, lakes enclosed within the territory, must always depend upon the depth upon the banks, and the width of the entrances. Each must be judged upon its own merits. But in the instance cited, there can be little doubt that the whole Archipiélago de los Canarios is a mere salt water lake, and that the boundary of the land of Cuba runs along the exterior edge of the bank."

In such circumstances as exist in the present case, we perceive no reason for declining to apply the rule of the thalweg in determining the boundary.

4. Moreover, it appears from the record that the various departments of the United States Government have recognized Louisiana's ownership of the disputed area; that Louisiana has always asserted it; and that Mississippi has repeatedly recognized it, and not until recently has disputed it.

The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both. *Virginia* v. *Tennessee*, 148 U. S. 503;

Indiana v. *Kentucky*, 136 U. S. 479; *Missouri* v. *Kentucky*, 11 Wall. 395; *Rhode Island* v. *Massachusetts*, 4 How. 591.

The Louisiana Enabling Act of February 20, 1811, provided that all the waste and unappropriated lands in said State should be and remain the property of the United States Government. In the disputed area of to-day are included lands and waters located in various townships, all of which are enumerated in the southeastern land district of Louisiana, east of the Mississippi River. The lands in these townships were surveyed by the Government about the year 1842, all of them as being in and forming a part of the State of Louisiana. By the Swamp Land Grants of 1849 and 1850, the United States granted to certain States the swamp and overflowed lands within their respective limits, in order that these lands might be reclaimed, protected from overflow, and brought into use. Louisiana made application to the United States for the approval to her of these lands as being part of her territory and situated within her limits. They all lay south of the deep water channel and were all approved to the State of Louisiana May 6, 1852. They were then offered by the State through the register of the State land office for sale and many sales of them were made from time to time to individuals and patents issued therefor in various years from 1853 to 1894. In 1892, in furtherance of the better protection of the lands of the Parishes of St. Bernard and Plaquemines from overflow, the legislature of Louisiana adopted an act which created a Lake Borgne Basin Levee Commission, and provided a board of commissioners therefor as a department of the State government, and the register of the State land office was authorized to transfer all of the unsold lands to the board, which was done in April, 1895. The board was authorized by law to sell these lands and also to levy taxes to be used in establishing a protective levee system in the district. The board made sales of a considerable number of acres to different individuals from September 16, 1898, to March 7, 1902. Isle à Pitre was composed of certain enumerated sections of township ten, south of range twenty east, and these lands were approved to Louisiana by the Commissioner of the General Land Office of the United States May 6, 1852, as forming part of that State, and they were subsequently patented, sold and conveyed to various individuals, the chain of title extending from 1852, a period of over fifty years. The lands forming Isle à Pitre have been paying taxes to the State of Louisiana for years. Political and police control and jurisdiction by the Parish of St. Bernard officials were exercised over the disputed area, and many instances are given of police control and jurisdiction by Louisiana officials over this general territory. This territory consisted, as heretofore stated, of what was known as the Louisiana marshes, and it is admitted that they have immemorially been known by that name, though some of the witnesses for Mississippi said that they were also known as

Grand Marshes, admitting, however, that they were quite as frequently called the Louisiana Marshes.

Some other matters may properly be referred to as showing the general understanding of and acquiescence in the boundary asserted by Louisiana.

In January, 1901, the Superintendent of the Coast and Geodetic Survey was applied to by a member of the House of Representatives from Mississippi for information in regard to the boundary line between Louisiana and Mississippi in the present disputed area, and Hodgkins, an Assistant in the Department, a well-known expert in such matters, made a report January 30, 1901, which, after considering the subject in all its phases, showed that the correct boundary between the two States in the locality is the deep water sailing channel line contended for by Louisiana.

The United States Geological Survey published in the year 1900 a bulletin devoted to a discussion of the boundaries of the States and Territories, and giving a history of changes as they may have occurred. The third edition was published in 1904. Gannett's Boundaries, 58th Congress, 2d Session, H. R. Doc. 678.

In the opinion of that Bureau, Louisiana was originally bounded by the deep water channel, and is the owner of the area in dispute to-day, according to the report and the accompanying sketches.

In 1897, Louisiana requested the United States Commission of Fish and Fisheries to make an investigation and report upon certain technical matters in connection with the Oyster industry of that State, which investigation was made in February, 1898, by the United States Fish Commission steamer Fish Hawk. A map was made of the area investigated in St. Bernard Parish, and that map is given in the opening statement as Diagram No. 4. Louisiana's ownership was clearly recognized.

The General Land Office of the United States began as early as 1842 a detailed survey of the land forming the disputed area, of which township plats appear in the record. The survey gave the location of Marsh Island, Half Moon or Grand Island, an unnamed island, Petit Pass Island, and Isle à Pitre and the sections and townships comprised in these islands. They were all designated as being in the southeastern land district of Louisiana, east of the Mississippi River.

When, as we have said, Louisiana, in the year 1852, selected these and other lands within her State limits as enuring to her under the Swamp Land Grants, the General Land Office, on May 6, 1852, recognized the correctness of the claim to the lands and approved and patented them to her as a State. Mississippi also applied for the land enuring to her under the provisions of those grants, and received her swamp lands, but the State never selected and never had approved to her, as is shown by the books of the State Land Office of Mississippi, any of the lands in the disputed area of to-day; but it appeared that the State did have in her Land Office

books a record of the lands forming St. Joseph's Island, which lay immediately north of the deep water channel, and did not extend south of that channel.

The General Land Office of the United States in all of the maps it has caused to be made of Louisiana and Mississippi has been consistent in its recognition of the ownership by Louisiana of the disputed area. (See maps of Louisiana, 1879, 1886, 1887, 1896; and of Mississippi in 1890.)

As before stated, in 1839 an engineer and surveyor made a report and sketch of the coast of Mississippi under the authority of that State. This showed the territory lying south of the deep water channel in outline to be a peninsular formation. The report referred to Horn, Petit Bois, Cat and Ship Islands as belonging to Mississippi, all of which are east of the disputed territory; and the territory southwest of the deep water channel, or South Pass, was described as the Louisiana Marshes. The official maps of Mississippi recognized Louisiana's ownership of the disputed territory. The State map of October 26, 1866, which was approved by Governor Humphrey and also by Governor Alcorn, did this; and other maps, as the official map of Mississippi, published under an act of the legislature of that State on March 8, 1882; Rand McNally's sectional map of Mississippi, compiled from the records of the office of the Surveyor General of the Board of Immigration and Agriculture, Jackson, Mississippi; and the Railroad Commissioners' map of Mississippi gave like recognition. The only exception seems to be a map of the Railroad Commission, issued in 1904, two years after this suit was instituted, wherein on the eighteen-mile theory, Mississippi for the first time cartographically extended her claims into the St. Bernard, Louisiana, peninsula.

The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within six leagues of her shore in her code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion.

Our conclusion is that complainant is entitled to the relief sought.

Decree accordingly.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 11, Original.—October Term, 1905.

State of Louisiana, Complainant,
vs.
State of Mississippi.
} In Equity.

[April 23, 1906.]

This cause came on to be heard on the pleadings and proofs and was argued by counsel. On consideration thereof it is found by the court that the State of Louisiana, complainant, is entitled to a decree recognizing and declaring the real, certain and true boundary south of the State of Mississippi and north of the southeast portion of the State of Louisiana, and separating the two States in the waters of Lake Borgne and Mississippi Sound, to be, and that it is, the deep water channel sailing line emerging from the most eastern mouth of Pearl River into Lake Borgne and extending through the northeast corner of Lake Borgne, north of Half Moon or Grand Island, thence east and south through Mississippi Sound, through South Pass between Cat Island and Isle au Pitre, to the Gulf of Mexico, as delineated on the following map, made up of the parts of charts Nos. 190 and 191 of the United States Coast and Geodetic Survey, embracing the particular locality:

And it is ordered, adjudged, and decreed accordingly.

It is further ordered, adjudged and decreed that the State of Mississippi, officers, agents and citizens, be and they are hereby enjoined and trained from disputing the sovereignty and ownership of the State of uisiana in the land and water territory south and west of said boundary e as laid down on the foregoing map.

And that the costs of this suit be borne by the State of Mississippi.

True copy.

Test:

Clerk Supreme Court, U. S.